



Anoka County Attorney

**BRAD JOHNSON**

Justice, Advocacy, Prevention.

**VIA EMAIL ONLY**

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**Re: Bill on Firearm and Ammunition Storage Requirements HF 396**

Representative Becker-Finn,

I write in opposition to HF 396 repealing the existing criminal statute prohibiting Negligent Storage of Firearms<sup>1</sup> in favor of a new, and significantly unenforceable statutory scheme. I want to be clear at the outset of this letter that our office will prosecute cases under the criminal laws of Minnesota, including “gun laws,” when there is evidence to support a prosecution. Such laws, however, must not only pass constitutional muster, but also be written with sufficient clarity so that both the prosecutor and any jury or court can make sense of them. Apparently stemming from misunderstandings on how firearms and ammunition are reasonably and safely handled by trained and law-abiding citizens, HF 396 is not only poorly considered and written, but also unconstitutional in certain respects under both the federal and state constitutions.

Instead of delineating every problem with the bill – there are too many to list – I will summarize the various rhetorical questions and comments I have discussed with prosecutors about this bill:

1. Negligence is an enforceable and well-tested standard, which we can use to prosecute a criminal case. The proposed new standard of “reasonable action” defined in the statute – that “requires a firearm to be stored unloaded with a locking device and separately from its ammunition” – is not sufficiently clear to rule out any other forms of reasonable action. If someone were to follow legitimate firearm safety training and storage practices, and they kept a firearm unloaded and “separately” (whatever that means) from its ammunition, is it really the legislature’s intent to make a criminal out of that person simply because the firearm also did not have a so-called locking device?
2. What is the difference between “under the control” and “stored?” Under certain negligence standards, where there is a duty of care, one could assert that even a firearm not carried is still under that person’s control. Indeed, the bill itself contemplates that there is a difference between “carried” and “under the control.” If so, under Subd. 1 the entire law would not apply in all the circumstances when a court finds the firearm was under the owner’s control. And because the bill also would do away with the negligent-storage statute, the prosecutor ends up left with fewer tools to redress what could have previously been a crime.

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<sup>1</sup> Our office can enforce and prosecute cases under Minn. Stat. § 609.666; the new bill will make those cases much harder to enforce or prosecute.

3. We assume that a child (person under 18) can be, and under all sorts of laws would be, recognized as either an “owner” or “authorized user” of a firearm. In such case, do the **felony** penalties in Subd. 3(c) still make sense in a situation when “a loaded, unsecured firearm that belongs to the person is accessed by a child...” and that same child is an owner or authorized user? They do not. And prosecutors would not be able to enforce this law if a prosecutor or judge determined that the child was an authorized user, even if that was a horribly negligent decision by a parent or custodian.
4. What is meant by “immediate area of the unsecured firearm’s ammunition” in Subd. 3(c)? How is that different from “separately” in Subd. 1? What if the ammunition is in a locked box, vault, or drawer? What if the ammunition is in the same closet? What if the ammunition is in the next room? You see the problem?
5. Is Subd. 3(c) really intended to create a form of strict felony-level liability for firearm owners or authorized users, **no matter how careful they are**, because either a child (even if authorized) or a prohibited person (regardless of the owner’s knowledge of that person’s status) accessed a loaded or unsecured firearm without their owner/authorized user’s knowledge? I struggle to understand the public policy considerations that resulted in this language and this severity of consequence.
6. What is meant by “transfer a firearm?” Is that phrase meant to apply only to sale or gift, resulting in an actual, legal transfer of ownership? Or is that phrase meant to include loaning or sharing a firearm, or even authorizing another to use it? Law abiding hunters, as well as recreational and competitive shooters alike, regularly allow their colleagues and partners to borrow or use their firearms. The intent is unclear.
7. Does Subd. 2 require the transferor to have “an appropriate locking device” on the firearm or with the firearm at the time of transfer? Does it create criminal liability for the transferor if the transferee does not “provide proof” (whatever that means) of ownership of a capable locking device, which could mean “... a gun vault; a locked box; or any other appropriate locked container” (whatever that means)? Why is this subdivision not written to punish the bad conduct of the person receiving the firearm, rather than the conduct of the person transferring it? And what is the point of the language in the last sentence, which appears to be a policy statement, “The transferee must own a sufficient number of locking devices to secure each firearm the transferee owns.” It is a non-sequitur.
8. The bill does nothing to acknowledge that there are other reasonable actions that are taken by firearm owners to secure or render safe firearms in their possession or control, including disassembly (i.e., removal of a bolt or pin, etc.), locking ammunition, firearm safety training, etc.
9. Finally, and most importantly, how does this law apply in situations where there may be good public safety reasons for people to store a loaded firearm at the ready? Such people may include domestic violence and stalking victims, people who have had to obtain harassment restraining orders, law enforcement, prosecutors, defense attorneys,



judges, permit-to-carry holders, etc. As written, the bill makes it criminal to keep a loaded firearm in a gun safe or vault, even if protected behind a lock with a code, key, or biometric interface. And this is the situation where the constitutional concerns are both apparent and paramount.

I doubt from the language used in the bill that few who have signed on to it really understand that it would make felons out of tens of thousands of Minnesota parents who have given their teenaged children a shotgun or rifle as a present, and then allowed them to keep that firearm unloaded and cased in their bedroom closet someplace near a box of ammunition without some sort of lock. That includes my father, a former Anoka County Attorney, who gave me a 20-gauge shotgun on my 15<sup>th</sup> birthday after I had completed a firearm safety course, and he had raised me from a very young age to understand and practice firearm safety.

Perhaps time and technology have changed. But a horribly written law that would make criminals out of careful, law-abiding citizens is not a solution to the tremendous problem we face with gun violence and firearm accidents. Publicly supported and funded, age-appropriate firearm safety education ought to be a part of it. Commonsense and practical ideas on how to close loopholes to assure that prohibited persons cannot purchase firearms could be a part of it. Improving the laws that we already have could be a part of it.

If genuinely interested in creating tools to address these issues and concerns, I respectfully request that the supporters of this bill abandon it and then get together with the Minnesota County Attorney's Association, the Minnesota Sheriff's Association, and other law enforcement organizations so that we can talk about how we can do a much better job crafting laws to protect our communities against gun violence and firearm accidents.

Bottom line: The goal that this bill seeks to achieve is lost in the way it is written. If you want my help and support, I will make the time.

As always, please do not hesitate to call if you have any questions.

Sincerely,

*Brad*

Brad Johnson  
Anoka County Attorney

cc (Via Email Only): Representatives Kelly Moller (PSF&P Chair); Paul Novotny (PSF&P Repub. Lead); Liz Olson (W&M Chair); Pat Garofalo (W&M Repub. Lead); Kurt Daudt; Elliot Engen; Erin Koegel; Jerry Newton; Harry Niska; Matt Norris; Peggy Scott; and Zack Stephenson.