Circuit Court for Baltimore City
Case No. 122326012

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1420

September Term, 2023

APRIL GASKINS

v.

STATE OF MARYLAND

Arthur,
Beachley,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: January 10, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Following a bench trial in the Circuit Court for Baltimore City, appellant April Gaskins was convicted of reckless endangerment and leaving a firearm in close proximity to an unsupervised minor in violation of Article 19, § 59-12, of the Baltimore City Code. The court sentenced Gaskins to a term of three years of imprisonment for reckless endangerment and a consecutive term of one year of imprisonment for violating the Baltimore City ordinance.

In this appeal, Gaskins presents two questions for our review. For clarity, we have rephrased those questions as follows:

1. Is Article 19, § 59-12, which regulates children's access to firearms, preempted by § 4-104 of the Criminal Law Article ("CR") of the Maryland Code, which also regulates children's access to firearms?

2. Did the sentencing court err in imposing separate sentences for Gaskins's two convictions?[1]

For reasons to follow, we hold that CR § 4-104 does not preempt Article 19, § 59-12, of the Baltimore City Code. We also hold that the court did not err in imposing separate sentences. Accordingly, we affirm the judgments of the circuit court.

[1] Gaskins formulated the questions as follows:

> 1. Does the statewide statute governing [a] child's access to firearms preempt the Baltimore City ordinance governing the same?
>
> 2. Should appellant's convictions for reckless endangerment and leaving a handgun loaded or unloaded in close proximity to ammunition where an unsupervised minor might gain access to it have merged at sentencing?

BACKGROUND

On August 16, 2022, Gaskins's nine-year-old grandson shot and killed a 15-year-old child. The handgun used in the shooting was registered to Gaskins, who was her grandson's guardian.

The investigators spoke to Gaskins at her home. She informed them that the handgun was her personal weapon, that she normally stored the handgun on the floor of her bedroom closet, and that her grandson had regular access to her bedroom. The police conducted a search of Gaskins's home and discovered an empty magazine in Gaskins's bedroom and two boxes of ammunition and an empty gun box in the living room.

Gaskins was indicted on three counts: reckless endangerment, in violation of CR § 3-204; improper storage of a firearm, in violation of CR § 4-104; and improper storage of a firearm, in violation of Article 19, § 59-12, of the Baltimore City Code.

Under CR § 3-204, "[a] person may not recklessly . . . engage in conduct that creates a substantial risk of death or serious physical injury to another[.]" Under CR § 4-104, "[a] person may not store or leave a loaded firearm in a location where the person knew or should have known that an unsupervised minor has access to the firearm." Under Article 19, § 59-12, "a person may not leave a loaded firearm, or an unloaded firearm that is in close proximity to ammunition, in any location where the person knows or reasonably should know that an unsupervised minor might gain access to the firearm."

Following a bench trial, the circuit court found Gaskins guilty of reckless endangerment and of violating Article 19, § 59-12. The court found Gaskins not guilty of

violating CR § 4-104 because the evidence was insufficient to show that the firearm was loaded when it was in the home.

Additional facts will be supplied as needed below.

DISCUSSION

I.

Gaskins argues that her conviction for violating Article 19, § 59-12, is invalid because, she says, that law was preempted by CR § 4-104, which makes it a crime to "store or leave a loaded firearm in a location where the person knew or should have known that an unsupervised minor has access to the firearm."

"There are three ways in which State law may preempt local law: (1) expressly, (2) by conflict, or (3) by implication." *Montgomery County v. Complete Lawn Care, Inc.*, 240 Md. App. 664, 685 (2019). Gaskins does not argue that CR § 4-104 expressly preempts the Baltimore City ordinance. Consequently, the theories of preemption that are relevant here are conflict preemption and implied preemption. Issues of preemption are reviewed de novo. *Harris v. State*, 479 Md. 84, 98-99 (2022).

A.

The first obstacle to a claim of preemption is CR § 4-209(b), which expressly permits local governments to regulate the ownership or possession of certain firearms "with respect to minors[.]"

CR § 4-209(a) states the general rule that State law "preempts the right of a county, municipal corporation, or special taxing district to regulate the purchase, sale,

taxation, transfer, manufacture, repair, ownership, possession, and transportation of: (1) a handgun, rifle, or shotgun; and (2) ammunition for and components of a handgun, rifle, or shotgun." CR § 4-209(b)(1)(i), however, creates an exception to that general rule: it states that "[a] county, municipal corporation, or special taxing district may regulate the purchase, sale, transfer, ownership, possession, and transportation of" a handgun, rifle, or shotgun and ammunition for and components of a handgun, rifle, or shotgun "with respect to minors[.]" CR § 4-209(b)(1)(i). Thus, although State law generally preempts local ordinances designed to regulate firearms, State law does not preempt those ordinances if they are specific to minors.

In an opinion concerning a Montgomery County bill that was virtually identical to Article 19, § 59-12,[2] the Attorney General concluded that the statutory predecessor of CR § 4-209 did not preempt the local law. 76 Md. Op. Att'y Gen'l 240, 242 (1991), 1991 WL 626542. The Attorney General reasoned that the Montgomery County bill "unquestionably is one 'with respect to minors,'" in that "[i]t seeks to protect them against death and injury caused by improperly stored firearms." *Id.* We are not bound by the Attorney General's opinion,[3] but we can conceive of no reasonable basis on which to disagree with its analysis. Accordingly, we hold that CR § 4-209 expressly permits

[2] The Montgomery County legislation generally prohibited any person from "leav[ing] a loaded firearm . . . , or an unloaded firearm in close proximity to fixed ammunition, in any location where the person knows or reasonably should know that an unsupervised person under the age of 18 may gain access to the firearm." 76 Md. Op. Att'y Gen'l 240, 240 (1991).

[3] *See, e.g.*, *Grant v. County Council of Prince George's County*, 465 Md. 496, 531 (2019).

Baltimore City to enact a law like Article 19, § 59-12, and, therefore, that Article 19, § 59-12, is not preempted by CR § 4-104.

Under Article 19, § 59-12, "a person may not leave a loaded firearm, or an unloaded firearm that is in close proximity to ammunition, in any location where the person knows or reasonably should know that an unsupervised minor might gain access to the firearm." The Baltimore City Code defines "firearm" as "any pistol, revolver, rifle, shotgun, short-barreled rifle, short-barreled shotgun, or other firearm, except an inoperable antique firearm." Art. 19, § 59-11(d). By enacting Article 19, § 59-12, the City Council of Baltimore was clearly regulating the possession of a handgun, rifle, or shotgun with respect to minors. Consequently, Article 19, § 59-12, falls squarely within the scope of CR § 4-209(b). CR § 4-104 does not preempt Article 19, § 59-12.

B.

"A local law is preempted by conflict 'when it prohibits an activity which is intended to be permitted by state law, or permits an activity which is intended to be prohibited by state law.'" *State v. Phillips*, 210 Md. App. 239, 279 (2013) (quoting *Montrose Christian Sch. Corp. v. Walsh*, 363 Md. 565, 580 (2001)). Assuming without deciding that the plain language of CR § 4-209(b) is not dispositive, we hold that CR § 4-104 did not preempt Article 19, § 59-12, by conflict.

Gaskins argues that, because CR § 4-104 regulates the storing of loaded firearms and is silent as to the storing of unloaded firearms, the General Assembly intended to permit the storing of unloaded firearms where a child might gain access to them. She

concludes, therefore, that Baltimore City's prohibition against storing unloaded firearms where a child might gain access to them conflicts with CR § 4-104.

We find no merit to Gaskins's argument, as it represents a fundamental misunderstanding of conflict preemption. Conflict preemption does not occur merely because a local statute prohibits an activity that a corresponding state statute excludes from its coverage. Rather, conflict preemption occurs when a local statute prohibits what a state statute *expressly* permits. As the Court explained in *City of Baltimore v. Sitnick*, 254 Md. 303 (1969):

> [A] political subdivision may not prohibit what the State by general public law has permitted, but it may prohibit what the State has not expressly permitted. Stated another way, unless a general public law contains an express denial of the right to act by local authority, the State's prohibition of certain activity in a field does not impliedly guarantee that all other activity shall be free from local regulation and in such a situation the same field may thus be opened to supplemental local regulation.

Id. at 317.

In that case, a tavern owner challenged a local minimum wage law, arguing that the local law conflicted with a State minimum wage law, under which taverns were exempted from coverage. *Id.* at 306-07. The tavern owner argued that, because taverns were excluded from the State law, the General Assembly intended that taverns be free of regulation. *Id.* The Court rejected that argument, ruling that "the more logical deduction is that the State exemption amounts to no regulation at all and accordingly leaves the field open for regulation at the local level." *Id.* at 324.

The Court reached a similar conclusion in *Coalition For Open Doors v. Annapolis Lodge No. 622, Benevolent and Protective Order of Elks*, 333 Md. 359 (1994). In that case, a private club, Annapolis Lodge, challenged a local ordinance that conditioned the grant or renewal of alcohol licenses upon proof that the club did not discriminate on the basis of race, gender, religion, physical handicap, or national origin. *Id.* at 361-62. Annapolis Lodge argued that the local ordinance conflicted with Maryland's public accommodation law, which also prohibited certain forms of discrimination, but which excluded private clubs from its purview. *Id.* at 378-79. The Court disagreed. *Id.* at 378-83.

The Court explained that, although a local ordinance is generally preempted when it prohibits an activity that is permitted by State law, "our cases have recognized a distinction between a state law which is intended to permit or authorize a particular matter and a state law which is simply intended to exempt the particular matter from its coverage." *Id.* at 380. "When a state law simply excludes a particular activity from its coverage, our cases have not attributed to the General Assembly an intent to preempt local legislation regulating or prohibiting that activity." *Id.*

After discussing *Sitnick*, the Court concluded that the local law challenged by Annapolis Lodge was not preempted by conflict:

> The language of the state public accommodations law, which excludes private clubs from its coverage, . . . is similar to the state minimum wage law involved in *Sitnick*, which excluded taverns from its coverage. The provision of the state public accommodations law relied on by the Annapolis Lodge, [] does not *permit* discrimination by private clubs. It simply excludes private clubs from the coverage of the state law. Instead of

> constituting an affirmative authorization to discriminate . . ., [the public accommodations law] merely removes private clubs from [its] scope[.]

Id. at 382-83.

Applying those principles to the facts of this case, we hold that CR § 4-104 does not preempt Article 19, § 59-12, by conflict. Like the State statutes at issue in *Sitnick* and *Annapolis Lodge*, CR § 4-104 does not expressly permit the activity—the storing of unloaded firearms where a child might gain access—that Article 19, § 59-12, prohibits. Rather, that activity is merely excluded from the coverage of CR § 4-104. Because that exclusion does not amount to an affirmative authorization to engage in the activity prohibited by Article 19, § 59-12, the local ordinance and the State statute do not conflict.

C.

We turn now to the issue of implied preemption. Once again assuming without deciding that the plain language of CR § 4-209(b) is not dispositive, we hold that CR § 4-104 did not preempt Article 19, § 59-12, by implication.

"Implied preemption concerns whether a local law 'deals with an area in which the State Legislature has acted with such force that an intent by the State to occupy the entire field must be implied.'" *Montgomery County v. Complete Lawn Care*, *Inc*., 240 Md. App. at 692 (quoting *County Council of Prince George's County v. Chaney Enters. Ltd. P'ship*, 454 Md. 514, 541 (2017)). "Therefore, our inquiry is focused on 'whether the General Assembly has manifested a purpose to occupy exclusively a particular field.'" *Board of County Comm'rs of Washington County v. Perennial Solar, LLC*, 239 Md. App.

380, 386 (2018) (quoting *East Star, LLC v. County Comm'rs of Queen Anne's County*, 203 Md. App. 477, 486 (2012)).

"[T]he 'primary indica of a legislative purpose to pre-empt an entire field of law is the comprehensiveness with which the General Assembly has legislated that field.'" *Montgomery County v. Complete Lawn Care*, *Inc*., 240 Md. App. at 692 (quoting *County Council of Prince George's County v. Chaney Enters. Ltd. P'ship*, 454 Md. at 541). Several factors are relevant to that determination:

> 1) whether local laws existed prior to the enactment of the state laws governing the same subject, 2) whether the state laws provide for pervasive administrative regulation, 3) whether the local ordinance regulates an area in which some local control has traditionally been allowed, 4) whether the state law expressly provides concurrent legislative authority to local jurisdictions or requires compliance with local ordinances, 5) whether a state agency responsible for administering and enforcing the state law has recognized local authority to act in the field, 6) whether the particular aspect of the field sought to be regulated by the local government has been addressed by the state legislation, and 7) whether a two-tiered regulatory process existing if local laws were not preempted would engender chaos and confusion.

Board of County Comm'rs of Washington County v. Perennial Solar, LLC, 239 Md. App. at 386-87 (quoting *Allied Vending, Inc. v. City of Bowie*, 332 Md. 279, 299-300 (1993)).

Gaskins argues that, through CR § 4-104, the General Assembly "has debated the field of [children's] access to firearms and has decided the contours of what should be permitted or punished, and how." Gaskins asserts that, by allegedly occupying the field of children's access to firearms via CR § 4-104, "the General Assembly's statewide statute preempts [Article 19, § 59-12] by implication."

We disagree with Gaskins's arguments, as the statutory history of CR § 4-104 and the relevant caselaw do not suggest that the General Assembly has so occupied the field of children's access to firearms that local ordinances are preempted by implication.

The Baltimore City Council enacted Article 19, § 59-12, in 1991. The following year, the General Assembly enacted Article 27, § 36K, of the Maryland Code, which would later become CR § 4-104.

At the time of its initial enactment, the State statute read, in relevant part, that "[a]n individual may not store or leave a loaded firearm in any location where the individual knew or should have known that an unsupervised minor would gain access to the firearm." 1992 Maryland Laws Ch. 439. The statute defined "minor" as a person under the age of 16 years old. *Id.*

In 2002, the statute was recodified as CR § 4-104, and the term "minor" was changed to "child" to avoid confusion with how the term "minor" was defined in other areas of the Article. 2002 Maryland Laws Ch. 26. In 2023, the word "child" was changed back to "minor," and "minor" was defined as a person under the age of 18 years old, which was consistent with how the term was defined in the rest of the Article. 2023 Maryland Laws Ch. 622. Aside from those relatively insignificant changes, the current statute remains virtually identical to the statute enacted in 1992.

Although we know of no Maryland case that decides the exact issue raised here, this Court did decide a similar issue in *State v. Phillips*, 210 Md. App. 239 (2013). In that case, the defendant challenged Baltimore City's Gun Offender Registration Act,

which required people convicted of certain offenses to register with local authorities. *Id.* at 246. The defendant argued that State law implicitly preempted the local ordinance because the State had thoroughly regulated the field of firearms. *Id.* at 280. We disagreed, holding that the local ordinance was not preempted by implication. *Id.* at 280-81.

In reaching that decision, we identified 19 State laws concerning firearms. *Id.* at 280 n.15. Based on that legislation, we acknowledged that the State had "heavily regulated the field of use, ownership, and possession of firearms." *Id.* at 280. We held, however, that the State had "not so extensively regulated the field of firearm use, possession, and transfer that all local laws relating to firearms are preempted." *Id.* at 281. We cited a 2008 opinion of the Attorney General, which stated that the General Assembly did not intend "'to preempt all local laws that are in any degree related to firearms,'" and accordingly, that State law did not preempt "a proposed Baltimore City ordinance which would require a gun owner to report the theft or loss of a firearm[.]" *Id.* at 281 (quoting 93 Md. Op. Att'y Gen'l 126 (2008)).

Phillips points to the conclusion that the General Assembly has not regulated the field of children's access to firearms so extensively that all local laws in that field are preempted. In 1992, when the General Assembly first enacted the State law concerning children's access to firearms, Article 19, § 59-12, was already in place. Since that time, the General Assembly has done little to change the State law, much less anything that would indicate "extensive regulation" within the field of children's access to firearms.

Although the General Assembly has considered changes to the law over the years, it adopted none of those changes, aside from the minor changes previously discussed. In view of *Phillips*'s holding that the General Assembly had not implicitly preempted local firearms laws despite the existence of 19 separate State laws in that field, we cannot say that the General Assembly has implicitly preempted the field of children's access to firearms, where the legislature has enacted only a single law and where that law has remained virtually unchanged since its adoption over 30 years ago.

That conclusion becomes even clearer when one considers that the General Assembly has, through CR § 4-209(b), expressly granted local jurisdictions the power to regulate the possession of firearms with respect to children. It makes little sense to conclude that the General Assembly has preempted the entire field of children's access to firearms via a single law, when the General Assembly has also expressly empowered local jurisdictions to regulate that very field.

For all of those reasons, we hold that CR § 4-104 did not preempt Article 19, § 59-12, by implication.

II.

Gaskins claims that her conviction for violating Article 19, § 59-12, should have merged for sentencing purposes into her conviction for reckless endangerment. She contends that, under the "rule of lenity," her convictions should have merged because there is no indication that either the Baltimore City Council or the General Assembly intended that she be subjected to multiple punishments. She contends, in the alternative,

that her convictions should have merged based on the doctrine of "fundamental fairness."[4]

Gaskins did not object at sentencing. A court, however, "may correct an illegal sentence at any time[,]" Md. Rule 4-345(a), including on direct appeal from a conviction in which the defendant did not object at sentencing. *See Jordan v. State*, 323 Md. 151, 161 (1991); *Walczak v. State*, 302 Md. 422, 427 (1985); *Griffin v. State*, 137 Md. App. 575, 578-79 (2001). We conduct a de novo review of the legality of a defendant's sentence. *See, e.g.*, *Carlini v. State*, 215 Md. App. 415, 443 (2013).

When a sentencing judge imposes multiple sentences in violation of the rule of lenity, the sentence is "an 'illegal sentence' within the contemplation of Rule 4-345(a)." *Pair v. State*, 202 Md. App. 617, 625 (2011). Thus, we may review Gaskins's arguments about the rule of lenity despite her failure to present those arguments to the circuit court.

On the other hand, "a failure to merge a sentence under the fundamental fairness test does not result in an 'illegal sentence,' and therefore, to preserve the issue for appeal the argument must be made to the trial court." *White v. State*, 250 Md. App. 604, 643 (2021) (citation omitted). Gaskins tacitly recognizes her failure to preserve the issue of fundamental fairness in arguing we "should exercise [our] discretion to apply plain-error review of the fundamental unfairness of [her] separate sentences."

[4] Gaskins does not contend that her sentences should merge under the "required evidence" test. She concedes that, because her case involves a State statute and a local ordinance, the required evidence test does not apply. *Miles v. State*, 349 Md. 215, 227 (1998).

A.

"The 'rule of lenity' is not a rule in the usual sense, but an aid for dealing with ambiguity in a criminal statute." *Oglesby v. State*, 441 Md. 673, 681 (2015). "It is a tool of last resort, to be rarely deployed and applied only when all other tools of statutory construction fail to resolve an ambiguity." *Id*.; *accord Clark v. State*, 473 Md. 607, 627 (2021).

Courts employ the rule of lenity to ascertain "whether the Legislature intended multiple punishments" when two or more enactments make it a crime to engage in the same act or transaction. *See Marlin v. State*, 192 Md. App. 134, 167 (2010); *accord Monoker v. State*, 321 Md. 214, 222 (1990). "Under the rule of lenity, a court confronted with an otherwise unresolvable ambiguity in a criminal statute that allows for two possible interpretations . . . will opt for the construction that favors the defendant." *Oglesby v. State*, 441 Md. at 681. "'[I]f we are unsure of the legislative intent in punishing offenses as a single merged crime or as distinct offenses, we, in effect, give the defendant the benefit of the doubt and hold that the crimes do merge.'" *Koushall v. State*, 479 Md. 124, 161 (2022) (quoting *Monoker v. State*, 321 Md. at 222).

In the ordinary case, the rule of lenity comes into play when the Maryland General Assembly has passed two or more statutes that criminalize the same conduct. The rule, however, may also apply in a case like this one, where both the General Assembly and a local government have passed legislation that makes it a crime to engage in the same act or transaction. *See Miles v. State*, 349 Md. 215, 228-29 (1998).

In this case, the language of the respective enactments offers no guidance about whether multiple punishments were intended. CR § 3-204 prescribes the punishment for reckless endangerment: "A person who violates this section is guilty of the misdemeanor of reckless endangerment and on conviction is subject to imprisonment not exceeding 5 years or a fine not exceeding $5,000 or both." Article 19, § 59-16, of the Baltimore City Code prescribes the punishment for a violation of article 19, § 59-12: "Any person who violates any provision of this Part or of a rule or regulation adopted under this Part is guilty of a misdemeanor and, on conviction, is subject to a fine of $1,000 or to imprisonment for 1 year or both." Both enactments ignore the possibility of multiple punishments.

Is an enactment "ambiguous" when it does not address the issue of multiple punishment? In at least one, older case, the Court seemingly thought that it was, because the Court employed the rule of lenity when the relevant legislation contained nothing to suggest that the legislature intended cumulative punishments. *Miles v. State*, 349 Md. at 228-29. More recently, however, this Court has declined to apply the rule of lenity when "[n]othing from the plain language of the statutes indicates that the Legislature intended that the offenses should merge for sentencing purposes." *Latray v. State*, 221 Md. App. 544, 557 (2015). Similarly, this Court has held that the absence of an anti-merger provision—i.e., the absence of a provision stating that an offense should not merge with another offense—does not indicate a legislative intent that the offenses should merge. *Quansah v. State*, 207 Md. App. 636, 655 (2012).

Lacking clarity as to whether CR § 3-204 and article 19, § 59-12, can be even termed "ambiguous" for purposes of the rule of lenity, we look elsewhere—to legislative and statutory history. When the General Assembly first enacted the reckless endangerment statute in 1989,[5] Article 19, § 59-12, did not yet exist. Consequently, the General Assembly could not possibly have had any intention, one way or the other, about whether a conviction for violating the Baltimore City ordinance would merge with a conviction for reckless endangerment. The legislative history of Article 19, § 59-12, indicates that the Baltimore City Council gave no thought to the question of merger when it passed that ordinance in 1991.[6] Thus, history does not answer the question.

To determine whether a legislature intended multiple punishments for the same conduct, courts sometimes ask whether "the two statutes ha[ve] different origins and different purposes." *Clark v. State*, 473 Md. at 626. If they have different origins and different purposes, courts ordinarily conclude that the legislature did not intend to preclude multiple punishments. *See id.*

Here, the two enactments have different origins and different purposes. CR § 3-204 is part of a title that concerns "Other Crimes Against the Person" and a subtitle that concerns assault, attempted poisoning, causing a life-threatening injury while operating a motor vehicle under the influence of alcohol, contaminating the water supply or food and

[5] "The reckless endangerment statute was first enacted in Maryland in 1989 as Art. 27, § 120." *Kilmon v. State*, 394 Md. 168, 174 (2006) (citing 1989 Md. Laws Ch. 469)).

[6] The appendix to this opinion includes copies of the materials included in the bill file for the ordinance that enacted Article 19, § 59-12, of the Baltimore City Code.

drink, and knowingly and willfully causing another to ingest a bodily fluid. *See* CR §§ 3-201 to -215. Article 19, § 59-12, on the other hand, is in a subtitle of the Baltimore City's "Police Ordinances" that specifically regulates the use of "Weapons," by, for example, prohibiting persons from carrying long-barrel firearms, discharging firearms, illegally carrying handguns, and possessing or selling brass knuckles, switchblades, and crossbows. In other words, CR § 3-204 addresses miscellaneous crimes against persons, while Article 19, § 59-12, regulates the use and possession of many sorts of weapons.

The elements of CR § 3-204 and Article 19, § 59-12, may be satisfied when a person leaves an unloaded firearm in proximity to ammunition if the person knows or reasonably should know that an unsupervised minor might gain access to the firearm, but this "does not negate the distinct, though related, legislative purposes underlying those statutes." *Clark v. State*, 473 Md. at 627. "On their face, the two statutes appear to target distinct concerns and thus to allow for separate sentences for convictions of these offenses." *Id.* "The fact that the statutes overlap does not render them ambiguous" for purposes of the rule of lenity. *Oglesby v. State*, 441 Md. at 686. The rule of lenity does not apply.

In arguing that the convictions merge under the rule of lenity, Gaskins highlights two pieces of proposed legislation that the General Assembly failed to pass during its 2023 session. First, the General Assembly considered, but did not pass, a bill to define reckless endangerment to include (1) leaving or storing a loaded firearm in a location where a person knows or reasonably should know that an unsupervised minor has access

to it or (2) leaving or storing a firearm in a location where a person knows or reasonably should know that an unsupervised minor has "ready" access to the firearm and ammunition for it. Second, the General Assembly considered, but did not pass, a bill to add an express anti-merger provision to CR § 4-104, which currently makes it a crime to store or leave a loaded firearm in a location where a person knows or should know that an unsupervised minor has access to it. From the rejection of this proposed legislation, Gaskins concludes that the legislature must have intended not to allow a court to impose separate sentences.

The short answer to Gaskins's contention is that, "when 'engaging in statutory interpretation, legislative inaction is seldom a reliable guide in discerning legislative intent.'" *Syed v. Lee*, 488 Md. 537, 596 (2024) (quoting *Smith v. Westminster Mgmt., LLC*, 257 Md. App. 336, 372 (2023), *aff'd*, 486 Md. 616 (2024)). "That is the case because there are often myriad reasons why the General Assembly may decide not to adopt proposed legislation, including the General Assembly's belief that the objectives of a proposed bill are already covered elsewhere in Maryland law." *Id.* In 2023, for example, the General Assembly may have decided not to include an express anti-merger provision because it thought that a violation of CR § 4-104 clearly would not merge with a crime based on the same act and thus that the amendment was unnecessary. In addition, the General Assembly may have failed to amend CR § 3-204 to include storing a firearm in a location where a person knows or reasonably should know that an unsupervised minor has "ready" access to the firearm and ammunition for it because some legislators

believed that this matter should remain within the discretion of local government to punish, or not to punish. The rule of lenity does not require that Gaskins's convictions be merged.

B.

Finally, we turn to Gaskins's claim that, under the doctrine of "fundamental fairness," her sentences should have merged. We hold that she did not preserve this claim for appellate review.

Unlike a sentence imposed in violation of the rule of lenity, a sentence imposed in violation of fundamental fairness is not an inherently illegal sentence. *Koushall v. State*, 479 Md. at 163. Thus, an alleged error in a sentence based on the principle of fundamental fairness is subject to the normal rules of preservation. *See White v. State*, 250 Md. App. at 643.

It is undisputed that, in the present case, Gaskins did not raise the issue of fundamental fairness at sentencing. That failure precludes appellate review.[7]

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED; COSTS TO BE PAID BY APPELLANT.

[7] As noted, Gaskins requests that we consider the issue for "plain error." For various reasons, we exercise our discretion to decline that request. *See Morris v. State*, 153 Md. App. 480, 507 (2003). That said, it seems likely that, had the issue been raised at sentencing, the sentencing court would have merged the sentences pursuant to the doctrine of fundamental fairness. The unique facts of the instant case make it evident that Gaskins's violation of Article 19, § 59-12, was an integral component of her conviction for reckless endangerment. *See Monoker v. State*, 321 Md. at 223-24.

APPENDIX

MARYLAND STATE RIFLE & PISTOL ASSOCIATION

DOWNRANGE

OCTOBER 1990

The Maryland State Rifle & Pistol Association
Maryland's - State N.R.A. Association

STATE ASSOCIATION

KIDS & GUN SAFETY: IT'S ONLY COMMON SENSE

Part 1 — Education

by Jim Giragosian

households contain at least one gun — that's over 200 million

Responsible parents, teachers, and other members of society naturally want to keep children safe from potentially hazardous situations which can lead to accidents. Teaching children to look both ways before crossing the street and keeping medicines and household chemicals out of children's reach are examples of common sense precautions we take for granted.

When it comes to firearm safety education for children, however, many adutls do not find the need so pressing. But when one considers the significant role firearms have always played in our nation's history and culture, and the fact that over 50% of this country's privately owned firearms nationwide—teaching children about gun safety becomes more than just a nice idea. It is an important responsbility we cannot afford to ignore. Even parents who do not own guns must consider the possibility that their children may come into contact with a firearm at the home of a friend or neighbor.

To keep children safe from the potential hazards of unsafe gun handling, two elements are essential: adequate education of the children and safe storage of the guns. Neither of these two elements should be considered sufficient by itself. Both must be utilized so that if one fails, the other will act as a backup.

Looking first at the educational component of gun safety for children, a logical question is when to start? Parents must be the judge of this. The National Rifle Association suggests beginning when a child first expresses an interest in guns, or acts out "gun play." In some instances, parents may wish to go a step further and begin as soon as child is able to recognize what a gun is. My own children, age 4 and 2, have a father who is a firearms instructor, range officer, competitive shooter, and reloader—they have been exposed to guns and ammunition since birth. I felt it would be better to give my children a positive, responsible introduction to gun safety, rather than wait for them to get the wrong idea from TV and then try to correct it.

What to teach children about gun safety is another important matter. This will, of course, depend on the children's age, ability, and level of maturity. The NRA's "Eddie Eagle" gun safety education program is geared to school children in two age groups, grades K through 2 and grades 3 through 6, and uses materials such as coloring books, posters, puzzles, and activity sheets appropriate to the age group. In each case, two important objectives are emphasized: first, only with a parent should a child be around guns, and second, a child who finds a gun in an unsafe place should not touch it, should leave the area, and tell an adult.

It is essential that children realize the difference between fantasy and reality when it comes to guns. The "Eddie Eagle" program stresses that in the shootings children may see on TV, actors do not use real guns and only pretend to be shot and die. In real life, real harm can and does occur when gun safety practices are not followed.

Parents who own guns should be positive role models and teach firearm safety by example. They should be honest and open in discussing guns and safe handling practices, so that guns do not become a mystery children will be tempted to investigate on their own. If children are permitted to handle real guns under a parent's supervision, the children should be taught the three fundamental rules of safe gun handling: keep the gun pointed in a safe direction, keep the finger off the trigger until ready to shoot, and keep the gun unloaded and the action open until ready to shoot.

Parents who allow their children to handle real guns must also take care to assure that the guns do not become confused with toys. I personally consider it an unsafe practice to have one set of rules for handling real guns and another set for toy guns, since confusion can easily result. In my home, the three rules of safe gun handling apply to toy guns as well as real ones.

Having a child accompany you to the gun club or shooting range can be an educational experience which can help demonstrate both safe gun handling practices and the power potential of real firearms. (Be sure that you and your child wear adequate hearing and eye protection.) Shooting a ripe melon, a can of soda, or a jug of water is a sight no youngster will soon forget. My daughter learned the three rules of safe gun handling at the age of three, and watched me shoot an M1 rifle on my club range. To this day she will not take a gun until she says, "Open the action to make sure there's no ammo in it."

Another logical question about gun safety education is who should do the teaching? The NRA's "Eddie Eagle" program was designed to be taught in schools by regular teachers, and can also be taught at home by parents, so there is no need to hire special instructors. The NRA also makes the "Eddie Eagle" teaching materials available free of charge to schools and law enforcement agencies. These are important considerations in today's revenue-starved school systems—and they make one wonder why Baltimore County is spending over $90,000 on materials and overtime for police officers to do the same job.

The "Eddie Eagle" program was developed by a safety task force composed of specialists in the field of education and child development. Many of them are from Maryland, including a school principal, a special education teacher, and specialists from the Anne Arundel County School System and Montgomery County Health Department.

Speaking of specialists, parents should beware of the self-appointed gun safety "experts" from the various anti-gun organizations, such as Marylanders Against Handgun Abuse (MAHA). This group, along with Handgun Control Inc. (HCI), demonstrated a total lack of comprehension of even the most elementary principles of gun safety by aggressively lobbying for legislation last winter to force gun owners to keep trigger locks on loaded firearms. Had they gone to the trouble of reading the label on the trigger lock's package, they would have seen the manufacturer's warning in bold red type stating that trigger locks should not be used on loaded guns.

Parents who wish their children to learn the fundamentals of shooting as well as gun safety can sign them up for one of NRA's basic firearms education courses taught by certified instructors. The Maryland State Rifle & Pistol Association presents these courses in the Baltimore and Washington DC areas, and plans to expand them to other locations around Maryland. Parents can also enroll their children in one of the many junior shooting programs at gun clubs around the state, or get them involved in shooting activities through the scouts, 4-H Clubs, and even Junior Olympic Shooting camps.

For further information on the "Eddie Eagle" gun safety program for children, call Grace Albert at NRA's Education & Training Division: (202) 828-6291. For information on NRA Basic Firearms Education courses in Maryland, see the "Education & Training Calendar" elsewhere in this issue.

(In the next issue: Part 2 — Safe Firearm Storage)

MARYLAND STATE RIFLE & PISTOL ASSOCIATION

DOWNRANGE

FEBRUARY 1991

The Maryland State Rifle & Pistol Association
Maryland's - State N.R.A. Association

STATE ASSOCIATION

KIDS & GUN SAFETY: IT'S ONLY COMMON SENSE

Part 2 — Safe Firearm Storage

by Jim Giragosian

The first half of this article dealt with the importance of firearm safety education for children. Over 50% of this country's households contain at least one gun — that's over 200 million privately owned firearms nationwide — making it likly that every American, including children, will come into contact with a gun sometime in his or her life.

The NRA's "Eddie Eagle" gun safety education program prepares children to deal with the situation of finding a gun in an unsafe place by providing them with an easy, concrete, 3-step response: Stop—don't touch; Leave the area; Tell an adult. And parents who wish their children to receive qualified training in the safe handling and proper use of firearms and even air guns can sign up for one of the courses in NRA's Basic Firearms Education Program—the national standard for marksmanship training.

In addition to adequately educating children about gun safety, safe storage of firearms is also a necessary precaution. Unlike anti-gunners, who emphasize safe storage to the point of excluding education, those of us who are familiar with guns realize that both elements must be utilized so that if one fails, the other can act as a backup.

Before discussing some of the various storage options available to parents, it should be emphasized that nothing is 100% childproof. Even a locked vault is useless if a key is left nearby, and clever children often surprise parents with their abilities to access the inaccessible. So careful thought and consideration must go into choosing from among the various gun storage options, as well as constant reevaluation as children grow, combined with safety education for every member of the household.

As is stated in the NRA-standardized gun safety rules, all guns must be stored "so they are not accessible to untrained or unauthorized persons," and that, of course, includes children. But despite what the anti-gun, so-called "experts" would have you believe, there is no universally applicable "best way" to store guns in accordance with this rule. Instead, gun storage methods must be custom-designed for particular household situations.

Among things to consider are the ages, abilities, and maturity levels of the children. An effective storage method of a household with an infant might not be adequate for a household with a 10-year old. Facilities must also be considered when evaluating storage options. A 1000-pound vault may be out of the question for a family living in a two-room, third floor apartment.

Another NRA safety rule which must be stressed when considering options for firearm storage is, "Always keep the gun unloaded until ready to use." Generally, firearms which are used for hunting, competition, and recreational shooting should never be loaded in the home. They should be stored unloaded and separate from ammunition, which should likewise be kept out of children's reach.

Guns which are kept for personal protection, however, must always be ready for use, and therefore may be kept loaded, but every precaution must be taken to keep them out of the hands of children. Since the personal protection gun must be inaccessible to children, but immediately accessible to its adult owner, particular care and caution must be utilized in determining the method which will be used to store it.

Parents who store a loaded gun for personal protection also need to consider things such as whether the gun should have a loaded or empty chamber, or even be cocked or uncocked. Because of the many different makes, models, and types of firearms, it is again impossible to specify a "best way." Next to having the gun unloaded, having the gun's hammer down on an empty chamber is often considered "safest." But this does not mean that a loaded gun stored in this condition will not fire if the trigger is pulled, e.g., on a double-action revolver. It is essential to check the gun's owner's manual or consult a qualified expert if there is any question about the condition in which a loaded firearm may be stored.

Gun storage devices which are designed to prevent unauthorized handling of guns include safes, strong boxes, locking cabinets, and lockable hard and soft cases. A strong, heavy safe will be a deterrent to burglars as well as children, but as was stated earlier, leaving a key handy renders an expensive piece of equipment totally useless.

A popular item for personal protection handguns is a small strong box with a push-button combination lock which can be unlocked in a few seconds, even in the dark. It may be bolted to the floor to help prevent theft.

Cabinets are also popular items, especially for long guns. Some are made of sheet metal, and others are wood with windows which allow the guns to be displayed, if that is what the owner wishes. Properly used, locking cabinets will keep out most children, but will not stop most burglars. This is also true for lockable hard and soft gun cases, which may also be used to transport guns to and from the range.

Other gun storage devices are designed to prevent unauthorized removal or use of guns, but do not necessarily prevent unauthorized gun handling if additional security measures are not utilized. This category includes wall racks, action locks, and trigger locks. Wall racks, like gun cabinets, allow for the display of guns, if this is considered desirable. In many cases, wall racks should include some sort of locking feature.

Action locks are designed to help prevent the action on a gun from closing and/or operating. Trigger locks are supposed to help prevent a firearm's trigger from being operated. But like the mechanical safeties on firearms, these devices can fail, and should be used as supplements to safe gun handling and storage practices, not as substitutes for them. A trigger-locked or action-locked firearm should not be left within a child's reach.

Gun owners using any kind of firearm locking device should be sure to read and follow the manufacturer's instructions and recommendations for use. As I stated in Part 1 of this article, gun prohibitionists made public fools of themselves here in Maryland last winter by aggressively lobbying for a law which would have mandated the use of trigger locks on loaded guns, in direct contradiction to the manufacturer's instructions.

Other methods of securing firearms do not depend on specially designed devices. A locked drawer, a high shelf, an inaccessible area of the home such as a locked basement, closet, or attic, may also be considered. Again, the key items to remember are that the gun be out of reach, inaccessible, and/or under lock and key, and unloaded until ready for use.

It is not surprising to see all the attention the media pay to gun accidents among children, despite the fact that most childhood injuries and deaths involve objects which are more commonplace—and less controversial—than firearms. But gun accidents are preventable, and like storing household chemicals or power tools in homes with children, safe firearm storage involves just a few simple precautions and plain common sense.

The response of anti-gunners to childhood accidents with guns is to call for the elimination of firearms from the homes of all Americans. The response of the NRA and the Maryland State Rifle & Pistol Association is to encourage gun safety education and training for both adults and children, and safe firearm storage within the home.

Who is being extreme and unrealistic and who is being reasonable and practical? You be the judge.

American Academy of Pediatrics

Maryland Chapter

Modena Wilson, MD, MPH
Chair, Committee on Injury and Poison Prevention
Maryland Chapter, American Academy of Pediatrics
Testimony before the Baltimore City Council Judiciary Committee

May 7, 1991

Pediatricians come to you not as experts on guns, but as experts on the health, behavior, and development of children. We feel compelled to action by any disease--and I speak here of firearm injuries--which kills more than 3000 American children and adolescents a year and permanently disables many more. Firearm injuries can be viewed as a disease so serious and so difficult to treat that the only effective medicine is prevention.

Every day in America at least one child is accidently killed with a firearm. Most of these incidents occur in a home where a firearm is kept loaded and where playing children can find and use it. We may be tempted to think that all these tragedies occur somewhere else, but we know well from the daily news that Baltimore City is not spared.

For the years 1981-1983, my colleagues at the Johns Hopkins Injury Prevention Center and I made a detailed study of all the deaths of Maryland children younger than 16 years of age which were caused by injury. Injury death rates are higher for Baltimore City children than for children in any other part of the state. There were an average of 15 childhood gunshot deaths a year in the state, even without looking at older adolescents, and only house fires, motor vehicles and drowning caused more injury deaths. Firearms move up on the list in Baltimore City. In 1982, about 70 Maryland children were treated in Maryland hospitals for non-fatal firearm injuries. I remember a 4 year old treated last year at the hospital where I practice. He had shot himself in the knee with a gun found under the couch. This is **not** an insignificant problem.

700 Maryland pediatricians filled out a detailed questionnaire in the spring of 1989. Forty percent of those Maryland pediatricians had had a patient who

P.O. Box 3620 • Baltimore, Maryland 21214 • 301-661-2002 • FAX 301-661-2003

had been shot. More than 8 out of 10 pediatricians believed that legislation would reduce firearm injury and fatality risks for Maryland children and adolescents. Pediatricians were nearly unanimous in their belief that, because of the quite normal developmental propensities of children and adolescents, no amount of education--even that which is carefully designed and scrupulously and repeatedly taught--can guarantee their safe behavior around loaded guns. In fact, education is an ongoing process of trial and error--learning from mistakes. Relying on education isn't in keeping with good educational theory, when one mistake can be fatal.

As a pamphlet of the National Rifle Association called "At Home with Guns" puts it, "Safe and secure storage of the guns in your home requires that untrained individuals (especially children) be denied access to the guns." Maryland pediatricians believe that the only way to prevent childhood firearm injuries in homes with guns is to assure that gun owners store the guns so that a child or adolescent cannot obtain or fire it. We believe that gun safety should be the responsibility of adults, not children.

We all know from our own experience that many families with children in the house also have guns in the home. Studies around the country confirm this. Of North Carolina households with children younger than 20, 35% had handguns and 40% of them kept them loaded. Of families surveyed in a pediatric health facility in Texas, 38% had at least one gun in the home and 55% of those kept the gun loaded.

Some Baltimore families keep guns, too, of course. Those who do may speak to you about protecting their family with a gun. Let me say to you that the facts do not suggest a family with a gun is safer. In fact, the evidence is that a gun in the home is very much more likely to kill a family member than an intruder.

We have surveyed families coming to pediatricians' offices in rural, suburban, and urban parts of the state. On average, 38% had guns in their homes. We were alarmed at unrealistic parental assumptions about children's safety around guns. Many Maryland parents visiting pediatricians thought children 12 or even younger could be trusted around a loaded gun. These misconceptions

were particularly true of gun owners. Many parents believed young children could tell the difference between toy guns and real guns. Even adults find this difficult. The casual assumptions of many parents fly in the face of every fact known about the curiosity of children and their limited understanding of cause and effect and the finality of death.

Many Maryland parents in our survey expected to prevent firearm injuries to children by strategies--such as education, discipline, and supervision--which pediatricians know fall short of protecting children from injury. After all, which parent can honestly say that they supervise their child every minute of the day? Does their phone nor doorbell never ring?

In our survey, only about one-half of gun-owning parents mentioned effective strategies like safety locks or keeping guns unloaded and locked up. Pediatricians agree with gun manufacturers like Mossberg & Sons, Inc. when they say, and I quote again, "...the right to keep firearms in your home carries with it serious responsibilities. Unfortunately, not enough gun owners take that responsibility seriously. Improperly stored firearms in the home lead to thousands of accidental shootings in America each year." As Mossberg says in advertisements, "Guns are stupid, amoral things...They don't care if a game animal or a child gets shot."

Pediatricians care. It is clear that if we rely on the good intentions of parents, it will not be enough to protect children. This is especially so when we remember that our children also may be exposed to loaded guns at the home of a friend, a relative, or a neighbor. It is especially so when we remember that children may carry to school the guns they find at home. We must do everything we can, including the enactment of legislation to encourage adults who keep guns to store them in a way that keeps children from getting shot.

#1224
Dr Pat - 3209
Hartm 3299

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DAVID J. MILIMAN

May 8, 1991

The Honorable Mary Pat Clarke
President, City Council
City Hall
100 N. Holliday Street
Baltimore, Maryland 21202

Re: Proposed Weapons Lock Law

Dear President Clarke:

Please be advised that this office represents the Maryland Licensed Firearms Dealers Association, Inc.

Today's Evening Sun carried an article in the Metro section stating that Councilman Anthony Ambridge had sponsored a bill (and which was co-sponsored by 15 other members of the Council) that would require a firearms owner to keep his firearms locked or otherwise secured and would also require that the firearms be stored away from ammunition. As you are aware, this very same law was defeated in Annapolis during the 1991 legislative session.

In any event, Councilman Ambridge's bill violates Article 27, § 445(a) of the Maryland Annotated Code which specifically reserves to the State the right to regulate the possession of firearms. Councilman Ambridge's bill clearly attempts to regulate the manner of possession. A copy of the cited Section is attached hereto.

If this law is enacted, the legality of it will be challenged by a Complaint for Declaratory Judgment and I am extremely confident that the Circuit Court for Baltimore City will find that this bill violates state law.

ROCHLIN AND SETTLEMAN P. A.

The Honorable Mary Pat Clarke
May 8, 1991
Page Two

Very truly yours,

ROCHLIN & SETTLEMAN, P.A.

David J. Miliman

DJM/tmc

cc: ✓Council Members
Maryland Licensed Firearms Dealers Assoc., Inc.
Maryland State Rifle and Pistol Assoc., Inc.

BALTIMORE CITY COUNCIL

ANTHONY J. AMBRIDGE—Second District

CHAIRPERSON
EXECUTIVE APPOINTMENTS
COMMITTEE

VICE CHAIRPERSON
LAND USE COMMITTEE

VICE CHAIRPERSON
BALTIMORE REGIONAL COUNCIL
OF GOVERNMENTS

MEMBER
URBAN AND INTER-GOVERNMENTAL
AFFAIRS COMMITTEE

PLANNING COMMISSION

May 9, 1991

The Honorable Mary Pat Clarke
Room 400, City Hall
Baltimore, Maryland 21202

Dear Mary Pat,

I received a copy of a letter to you from an attorney who represents the local N.R.A. affiliate. He has written you regarding our bill which will protect children from accessible guns.

Be assured that prior to introduction the preemption issue was considered. Since introduction it has been further evaluated specifically to the points raised in the aforementioned letter. All court rulings, according to the City Solicitor, point to the legal sufficiency of our bill.

When we proceed, there are three positive points of interest here if this lawyer follows up. First, some lawyers will be able to generate some fees that I hope will partly enure to the benefit of the City. Second, we may get some great publicity on this important issue which will help lessen our educational responsibilities. Finally and most importantly, we will save the lives of innocent victims.

Sincerely yours,

Tony

ANTHONY J. AMBRIDGE

cc: Members, Baltimore City Council
David Miliman

AJA/km

ROOM 527, CITY HALL · 100 N. HOLLIDAY STREET, BALTIMORE, MARYLAND 21202 · TELEPHONE: Office 396-4811 · Home 243-TONY · FAX 539-0647

or is a habitual drunkard, or is addicted to or a habitual user of narcotics, barbiturates or amphetamines, or has spent more than thirty consecutive days in any medical institution for treatment of a mental disorder or disorders, unless the licensee produces a physician's certificate, issued subsequent to the last period of institutionalization, certifying that the licensee is capable of possessing a pistol or revolver without undue danger to himself or herself, or to others.

(3) If the licensee has willfully manufactured, offered to sell, or sold a handgun not on the handgun roster in violation of § 36-I of this article.

(l) *Assault weapons.* — The Superintendent of the Maryland State Police shall adopt regulations to implement the inclusion of an assault weapon, as defined under § 481E of this article, within the license, sales, and transfer requirements under this section.

(1988, ch. 533; 1989, ch. 5, § 1; chs. 293, 428; 1990, ch. 6, § 2.)

Effect of amendment. — Chapter 533, Acts 1988, effective July 1, 1988, in the introductory language of subsection (h), substituted "or his duly authorized agent" for "and/or his duly authorized agent"; and added subsection (h) (3).

Chapter 5, Acts 1989, approved Mar. 9, 1989, and effective from date of passage, substituted "a" for "an" preceding "habitual" twice in (h) (2).

Chapter 428, Acts 1989, effective July 1, 1989, inserted "or of a violation ... sections" in (d) (4) (iii).

Chapter 293, Acts 1989, effective Jan. 1, 1990, added (l).

The 1990 amendment, approved Feb. 16, 1990, and effective from date of passage, substituted "a" for "an" in (d) (4) (v) and (vi).

As the remainder of the section was not affected by the amendment, it is not set forth above.

Editor's note. — Section 3, ch. 533, Acts 1988, provides that "compliance with the prohibition of this act against the manufacture for distribution or sale, sale or offer for sale of handguns is not required until Jan. 1, 1990."

Pursuant to the provisions of Article XVI of the Constitution of Maryland, ch. 533, Acts 1988, was subject to referendum at the general election to be held in November, 1988, and was ratified at the election held on November 8, 1988.

Section 19, ch. 5, Acts 1989, provides that "except for §§ 5, 6, 10, and 11 of this Act, the provisions of this Act are intended solely to correct technical errors in the law and that there is no intent to revive or otherwise affect law that is the subject of other acts, whether those acts were signed by the Governor prior to or after the signing of this Act."

§ 445. Restrictions on sale, transfer and possession of pistols and revolvers.

(a) *Right to regulate transfer and possession of pistols and revolvers preempted by State.* — All restrictions imposed by the laws, ordinances or regulations of all subordinate jurisdictions within the State of Maryland on possession or transfers by private parties of pistols and revolvers are superseded by this section and the State of Maryland hereby preempts the right of such jurisdictions to regulate the possession and transfer of pistols and revolvers.

(b) *Sale or transfer to criminal, fugitive, etc.* — A dealer or person may not sell or transfer a pistol or revolver to a person whom he knows or has reasonable cause to believe has been convicted of a crime of violence, or of a violation of any of the provisions of § 286, § 286A, or § 286C of this article, or any conspiracy to commit any crimes established by those sections or of any of the provisions of this subtitle, or is a fugitive from justice, or is a habitual drunkard, or is addicted to or a habitual user of narcotics, barbiturates or amphet-

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DAVID J. MILIMAN

May 20, 1991

The Honorable Mary Pat Clarke
President, City Council
Room 400, City Hall
Baltimore, Maryland 21202

HAND-DELIVERED

Re: Council Bill No. 1226

Dear President Clarke:

In response to Councilman Ambridge's letter to you dated May 9, 1991, let me point out that I do not represent "the local N.R.A. affiliate." Either Mr. Ambridge did not read my letter to you, or he has deliberately chosen to mischaracterize who I represent in an attempt to try, in his eyes, to discredit both me and my client.

Second, in addition to Article 27, §445(a), which I mentioned in my previous letter to you, Article 27, §36H also specifically prohibits the City Council from enacting bills of this type. As you may recall, Montgomery County tried to regulate the sale of ammunition in 1983 and that law was also invalidated by appellate court action.

Third, and in response to the third paragraph of Mr. Ambridge's letter, all I can say is that it appears to me that Mr. Ambridge is saying that since he thinks his law is a "good" idea, it is okay to violate Maryland law. It is not the merits of this law that will be debated in Circuit Court, it is the validity of the City Council's action in enacting this law in the face of the aforementioned Sections of Article 27.

ROCHLIN AND SETTLEMAN P. A.

The Honorable Mary Pat Clarke
May 20, 1991
Page Two

I assume that, since this Bill is in apparent conflict with Maryland law, Mr. Ambridge has sought the opinion of the Attorney General's Office as to the validity of his bill.

Very truly yours,

David J. Miliman

DJM/tmc

cc: Members, City Council
Maryland Licensed Firearms Dealers Association, Inc.

BALTIMORE CITY COUNCIL

ANTHONY J. AMBRIDGE — Second District

CHAIRPERSON:
EXECUTIVE APPOINTMENTS
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PLANNING COMMISSION

May 9, 1991

The Honorable Mary Pat Clarke
Room 400, City Hall
Baltimore, Maryland 21202

Dear Mary Pat,

I received a copy of a letter to you from an attorney who represents the local N.R.A. affiliate. He has written you regarding our bill which will protect children from accessible guns.

Be assured that prior to introduction the preemption issue was considered. Since introduction it has been further evaluated specifically to the points raised in the aforementioned letter. All court rulings, according to the City Solicitor, point to the legal sufficiency of our bill.

When we proceed, there are three positive points of interest here if this lawyer follows up. First, some lawyers will be able to generate some fees that I hope will partly enure to the benefit of the City. Second, we may get some great publicity on this important issue which will help lessen our educational responsibilities. Finally and most importantly, we will save the lives of innocent victims.

Sincerely yours,

Tony

ANTHONY J. AMBRIDGE

cc: Members, Baltimore City Council
David Miliman

AJA/km

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MARYLAND STATE RIFLE & PISTOL ASSOCIATION

Maryland State
Rifle and Pistol Association, Inc.

OFFICE OF THE
LEGISLATIVE VICE PRESIDENT
JIM NORRIS
P.O. BOX 377
BLADENSBURG, MD. 20710

May 19, 1991

The Honorable Mary Pat Clarke
President of the Baltimore City Council
100 North Holliday Street
Baltimore, Maryland 21202

Dear Ms. Clarke:

The Maryland State Rifle and Pistol Association opposes Council Bill No. 1226, Firearms - Access By Minors. This dangerous bill is a recycle of 1991 Senate Bill 214/ House Bill 197, Firearms - Access By Minors which failed to be enacted during the 1991 General Assembly session because of numerous shortcomings.

The primary reason the General Assembly bills failed legislative scrutiny was the bills promoted the use of trigger locking devices with loaded firearms against the instructions of trigger lock manufacturers. This unsafe practice is specifically warned against by trigger lock manufacturers on literature included with the trigger locks when sold.

The Maryland State Rifle and Pistol Association urges the Baltimore City Council to oppose CB 1226. The passage of this bill will cost lives. Please reject this attempt at social engineering. CB 1226 is no substitute for firearms education and safety training. Thank you.

Sincerely,

Jim Norris

The Official NRA State Association

Master Lock®

March 28, 1991

Mr. Jim Giragosian
6323 Landover Road
Cheverly, MD 20785

Dear Mr. Giragosian,

You have asked us for an explanation of the packaging information regarding our trigger gun locks. This packaging contains the following statements:

1. *CAUTION: DO NOT INSTALL THIS LOCK ON A LOADED GUN. A LOADED GUN MUST ALWAYS BE REGARDED AS DANGEROUS!*

2. *MAKE SURE GUN IS UNLOADED AND NOT COCKED.*

3. *IMPORTANT -- WE DO NOT GUARANTEE THAT THIS PRODUCT WILL LOCK ALL GUNS. IT WILL BLOCK ACCESS TO THE TRIGGERS OF MOST GUNS WHEN PROPERLY ATTACHED. SOME LEVER ACTION RIFLES CANNOT BE LOCKED EFFECTIVELY WITH THIS GUN LOCK.*

Our trigger gun lock is an anti-theft device . . . not a safety device. If a loaded firearm is secured with our gun lock, there is a possibility that it could discharge, should the gun be mishandled. Therefore, we cannot guarantee that a firearm cannot be fired when secured with our gun lock.

The National Rifle Association any many other groups recognize that firearms should be stored unloaded to prevent accidental firing. Using gun locks on unloaded firearms can help prevent theft of those firearms and may dissuade children from playing with the firearms. However, again, Master Lock gun locks are not meant as safety devices to prevent accidental firing.

We are grateful for the opportunity to explain our position. Please do not hesitate to contact me if you have any additional questions.

Best regards,

Tom Smith
Associate Product Manager

CC: LBonk
JAnderson
SWilliams

/tj

MASTER LOCK COMPANY
2600 North 32nd Street, P.O. Box 10367, Milwaukee, Wisconsin 53210-0367 • 414-444-2800 • FAX 414-449-3142
Doorlock Division: 300 Webster Road, Auburn, Alabama 36830-4299 • 205-826-3300 • FAX 205-887-6932

CITY COUNCIL HEARING ATTENDANCE RECORD

Committee Judiciary Committee | Chairperson Rochelle "Rikki" Spector

Date May 7, 1991 | Time 2:15 pm | Place Chambers | CC Bill Number 1226

Subject Ordinance - Firearms - access by minors

PLEASE PRINT ALL INFORMATION

NAME	ADDRESS	AGENCY, ORGANIZATION or COMPANY	FAVOR THIS BILL	OPPOSE THIS BILL	CHECK TO TESTIFY
Vinny DeMarco	4313 Harcourt Rd Mt. Rainier 20712	Maryland Assault Weapons Ban	✓		
Modena Wilson	200 Tuscany Rd #2 Baltimore, MD 21210	American Academy of Pediatrics	✓		✓
Mike Ansel	2600 Sir Barton Way	Md. Against Handgun Violence	✓		✓

PLEASE PRINT

Dear Baltimore City Council Member,

Concerning council bill #1226; It is requested that you withdraw from sponcership and/or vote aginst ordination,publication ,and implimentation of #1226:

Because of the effect on crime and criminals.The bill provides DE FACTO (and you know what DEFACTO means)guarantee to criminals that the armed citizenwill not intervine in crimes.Any place kids are around is a likely target - such as daytime armed robbery of U.S.citizens at thier Baltimore residence or burglery of occupied dwellings.Most criminals fear the armed citizen if they feared the criminal justice system they probably would not be criminals.

Because #1226 is very badly flawed (REAL FACTO);It provides for trigger locks on loaded firearms in violation of warnings of manufacturers of the devices.Nontheless compliance with the law relieves gun owners of criminal liability and perhaps civil liability as well.

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A resolution that other existing negligence laws be enforeed would be much more effective;To make example of wrong doers;And to promote firearms safety,education,and supervision of minors. So! In addition to voting aginst #1226 it is requested that you take positive action to sponcer and support such resolution.

Your cooperation will be appriciated;Thank you for receiving this correspondence for the record,its information,coment,and details which may earlier have been overlooked.

Very truely yours,

Al Bryan

Mr.Albert C.Bryan 5/15/91
2201 Sherwood Ave.
Baltimore,Maryland 21218-5545

cc acb
bccouncil
msr&pa
nra-ila

CITY OF BALTIMORE
COUNCIL BILL NO. 1226 - FIRST READER

By: Councilmembers Ambridge, Welch, President Clarke, Councilmembers Stokes, Dixon, Landers, Cunningham, Hall, Reisinger, DiPietro, Curran, Bell, DiBlasi, D'Adamo, Schaefer, McLean
Requested by:
Address:
Introduced: January 22, 1991
Assigned to: Judiciary Committee

REFERRED TO THE FOLLOWING MUNICIPAL AGENCIES: City Solicitor, Police Dept.

A BILL ENTITLED

AN ORDINANCE concerning

FIREARMS - ACCESS BY MINORS

FOR the purpose of prohibiting persons from leaving certain firearms where an unsupervised minor may obtain access; requiring the posting of warnings; providing penalties; and generally relating to access to firearms by minors.

BY adding
Article 19 - Police Ordinances
Subtitle - Pistols and Guns
To be under a new heading "Access to Firearms by Minors"
Section 117A
Baltimore City Code (1983 Replacement Volume, as amended)

SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE, That Section(s) of the Baltimore City Code (1983 Replacement Volume, as amended) be added, repealed, or amended, to read as follows:

ARTICLE 19 - POLICE ORDINANCES

Pistols and Guns

ACCESS TO FIREARMS BY MINORS

117A.
(A) FOR THE PURPOSES OF THIS SECTION THE FOLLOWING TERMS SHALL HAVE THE MEANINGS INDICATED UNLESS THEIR CONTEXT REQUIRES A DIFFERENT MEANING:

(1) "FIREARM" SHALL MEAN A PISTOL, REVOLVER, RIFLE, SHOTGUN, SHORT-BARRELED RIFLE, SHORT BARRELED SHOTGUN, OR ANY OTHER FIREARM, EXCEPT FOR AN INOPERABLE ANTIQUE FIREARM;

(2) "MINOR" SHALL MEAN ANY PERSON UNDER THE AGE OF 18;

#1425/1/1-8-91/POLICE

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[BRACKETS] indicate matter deleted from existing law.

(Bill No. 1226)

(3) "AMMUNITION" SHALL MEAN ANY AMMUNITION CARTRIDGE, SHELL OR OTHER DEVICE CONTAINING EXPLOSIVE OR INCENDIARY MATERIAL DESIGNED AND INTENDED FOR USE IN ANY FIREARM.

(B) EXCEPT AS PROVIDED IN THIS SECTION, A PERSON SHALL NOT LEAVE A LOADED FIREARM, OR AN UNLOADED FIREARM IN CLOSE PROXIMITY TO AMMUNITION, IN ANY LOCATION WHERE THE PERSON KNOWS, OR REASONABLY SHOULD KNOW, THAT AN UNSUPERVISED MINOR MAY GAIN ACCESS TO THE FIREARM.

(C) THIS SECTION SHALL NOT APPLY WHERE:

(1) A MINOR'S ACCESS TO A FIREARM IS SUPERVISED BY A PERSON 21 YEARS OF AGE or older;

(2) A FIREARM IS IN A LOCKED GUN CABINET OR SIMILAR LOCKED LOCATION, OR IS SECURED WITH A TRIGGER LOCK OR OTHER SIMILAR DEVICE WHICH PREVENTS THE FIREARM FROM DISCHARGING AMMUNITION;

(3) A MINOR'S ACCESS TO A FIREARM WAS OBTAINED AS A RESULT OF AN UNLAWFUL ENTRY TO THE PREMISES; OR

(4) A FIREARM IS IN THE POSSESSION OR CONTROL OF A LAW ENFORCEMENT OFFICER WHILE THE OFFICER IS ENGAGED IN OFFICIAL DUTIES.

(D) (1) WHEN SELLING ANY FIREARM, A LICENSED FIREARMS DEALER SHALL EXPLICITLY OFFER TO SELL OR GIVE TO THE PURCHASER A TRIGGER LOCK OR SIMILAR DEVICE TO PREVENT THE FIREARM FROM DISCHARGING AMMUNITION.

(2) AT EVERY PURCHASE COUNTER IN EVERY STORE, SHOP OR SALES OUTLET WHERE FIREARMS ARE SOLD, THE FOLLOWING WARNING IN BLOCK LETTERS NOT LESS THAN ONE INCH IN HEIGHT SHALL BE CONSPICUOUSLY POSTED: "IT IS UNLAWFUL TO LEAVE A LOADED FIREARM, OR AN UNLOADED FIREARM IN CLOSE PROXIMITY TO AMMUNITION, WHERE A MINOR CAN OBTAIN ACCESS TO THE FIREARM."

(E) ANY PERSON WHO VIOLATES ANY PROVISION OF THIS (SECTION) SHALL BE GUILTY OF A MISDEMEANOR AND UPON CONVICTION SHALL BE SUBJECT TO A FINE OF UP TO $1,000 OR IMPRISONMENT FOR 1 YEAR, OR BOTH.

SEC. 2. AND BE IT FURTHER ORDAINED, That this ordinance shall take effect on the date of its enactment.

SENATE OF MARYLAND

llr1202 No. 214 E2
Identical to HB-197 CF llr1203

By: The President (Administration)
Introduced and read first time: January 21, 1991
Assigned to: Judicial Proceedings

A BILL ENTITLED

AN ACT concerning

Firearms – Access by Minors

FOR the purpose of prohibiting persons from storing or leaving unsecured firearms where an unsupervised minor is likely to obtain access; requiring firearms dealers to post certain warnings; establishing certain penalties for violations of this Act; providing certain conditions to the application of this Act; and generally relating to access to firearms by minors.

BY adding to

Article 27 – Crimes and Punishments

Section 36K

Annotated Code of Maryland

(1987 Replacement Volume and 1990 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article 27 – Crimes and Punishments

36K.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) (I) "FIREARM" MEANS A PISTOL, REVOLVER, RIFLE, SHOTGUN, SHORT-BARRELED RIFLE, SHORT-BARRELED SHOTGUN, OR ANY OTHER FIREARM.

(II) "FIREARM" DOES NOT INCLUDE ANTIQUE FIREARMS AS DEFINED IN SECTION 36F OF THIS ARTICLE.

(3) "MINOR" MEANS AN INDIVIDUAL UNDER THE AGE OF 18.

(4) "AMMUNITION" MEANS ANY AMMUNITION CARTRIDGE, SHELL OR OTHER DEVICE CONTAINING EXPLOSIVE OR INCENDIARY MATERIAL DESIGNED AND INTENDED FOR USE IN A FIREARM.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law. Note:

Serious Consideration should be given to the possible affects this law could have on the sports of Hunting, and Target Shooting, by youngsters under 18 years of age. Consider also that this law makes it a Felony for any gunowner, whose gun is taken by a minor and used, or carried, in any way outside the gun-owner's home! This law is dangerous in many ways!

(B) EXCEPT AS PROVIDED IN THIS SECTION, AN INDIVIDUAL MAY NOT STORE OR LEAVE A LOADED FIREARM, OR AN UNLOADED FIREARM IN CLOSE PROXIMITY TO AMMUNITION, IN ANY LOCATION WHERE IT MAY REASONABLY BE EXPECTED THAT AN UNSUPERVISED MINOR MAY GAIN ACCESS TO THE FIREARM.

(C) THIS SECTION DOES NOT APPLY IF:

(1) A MINOR'S ACCESS TO A FIREARM IS SUPERVISED BY A PERSON 18 YEARS OLD OR OLDER;

(2) A FIREARM HAS BEEN SECURED WITH A TRIGGER LOCK OR OTHER SIMILAR DEVICE WHICH PREVENTS THE FIREARM FROM DISCHARGING AMMUNITION;

(3) A MINOR'S ACCESS TO A FIREARM WAS OBTAINED AS A RESULT OF AN UNLAWFUL ENTRY; OR

(4) A FIREARM IS IN THE POSSESSION OR CONTROL OF A LAW ENFORCEMENT OFFICER WHILE THE OFFICER IS ENGAGED IN OFFICIAL DUTIES.

(D) (1) WHEN SELLING ANY FIREARM, A LICENSED FIREARMS DEALER SHALL OFFER TO SELL OR GIVE THE PURCHASER A TRIGGER LOCK OR SIMILAR DEVICE WHICH WOULD PREVENT THE FIREARM FROM DISCHARGING AMMUNITION.

(2) AT EVERY PURCHASE COUNTER IN EVERY STORE, SHOP, OR SALES OUTLET WHERE FIREARMS ARE SOLD, A LICENSED FIREARMS DEALER SHALL POST CONSPICUOUSLY THE FOLLOWING WARNING IN BLOCK LETTERS NOT LESS THAN 1 INCH IN HEIGHT: "IT IS UNLAWFUL TO STORE OR LEAVE AN UNLOCKED FIREARM WHERE UNSUPERVISED MINORS ARE LIKELY TO OBTAIN ACCESS TO THE FIREARM".

(E) (1) ANY PERSON WHO VIOLATES SUBSECTION (B) OF THIS SECTION IS GUILTY OF A FELONY AND UPON CONVICTION SHALL BE FINED NOT MORE THAN $5,000 OR IMPRISONED FOR NOT MORE THAN 1 YEAR OR BOTH.

(2) ANY PERSON WHO VIOLATES SUBSECTION (D) OF THIS SECTION IS GUILTY OF A MISDEMEANOR AND UPON CONVICTION SHALL BE FINED NOT MORE THAN $5,000.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1991.

Fle 1226

Dear Baltimore City Council Member,

Concerning council bill #1226; It is requested that you withdraw from sponcership and/or vote aginst ordination,publication ,and impli-mentation of #1226:

Because of the effect on crime and criminals.The bill provides DE FACTO (and you know what DEFACTO means)guarantee to criminals that the armed citizenwill not intervine in crimes.Any place kids are around is a likely target - such as daytime armed robbery of U.S.citizens at thier Baltimore residence or burglery of occupied dwellings.Most crim-inals fear the armed citizen if they feared the criminal justice system they probably would not be criminals.

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