

M E M O R A N D U M

November 8, 2023

TO: Health and Human Services Committee

FROM: Christine Wellons, Senior Legislative Attorney

SUBJECT: Bill 36-23, Sale of Firearms or Ammunition – Suicide Awareness and Firearm Education (SAFE) Act

PURPOSE: Committee worksession – recommendation expected

Expected Attendees:

Dr. Stoddard, Assistant Chief Administrative Officer, Office of the County Executive (invited)

Dr. Bridgers, Director, Department of Health and Human Services (invited)

Bill 36-23, Sale of Firearms or Ammunition – Suicide Awareness and Firearm Education (SAFE) Act, sponsored by Lead Sponsor Council President Glass and Co-Sponsors Councilmembers Alborno, Stewart, and Sayles, Council Vice-President Friedson, and Councilmembers Katz, Balcombe, Jawando, and Luedtke, was introduced on September 26, 2023. A public hearing was held on October 10, 2023.

Bill 36-23 would:

- (1) require the Department of Health and Human Services to develop literature about firearm safety, suicide prevention, and conflict resolution;
- (2) require sellers of firearms or ammunition to display and distribute the literature at points of sale;
- (3) enable the Department of Health and Human Services to enforce the display and distribution requirements; and
- (4) generally amend the law regarding education about mental health and firearms in the County.

BACKGROUND

In 2022, Anne Arundel County enacted a law to require establishments selling guns or ammunition to make available, and to distribute to all purchasers, literature prepared by the County

Health Department regarding gun safety and training, suicide prevention, mental health, and conflict resolution.

The Anne Arundel County law has been challenged in U.S. District Court on First Amendment grounds. *Maryland Shall Issue, Inc., et al. v. Anne Arundel County*, (U.S. District Court for the District of Maryland, Civil Case No. SAG-22-00865). The County prevailed in the District Court. See [Md. Shall Issue, Inc. v. Anne Arundel Cnty., CIVIL SAG-22-00865 | Casetext Search + Citator](#). The case currently is on appeal before the U.S. Court of Appeals for the Fourth Circuit (Case No. 23-1351). Oral arguments are scheduled for December 8, 2023. [internetcaldec052023ric.pdf \(uscourts.gov\)](#)

BILL SPECIFICS

Bill 36-23 would require the County health department – the Department of Health and Human Services (DHHS) – to develop literature about firearm safety and training, suicide prevention, mental health, and conflict resolution. In turn, *gun shops* would be required to make the literature available, and to distribute the literature to purchasers, at the point of sale.

A *gun shop* is defined under the County Code, § 57-1 as: “An establishment where a handgun, rifle, or shotgun, or ammunition or major component of these guns is sold or transferred. ‘Gun shop’ does not include an area of an establishment that is separated by a secure, physical barrier from all areas where any of these items is located.”

There are approximately five gun shops in the County.¹

A failure to display or distribute the literature, as required under the bill, would be a Class A violation. Representatives of DHHS would be authorized to issue citations to enforce the bill.

SUMMARY OF IMPACT STATEMENTS

Climate. The Office of Legislative Oversight (OLO) anticipates that Bill 36-23 will not affect climate change.

Racial Equity and Social Justice. OLO anticipates that the bill will have an indeterminate effect upon racial equity and social justice. OLO recommends considering whether to commission “a comprehensive study of suicide trends and suicide prevention in the County by race and ethnicity.”

¹ To determine the number and location of “gun shops” in the County, Council staff searched the Federal Firearms License (FFL), [Federal Firearms Listings | Bureau of Alcohol, Tobacco, Firearms and Explosives \(atf.gov\)](#), for “Dealer in Firearms Other Than Destructive Devices (includes Gunsmiths)”. Approximately 41 persons and entities in the County have such licenses. The vast majority of these licensees are individuals, who might have the licenses for a variety of reasons. Among the licensees, the Police Department identified five actual retail establishments that maintain inventory and sell firearms. The locations of the establishments are Rockville, Damascus, and Gaithersburg.

Economic Impact. OLO anticipates that the bill would have an insignificant impact upon economic conditions in the County.

Fiscal Impact. The Office of Management and Budget states: “DHHS will incur operating expenses of approximately \$15,000 each year for design and printing of the literature and posters. Any revenue generated by the bill with regard to penalties is expected to be minimal.”

SUMMARY OF PUBLIC HEARING TESTIMONY

Dr. Stoddard submitted testimony on behalf of the County Executive in support of the bill. He noted that the Executive might have recommendations related to enforcement under the bill.

Numerous individuals and organizations submitted testimony for and against Bill 36-23. Highlights included:

- Bill opponents noted: concerns that the bill would violate the First Amendment and state law related to gun sales; concerns that the bill constituted governmental over-reach; and concerns that similar legislation has had unintended consequences in Anne Arundel County, including offending customers.
- Bill proponents noted that the bill would address a growing mental health and suicide crisis and the prevalence of guns used in suicides. The National Alliance on Mental Illness, Montgomery County, stated:
 - “Suicide and gun violence are public health crises in America, threatening our communities’ health and well-being. **In 2020, firearm-related injuries rose to the highest number on record and became the leading cause of death for children and adolescents. Most firearm deaths each year are suicides, and firearms are the most common method used for suicide.** As a result, in 2020, over 24,000 lives were tragically lost to suicide using firearms.” (Emphasis added).
 - “**Interventions at the point of sale of ammunition or firearms are an evidence-based and recommended strategy to prevent suicide.** Collaboration between firearm retailers and public health professionals is not new. ...**In 2012 the surgeon general called for health officials to partner with firearm dealers and gun owner groups to incorporate suicide awareness as a basic tenet of firearm safety and responsible firearm ownership.**” (Emphasis added).

ISSUES FOR THE COMMITTEE’S CONSIDERATION

1. ENFORCEMENT ISSUES – CIVIL VS. CRIMINAL PENALTIES

As currently drafted, Bill 36-23 would be enforced by the Department of Health and Human Services (DHHS) through citations for a Class A violation.

Under § 1-18 of the County Code, Class A violations can be civil or criminal. A chart illustrating the associated penalties follows.

<i>Class</i>	<i>Maximum Fine - Criminal</i>	<i>Maximum Jail Term</i>	<i>Civil Fine - Initial Offense</i>	<i>Civil Fine - Repeat Offense</i>
A	\$1000	6 months	\$500	\$750
B	\$200	30 days	\$100	\$150
C	\$50	None if fine is paid; 10 days otherwise	\$50	\$75

The intent of the bill sponsor was to enforce the bill through civil citations. This is consistent with the approach of Anne Arundel County.

If the Committee would like to clarify that the citations under Bill 36-23 are *solely* civil in nature, as opposed to criminal, it could adopt the following amendment.

Amend lines 17-18 as follows.

- (1) A failure to display or distribute literature under subsection (b) is a Class A civil violation under Section 1-19.

2. POTENTIAL AMENDMENTS – MECHANICS OF LITERATURE DISTRIBUTION

With certain exceptions, the General Assembly has preempted the ability of the County to regulate gun sales. Under the Public Safety Article of the Maryland Code, the State expressly “preempts the right of any local jurisdiction to regulate the sale of a regulated firearm.” Public Safety § 5-104. In addition, the Criminal Law Article provides:

State preemption

(a) Except as otherwise provided in this section, the State 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.

Exemptions

(b) (1) A county, municipal corporation, or special taxing district may regulate the purchase, sale, transfer, ownership, possession, and transportation of the items listed in subsection (a) of this section:

- (i) with respect to minors;
- (ii) with respect to law enforcement officials of the subdivision; and
- (iii) except as provided in paragraph (2) of this subsection, within 100 yards of or in a park, church, school, public building, and other place of public assembly.

(2) A county, municipal corporation, or special taxing district may not prohibit the teaching of or training in firearms safety, or other educational or sporting use of the items listed in subsection (a) of this section....

Criminal Law § 4-209.

Given these state law provisions, the Council might wish to consider ways in which to mitigate preemption concerns while still retaining the effectiveness of the bill.

Option 1 below would further decouple the distribution of literature from the act of a gun sale. Alternatively, the Council could amend the bill to meet one of the exemptions under § 4-209. For instance, the Council could amend the bill to apply solely to gun shops within 100 yards of a place of public assembly (Option 2 below). Another option would be to amend the bill to make the content of the required literature specific to minors (Option 3 below).

Council staff would recommend that, of the options below, Option 1 would likely be the most effective in preserving the effectiveness of the bill and mitigating preemption concerns. Options 2 and 3 likely would lessen the effectiveness of the bill.

Option 1 – Decouple the Distribution of Literature from the Sale

Amend lines 10-12 as follows.

- (b) A gun shop must make visible and available [[at a point of sale]], and must provide to each [[customer upon a sale of a gun, firearm, or fixed ammunition,]] person who enters the shop, the literature prepared under subsection (a).

This option has the advantage of distributing suicide prevention literature to a greater number of individuals and prospective customers, in addition to mitigating the preemption issue.

Option 2 – Limit the Scope of the Bill to Within 100 Yards of Places of Public Assembly

Amend lines 10-12 as follows.

- (b) A gun shop located within 100 yards of a place of public assembly must make visible and available at a point of sale, and must provide to each customer upon a sale of a gun, firearm, or fixed ammunition, the literature prepared under subsection (a).

Note – This option is probably unadvisable from a practical standpoint. Based on a review by Council staff of federal firearms licensees in the County, there appear to be only five “gun shops” in the County – none of which appears to be located within 100 yards of places of public assembly.

Option 3 – Limit the Content of the Literature to Relate Solely to Minors

Amend lines 3-9 as follows.

(a) The Department of Health and Human Services must prepare, and must distribute to each gun shop in the County, literature related to minors regarding:

- (1) gun and firearm safety;
- (2) gun and firearm training;
- (3) suicide prevention;
- (4) mental health; and
- (5) conflict resolution.

Note – The practical issue with Option 3 would be that suicide by firearms is a public health crisis affecting adults as well as minors. Restricting the literature might lessen its effectiveness.

3. Potential Amendment – Mandatory Nature of the Literature Distribution

As noted above under the Background section of this memorandum, Anne Arundel County is engaged in litigation, currently before the U.S. Court of Appeals for the Fourth Circuit, regarding whether its suicide prevention literature law, which is similar to Council Bill 36-23, violates the First Amendment.

The plaintiffs’ argument in the case is that requiring gun shops to distribute literature constitutes “compelled speech” inconsistent with constitutional protections of free speech. The U.S. District Court for the District of Maryland rejected the plaintiffs’ argument. *See* [Md. Shall Issue, Inc. v. Anne Arundel Cnty., CIVIL SAG-22-00865 | Casetext Search + Citator](#). The case is on appeal, and oral arguments are scheduled for December 8, 2023, [internetcaldec052023ric.pdf \(uscourts.gov\)](#).

It is not necessary for the Council to amend the bill in light of Anne Arundel County’s pending litigation, and it should be noted that Anne Arundel County has prevailed in District Court. However, if the Council wished to avoid the potential issue of compelled speech, it could consider amending Bill 36-23 to make the suicide awareness literature available to gun shops for voluntary distribution. A potential amendment would be as follows.

Amend lines 10-22 as follows.

(b) A gun shop ~~[[must]]~~ should make visible and available at a point of sale, and
~~[[must]]~~ should provide to each customer upon a sale of a gun, firearm, or fixed
ammunition, the literature prepared under subsection (a).

[(c) An authorized representative of the Department of Health and Human Services may
issue a civil citation to an owner of a gun shop for a violation of subsection (b).

(d) Penalties.

(1) A failure to display or distribute literature under subsection (b) is a Class A
violation under Section 1-19.

(2) Each failure to distribute literature under subsection (b) is a separate
violation.

(3) Each day of a failure to display literature under subsection (b) is a separate
violation.]]

NEXT STEP: Committee recommendation on whether to enact Bill 36-23.

This packet contains:

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Bill No. 36-23
Concerning: Sale of Firearms or
Ammunition – Suicide Awareness and
Firearm Education (SAFE) Act
Revised: 10/04/2023 Draft No. 4
Introduced: September 26, 2023
Expires: December 7, 2026
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Council President Glass

Co-Sponsors: Councilmembers Alborno, Stewart, and Sayles, Council Vice-President Friedson,
and Councilmembers Katz, Balcombe, Jawando, and Luedtke

AN ACT to:

- (1) require the Department of Health and Human Services to develop literature about firearm safety, suicide prevention, and conflict resolution;
- (2) require sellers of firearms or ammunition to display and distribute the literature at points of sale;
- (3) enable the Department of Health and Human Services to enforce the display and distribution requirements; and
- (4) generally amend the law regarding education about mental health and firearms in the County.

By adding

Montgomery County Code
Chapter 57, Weapons
Section 57-11A

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Section 57-11A is added as follows:

57-11A. Firearms and Ammunition - Suicide Prevention Literature.

(a) The Department of Health and Human Services must prepare, and must distribute to each gun shop in the County, literature regarding:

(1) gun and firearm safety;

(2) gun and firearm training;

(3) suicide prevention;

(4) mental health; and

(5) conflict resolution.

(b) A gun shop must make visible and available at a point of sale, and must provide to each customer upon a sale of a gun, firearm, or fixed ammunition, the literature prepared under subsection (a).

(c) An authorized representative of the Department of Health and Human Services may issue a civil citation to an owner of a gun shop for a violation of subsection (b).

(d) Penalties.

(1) A failure to display or distribute literature under subsection (b) is a Class A violation under Section 1-19.

(2) Each failure to distribute literature under subsection (b) is a separate violation.

(3) Each day of a failure to display literature under subsection (b) is a separate violation.

MEMORANDUM

To: Councilmembers
From: Council President Evan Glass
Re: The SAFE Act: Suicide Awareness and Firearm Education Act

September has been declared National Suicide Prevention Awareness Month, a time to remember those affected by suicide, to raise awareness and to focus efforts on directing treatment to those who need it most. The Centers for Disease Control reports that suicide continues being a leading cause of death in the United States. Forty-two percent of all suicides in Maryland are committed by a firearm.

In order to bring awareness to this tragic situation, I will be introducing “The SAFE Act”: The Suicide Awareness and Firearm Education Act on Tuesday, September 26.

This bill would:

- Require the Department of Health and Human Services to develop literature about firearm safety, suicide prevention and conflict resolution.
- Require sellers of firearms or ammunition to display and distribute the literature at points of sale.
- Amend the law regarding education about mental health and firearms in the County.

Similar legislation has been enacted in Anne Arundel County. This law was recently challenged in the U.S. District Court of Maryland by gun retailers claiming the pamphlets violated their First Amendment rights. On March 21, 2023, the U.S. District Judge ruled in favor of the county, recognizing that “access to firearms is a risk factor for suicide.” Further, the court ruled that the “pamphlets are reasonably related to the County’s interest in preventing suicide and violence.” On September 5, 2023, MedChi, The Maryland State Medical Society, the American Academy of Pediatrics, the AMA, filed an amicus brief to urge the federal appeals court to uphold this law.

As we continue to advocate for more firearm safety measures and suicide prevention awareness, the SAFE Act will be an additional tool that can be leveraged to save lives.

Please let Valeria Carranza from my office know by Wednesday, September 20 at 12 noon if you would like to co-sponsor this legislation.

Economic Impact Statement

Montgomery County, Maryland

Bill 36-23

Sale of Firearms or Ammunition – Suicide Awareness and Firearm Education (SAFE) Act

SUMMARY

The Office of Legislative Oversight (OLO) anticipates that enacting Bill 36-23 would have an insignificant impact on economic conditions in the County in terms of the Council's priority indicators.

BACKGROUND AND PURPOSE OF BILL 36-23

Bill 36-23 would require the Department of Health and Human Services (DHHS) to prepare and distribute literature to each gun shop in the County regarding:

- (1) gun and firearm safety;
- (2) gun and firearm training;
- (3) suicide prevention;
- (4) mental health; and
- (5) conflict resolution.¹

The gun shop would be required to make the literature visible and available at the point of sale and to distribute the literature to each customer upon a sale of a gun, firearm, or fixed ammunition.²

Failure to display or display the literature would be a Class A civil violation, which carries a maximum civil penalty of \$500 for an initial offense and \$750 for a repeat offense.³ DHHS representatives would be authorized to issue a civil citation to an owner of a gun shop for noncompliance.⁴

The Council introduced Bill 36-23, Sale of Firearms or Ammunition – Suicide Awareness and Firearm Education (SAFE) Act, on September 26, 2023.

INFORMATION SOURCES, METHODOLOGIES, AND ASSUMPTIONS

Per Section 2-81B of the Montgomery County Code, the purpose of this Economic Impact Statement is to assess the impacts of Bill 36-23 on County-based private organizations and residents in terms of the Council's priority economic

¹ Introduction Staff Report on Bill 36-23.

² Ibid.

³ Montgomery County Code, Sec. 1-19.

⁴ Introduction Staff Report on Bill 36-23.

indicators and whether the Bill would likely result in a net positive or negative impact on overall economic conditions in the County.⁵ Because DHHS would provide gun shops with the literature on gun safety, these shops should not incur operating expenses from printing materials. Therefore, OLO anticipates that the Bill would have an insignificant impact on private organizations, residents, and overall economic conditions in the County in terms of the Council's priority indicators.

VARIABLES

Not applicable

IMPACTS

WORKFORCE ▪ TAXATION POLICY ▪ PROPERTY VALUES ▪ INCOMES ▪ OPERATING COSTS ▪ PRIVATE SECTOR CAPITAL INVESTMENT ▪ ECONOMIC DEVELOPMENT ▪ COMPETITIVENESS

Not applicable

DISCUSSION ITEMS

Not applicable

WORKS CITED

[Introduction Staff Report on Bill 36-23, Sale of Firearms or Ammunition – Suicide Awareness and Firearm Education \(SAFE\) Act](#), September 26, 2023.

Montgomery County Code, [Sec. 2-81B, Economic Impact Statements](#).

Montgomery County Code, [Sec. 1-19, Fines and Penalties](#).

CAVEATS

Two caveats to the economic analysis performed here should be noted. First, predicting the economic impacts of legislation is a challenging analytical endeavor due to data limitations, the multitude of causes of economic outcomes, economic shocks, uncertainty, and other factors. Second, the analysis performed here is intended to *inform* the legislative process, not determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the Bill under consideration.

CONTRIBUTIONS

Stephen Roblin (OLO) prepared this report.

⁵ Montgomery County Code, Sec. 2-81B.

Climate Assessment

Office of Legislative Oversight

Bill 36-23: Sale of Firearms or Ammunition – Suicide Awareness and Firearm Education (SAFE) Act

SUMMARY

The Office of Legislative Oversight (OLO) anticipates Bill 36-23 will have no impact as the proposed change would require the development and distribution of literature about firearm safety and training, which does not impact the County's contribution to addressing climate change.

BACKGROUND AND PURPOSE OF BILL 36-23

Bill 36-23 would require the Department of Health and Human Services (DHHS) to prepare and distribute literature to each gun shop in the County regarding:

- 1) gun and firearm safety;
- 2) gun and firearm training;
- 3) suicide prevention;
- 4) mental health; and
- 5) conflict resolution.¹

The gun shop would be required to make literature visible and available at the point of sale and to distribute literature to each customer upon a sale of a gun, firearm, or fixed ammunition.²

Failure to display or distribute literature would be a Class A civil violation, which carries a maximum civil penalty of \$500 for an initial offense and \$750 for a repeat offense.³ DHHS representatives would be authorized to issue a civil citation to an owner of a gun shop for noncompliance.⁴

The Council introduced Bill 36-23, Sale of Firearms or Ammunition – Suicide Awareness and Firearm Education (SAFE) Act, on September 26, 2023.

ANTICIPATED IMPACTS

As the bill proposes to require the development and distribution of literature about firearm safety and training, OLO anticipates Bill 36-23 will have no impact on the County's contribution to addressing climate change, including the reduction and/or sequestration of greenhouse gas emissions, community resilience, and adaptive capacity.

RECOMMENDED AMENDMENTS

The Climate Assessment Act requires OLO to offer recommendations, such as amendments or other measures to mitigate any anticipated negative climate impacts.⁵ OLO does not offer recommendations or amendments as Bill 36-23 is likely to have no impact on the County's contribution to addressing climate change, including the reduction and/or sequestration of greenhouse gas emissions, community resilience, and adaptive capacity.

CAVEATS

OLO notes two caveats to this climate assessment. First, predicting the impacts of legislation upon climate change is a challenging analytical endeavor due to data limitations, uncertainty, and the broad, global nature of climate change. Second, the analysis performed here is intended to inform the legislative process, not determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

PURPOSE OF CLIMATE ASSESSMENTS

The purpose of the Climate Assessments is to evaluate the anticipated impact of legislation on the County's contribution to addressing climate change. These climate assessments will provide the Council with a more thorough understanding of the potential climate impacts and implications of proposed legislation, at the County level. The scope of the Climate Assessments is limited to the County's contribution to addressing climate change, specifically upon the County's contribution to greenhouse gas emissions and how actions suggested by legislation could help improve the County's adaptive capacity to climate change, and therefore, increase community resilience.

While co-benefits such as health and cost savings may be discussed, the focus is on how proposed County bills may impact GHG emissions and community resilience.

CONTRIBUTIONS

OLO staffer Kaitlyn Simmons drafted this assessment.

¹ Introduction Staff Report on Bill 36-23, Sale of Firearms or Ammunition – Suicide Awareness and Firearm Education (SAFE) Act.

² Ibid.

³ Montgomery County Code, Sec. 1-19, Fines and Penalties.

⁴ Introduction Staff Report on Bill 36-23, Sale of Firearms or Ammunition – Suicide Awareness and Firearm Education (SAFE) Act.

⁵ Bill 3-22, Legislative Branch – Climate Assessments – Required, Montgomery County Council, Effective date October 24, 2022



Fiscal Impact Statement

Office of Management and Budget

Bill 36-23

Sale of Firearms or Ammunition - Suicide Awareness and Firearm Education (SAFE) Act

Bill Summary

Bill 36-23 requires the Department of Health and Human Services (DHHS) to prepare and distribute literature about gun and firearm safety and training; suicide prevention; mental health; and conflict resolution to gun shops in the County. The bill requires gun shops to display and distribute the literature. The bill also creates civil penalties to enforce compliance.

Fiscal Impact Summary

DHHS expects that existing staff can administer the bill. DHHS will incur operating expenses of approximately \$15,000 each year for design and printing of the literature and posters. Any revenue generated by the bill with regard to penalties is expected to be minimal.

Fiscal Year	24	25	26	27	28	29	Total
Personnel Costs	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Operating Expenses	\$15,000	\$15,000	\$15,000	\$15,000	\$15,000	\$15,000	\$90,000
Total Expenditures	\$15,000	\$15,000	\$15,000	\$15,000	\$15,000	\$15,000	\$90,000
Revenues	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Impact	(\$15,000)	(\$15,000)	(\$15,000)	(\$15,000)	(\$15,000)	(\$15,000)	(\$90,000)
FTE	0.00	0.00	0.00	0.00	0.00	0.00	

Fiscal Impact Analysis

The bill is not expected to increase personnel costs. Operating expenditures will increase approximately \$15,000 each year for design and printing of the literature and posters.

The bill creates Class A civil penalties for failure to display or distribute the literature. The first violation is punishable by a fine of up to \$500; each repeat offense is punishable by a fine of up to \$750. Given that there may be 60 or fewer gun shops in the County, any fine revenue generated by these penalties cannot be reliably estimated at this time, but is assumed to be minimal.

Staff Impact

DHHS estimates that the bill will not require additional positions, but it will add work to existing staff's duties.

DHHS anticipates that it will take one Behavioral Health and Crisis Services Program Manager I approximately 80 hours to research and create the informational literature.

DHHS expects that its Licensing and Regulation staff will distribute the literature to gun shops throughout the County and incorporate the bill's enforcement provisions within their existing responsibilities. DHHS estimates that it will take one Environmental Health Specialist III approximately 200 hours to perform the distribution and enforcement functions.



	Staff time spent on enforcement is expected to be minimal because DHHS plans to implement a complaint-based enforcement system. Should a more proactive enforcement mechanism be required, the staff impact will increase.
Actuarial Analysis	The bill is not expected to impact retiree pension or group insurance costs.
Information Technology Impact	The bill is not expected to impact the County Information Technology (IT) or Enterprise Resource Planning (ERP) systems.
Other Information	
<i>Later actions that may impact revenue or expenditures if future spending is projected</i>	The bill does not authorize future spending.
<i>Ranges of revenue or expenditures that are uncertain or difficult to project</i>	The federal Bureau of Alcohol, Tobacco, Firearms and Explosives estimates that there are approximately 67 licenses across approximately 60 establishments to manufacture, import, deal, or otherwise sell firearms, ammunition, or other destructive devices in the County. Depending on the number of these establishments that are considered gun shops for the purposes of the bill, printing costs may vary. The staff impact of the bill's enforcement requirements will also vary depending on the number of complaints received for noncompliance.
<i>Sources of information</i>	This fiscal impact statement's estimate of potentially applicable gun shops is based on September 2023 data from the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives' Federal Firearms Listings for Montgomery County, Maryland.
<i>Contributors</i>	Grace Pedersen, Office of Management and Budget Deborah Lambert, Office of Management and Budget Dr. Rolando Santiago, Department of Health and Human Services Erin Fashion, Department of Health and Human Services Jason Rundell, Department of Health and Human Services Kenneth Welch, Department of Health and Human Services



Racial Equity and Social Justice (RESJ) Impact Statement

Office of Legislative Oversight

BILL 36-23: SALE OF FIREARMS OR AMMUNITION – SUICIDE AWARENESS AND FIREARM EDUCATION (SAFE) ACT

SUMMARY

The Office of Legislative Oversight (OLO) finds the racial equity and social justice (RESJ) impact of Bill 36-23 is indeterminant since there is no data on gun purchasers in the County by race and ethnicity. Additionally, no research was found on the impact of suicide awareness and firearm education literature on gun suicides. OLO offers one policy option for Council consideration.

PURPOSE OF RESJ IMPACT STATEMENTS

The purpose of RESJ impact statements (RESJIS) is to evaluate the anticipated impact of legislation on racial equity and social justice in the County. Racial equity and social justice refer to a **process** that focuses on centering the needs, leadership, and power of communities of color and low-income communities with a **goal** of eliminating racial and social inequities.¹ Achieving racial equity and social justice usually requires seeing, thinking, and working differently to address the racial and social harms that have caused racial and social inequities.²

PURPOSE OF BILL 36-23

Suicides, and in particular gun suicides, are a serious and growing public health problem in the United States.^{3,4} According to provisional data from the Centers for Disease Control and Prevention (CDC), gun suicides accounted for 56 percent of gun-related deaths in 2022.⁵ Further, researchers at Johns Hopkins found the gun suicide rate reached all-time highs in recent years following steady growth since 2006.⁶ Many jurisdictions have turned to gun safety policies to address the growing concern of gun suicides.⁷

If enacted, Bill 36-23 would require the Montgomery County Department of Health and Human Services (DHHS) to prepare and distribute literature to each gun shop in the County regarding gun and firearm safety; gun and firearm training; suicide prevention; mental health; and conflict resolution.⁸ Each gun shop would be required to make the literature visible and available at the point of sale and to distribute the literature to each customer upon a sale of a gun, firearm, or fixed ammunition. According to the Bill's sponsor, these steps are intended to "reduce harm by providing potentially lifesaving information when someone is purchasing a firearm or ammunition."⁹

Failure of a gun shop to display or distribute the literature would be a Class A civil violation, which currently carries a maximum penalty of \$500 for an initial offense and \$750 for a repeat offense.¹⁰ DHHS representatives would be authorized to issue a civil citation to an owner of a gun shop for noncompliance.¹¹

Bill 36-23, Sale of Firearms or Ammunition – Suicide Awareness and Firearm Education (SAFE) Act, was introduced by the Council on September 26, 2023.

In August 2022, OLO published a RESJIS on Expedited Bill 21-22, Weapons – Firearms In or Near Places of Public Assembly.¹² Please refer to this RESJIS for more information on gun violence and racial equity.

RESJ Impact Statement

Bill 36-23

MENTAL HEALTH AND RACIAL EQUITY

As described by the Office of Disease Prevention and Health Promotion (ODPHP), the social determinants of health “are the conditions in the environments where people are born, live, learn, work, play, worship, and age that affect a wide range of health, functioning, and quality-of-life outcomes and risks.”¹³ ODPHP groups the social determinants of health into five domains: economic stability, education access and quality, health care access and quality, neighborhood and built environment, and social and community context.¹⁴

A deep history of oppression and marginalization of Black, Indigenous, and Other People of Color (BIPOC) in the United States has created structural racial inequities in the social determinants of health. As described in “How Structural Racism Works – Racist Policies as a Root Cause of U.S. Racial Health Inequities:”

“As a legacy of African enslavement, structural racism affects both population and individual health in three interrelated domains: redlining and racialized residential segregation, mass incarceration and police violence, and unequal medical care. These examples, among others, share certain cardinal features: harms are historically grounded, involve multiple institutions, and rely on racist cultural tropes.”¹⁵

Structural racial inequities in the social determinants of health cause racial disparities across a range of health conditions and compound the consequences of health conditions for BIPOC.¹⁶ Particularly on mental health and substance use disorders, a study of 2020 survey data by KFF found that BIPOC were less likely than White people to report experiencing any mental illness or substance use disorders.¹⁷ However, the researchers noted that BIPOC may be underdiagnosed due to a “lack of culturally sensitive screening tools that detect mental illness” and structural barriers, such as inequities in health care access and treatment. For example, a Blue Cross Blue Shield study of 3.1 million medical claims of people with major depression found that:¹⁸

- Major depression goes undiagnosed and untreated at disproportionately greater rates in majority Black and Latinx communities;
- The presence of more mental and behavioral health providers in Black and Latinx communities is associated with higher diagnosis rates for major depression; and
- When treated for major depression, Black and Latinx communities have a lower frequency of both prescription drug treatment and counseling.

Deaths by Suicide. Depression and other mental illnesses are among the individual risk factors for suicide.¹⁹ For the last twenty years, Native American and White people have consistently experienced the highest rates of death by suicide overall and particularly by firearms in the U.S.^{20,21} Similarly, between 2017 and 2019, White people had the highest suicide mortality rate in the County at 11.3 per 100,000 people, compared to 6.1 for Black people, 5.7 for Asian people, and 3.7 for Latinx people.²²

National data however points to suicide rates increasing among BIPOC. While national suicide rates for White people have decreased in more recent years, suicide rates for Native American, Black and Latinx people have increased.²³ Specifically, between 2018 and 2021, the suicide rate among Black children and young adults between the ages of 10 and 24 increased by 37 percent. Further, in the same time period, suicide rates for Native American, Black, and Latinx adults between the ages of 25 and 44 increased by 34 percent, 23 percent, and 19 percent, respectively.²⁴ On gun suicides, researchers at Johns Hopkins found that Black and Latinx people saw the sharpest increase in gun suicide rates from 2020 to 2021.²⁵ Additionally, researchers at Johns Hopkins recently found the gun suicide rate among Black children and teens ages 10 to 19 surpassed the rate among White children and teens for the first time on record in 2022.²⁶

RESJ Impact Statement

Bill 36-23

ANTICIPATED RESJ IMPACTS

To consider the anticipated impact of Bill 36-23 on RESJ in the County, OLO recommends the consideration of two related questions:

- Who are the primary beneficiaries of this bill?
- What racial and social inequities could passage of this bill weaken or strengthen?

For the first question, OLO considered the demographics of constituents purchasing firearms, as they would benefit from literature on suicide awareness and firearm education. However, there is no data on race and ethnicity of constituents purchasing firearms in the County.

For the second question, OLO considered how the Bill could impact racial and ethnic disparities in gun suicides. OLO referred to RAND's "Gun Policy Research Review," a resource that contains a systematic review of research on gun policies and their impact on gun use outcomes, including on suicides.²⁷ RAND's resource did not include a review of research on the impact of educational literature on gun use outcomes. OLO also could not locate research on this topic beyond RAND's resource.

Taken together, OLO finds the RESJ impact of Bill 36-23 is indeterminant.

RECOMMENDED AMENDMENTS

The Racial Equity and Social Justice Act requires OLO to consider whether recommended amendments to bills aimed at narrowing racial and social inequities are warranted in developing RESJ impact statements.²⁸ OLO finds the RESJ impact of Bill 36-23 is indeterminant. As such, OLO does not offer recommended amendments. However, should the Council seek to improve the RESJ impact of this Bill, OLO offers one policy option for discussion and consideration:

- **Commission a comprehensive study of suicide trends and suicide prevention in the County by race and ethnicity.** While County data demonstrates that suicide rates are highest among White constituents, national data suggests that suicide rates are increasing among BIPOC. Further, structural racial inequities in community level risk factors, such as access to health care,²⁹ could make BIPOC at increased risk of suicide. The Council could commission a study on suicides in the past five to ten years to understand local trends in suicides by race and ethnicity. The study could also review suicide risk factors impacting constituents by race and ethnicity and protective factors that could mitigate the risks. Findings from the research could be used to inform targeted policy solutions by race and ethnicity to help reduce suicide rates among all constituents.

CAVEATS

Two caveats to this racial equity and social justice impact statement should be noted. First, predicting the impact of legislation on racial equity and social justice is a challenging analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ impact statement is intended to inform the legislative process rather than determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

RESJ Impact Statement

Bill 36-23

CONTRIBUTIONS

OLO staffer Janmarie Peña, Performance Management and Data Analyst, drafted this RESJ impact statement.

¹ Definition of racial equity and social justice adopted from “Applying a Racial Equity Lens into Federal Nutrition Programs” by Marlysa Gamblin, et.al. Bread for the World, and from Racial Equity Tools. <https://www.racialequitytools.org/glossary>

² Ibid.

³ [Facts About Suicide](#), Centers for Disease Control and Prevention, Last reviewed May 8, 2023.

⁴ [Suicide and Self-Harm Injury](#), National Center for Health Statistics, Centers for Disease Control and Prevention, Last reviewed September 19, 2023.

⁵ [“CDC Provisional Data: Gun Suicides Reach All-time High in 2022, Gun Homicides Down Slightly from 2021,”](#) John Hopkins Bloomberg School of Public Health, July 27, 2023.

⁶ Ibid.

⁷ Kathryn R. Fingar, et. al., [“Two Decades of Suicide Prevention Laws: Lessons from National Leaders in Gun Safety Policy,”](#) Everytown for Gun Safety, September 29, 2023.

⁸ [Introduction Staff Report for Bill 36-23](#), Montgomery County Council, Introduced September 26, 2023.

⁹ Council President Glass comments during introduction of Bill 36-23, September 26, 2023.

¹⁰ [Montgomery County Code § 1-19](#)

¹¹ Introduction Staff Report for Bill 36-23

¹² [RESJIS for Expedited Bill 21-22](#), Office of Legislative Oversight, August 5, 2022.

¹³ [Social Determinants of Health](#), Office of Disease Prevention and Health Promotion, U.S. Department of Health and Human Services.

¹⁴ Ibid.

¹⁵ Zinzi D. Bailey, et. al., [“How Structural Racism Works — Racist Policies as a Root Cause of U.S. Racial Health Inequities,”](#) The New England Journal of Medicine, February 25, 2021.

¹⁶ [Racism and Health](#), Centers for Disease Control and Prevention.

¹⁷ Nirmita Panchal, et. al., [“Five Key Findings on Mental Health and Substance Use Disorders by Race/Ethnicity,”](#) KFF, September 22, 2022.

¹⁸ [Racial Disparities in Diagnosis and Treatment of Major Depression](#), Blue Cross Blue Shield, May 31, 2022.

¹⁹ [Risk and Protective Factors](#), Suicide Prevention, Centers for Disease Control and Prevention, Last reviewed November 2, 2022.

²⁰ Rajeev Ramchand, et. al., [“Trends in Suicide Rates by Race and Ethnicity in the United States,”](#) JAMA Network Open, May 26, 2021.

²¹ Lindsay J. Young and Henry Xiang, [“US Racial and Sex-based Disparities in Firearm-related Death Trends from 1981–2020,”](#) PLoS One, December 14, 2022.

²² [Health in Montgomery County, 2010-2019](#), Department of Health and Human Services.

²³ Deborah M. Stone, et. al., [“Recent Changes in Suicide Rates, by Race and Ethnicity and Age Group — United States, 2021,”](#) Morbidity and Mortality Weekly Report, Centers for Disease Control and Prevention, February 10, 2023.

²⁴ Ibid.

²⁵ [“New Analysis: Guns Drove the Increases in Homicides and Suicides from 2019 to 2021,”](#) John Hopkins Bloomberg School of Public Health, October 10, 2022.

²⁶ “CDC Provisional Data: Gun Suicides Reach All-time High in 2022, Gun Homicides Down Slightly from 2021”

²⁷ [Gun Policy Research Review](#), RAND.

²⁸ Bill 27-19, Administration – Human Rights – Office of Racial Equity and Social Justice – Racial Equity and Social Justice Advisory Committee – Established, Montgomery County Council

²⁹ Risk and Protective Factors, Suicide Prevention

**Testimony on Behalf of County Executive Marc Elrich on
Bill 36-23 Sale of Firearms or Ammunition – Suicide Awareness and Firearm Education (SAFE)
Act**

October 10, 2023

My name is Earl Stoddard, Assistant Chief Administrative Officer in the Office of the County Executive. Thank you for the opportunity to testify on Bill 36-23 known as the Suicide Awareness and Firearm Education or SAFE Act on behalf of County Executive Marc Elrich. The County Executive supports this legislation and only has some concerns about the enforcement of the proposed requirements.

According to the Centers for Disease Control & Prevention (CDC), there were 26,328 firearm suicides in the United States in 2021, which accounted for more than 50% of the total suicides in that year. Requiring that gun sellers provide information to gun buyers about the risks of firearm-related suicide, ensuring safe use and storage of firearms, and teaching conflict resolution represents a common-sense approach to reduce the risks of firearm suicides in Montgomery County.

The only concern of the County Executive is enforcement. As drafted, enforcement of this requirement would fall on the Department of Health & Human Services, Public Health Service, Licensure and Regulatory Services division. This program is already responsible for conducting numerous other inspections, including those of restaurants. As part of the County Executive's proposed FY24 submission earlier this year, there was a request for an additional inspector to address the increasing responsibilities of this unit. That request was not approved. Adding additional responsibilities to this unit will impact its capacity to meet existing workload. As the County Executive supports the goals of this legislation, additional resources will be required. The Executive Branch is considering potential alternative enforcement vehicles or units and will provide additional feedback to the Council moving forward.



Testimony in SUPPORT of:
Bill #36-23 – Sale of Firearms or Ammunition – Suicide Awareness and
Firearm Education (SAFE) Act
October 10, 2023

The Jewish Community Relations Council of Greater Washington (JCRC) serves as the public affairs and community relations arm of the Jewish community. We represent over 100 Jewish organizations and synagogues throughout Maryland, Virginia, and the District of Columbia. The JCRC is strongly committed to cultivating a society based on freedom, justice, and pluralism. To that end, we have a history of advocating for our nonprofit partners which serve, on a nonsectarian basis, the most vulnerable populations among us.

The JCRC supports Bill 36-23, the Suicide Awareness and Firearm Education (SAFE) Act, which would require firearms retailers to provide suicide prevention literature at point of sales. Specifically, the SAFE Act would require the Department of Health and Human Services to develop literature about firearm safety, suicide prevention and conflict resolution. If retailers do not comply with the distribution regulation, they may be issued a civil citation.

For decades, the JCRC has advocated for common-sense gun safety measures because we know that access to deadly weapons contributes to the rise in senseless violence and death we continue to witness. In Maryland, according to the Centers for Disease Control and Prevention, 42% of all suicides are committed with a firearm and suicides make up 36% of all firearm deaths in the state. We are experiencing a mental health crisis in this country and every measure we can take for gun violence prevention must be implemented. For these reasons, the JCRC strongly supports Bill 36-23.



President
Mark W. Pennak

October 10, 2023

WRITTEN TESTIMONY OF MARK W. PENNAK, PRESIDENT, MSI, IN OPPOSITION TO BILL 36-23 *Corrected*

I am the President of Maryland Shall Issue (“MSI”). Maryland Shall Issue is a Section 501(c)(4), all-volunteer, non-partisan organization dedicated to the preservation and advancement of gun owners’ rights in Maryland. It seeks to educate the community about the right of self-protection, the safe handling of firearms, and the responsibility that goes with carrying a firearm in public. I am also an attorney and an active member of the Bar of the District of Columbia and the Bar of Maryland. I recently retired from the United States Department of Justice, where I practiced law for 33 years in the Courts of Appeals of the United States and in the Supreme Court of the United States. I am an expert in Maryland Firearms Law, federal firearms law and the law of self-defense. I am also a Maryland State Police certified handgun instructor for the Maryland Wear and Carry Permit and the Maryland Handgun Qualification License and a certified NRA instructor in rifle, pistol, personal protection in the home, personal protection outside the home, muzzle loading, as well as a range safety officer. This letter is submitted in opposition to Bill 36-23 on behalf of MSI as well as on behalf of MSI members, many of whom live and/or work in Montgomery County.

Bill 36-23 would amend Chapter 57 of the County Code to add a new Section 57-11A. That new section that would direct the County Department of Health and Human Services to prepare and distribute to each gun shop in the County literature regarding “(1) gun and firearm safety; (2) gun and firearm training; (3) suicide prevention; (4) mental health; and (5) conflict resolution” The Bill further provides that “[a] gun shop must make visible and available at a point of sale, and must provide to each customer upon a sale of a gun, firearm, or fixed ammunition, the literature prepared under subsection (a).”

The Bill imposes potentially severe penalties, providing that “[a] failure to display or distribute literature under subsection (b) is a **Class A violation** under Section 1-19,” that “[e]ach failure to distribute literature under subsection (b) is a separate violation” and that “[e]ach day of a failure to display literature under subsection (b) is a separate violation.” Section 1-19 punishes a **Class A violation** as a criminal violation with a \$1000 fine **and 6 months in jail**, or as a civil violation with a \$500 fine, with each repeat civil offense punishable by \$750 fine. Under Section 1-19:

Any violation of County law that is identified as a Class A, B, or C violation may be punished as a misdemeanor by a fine of not more than the amount shown below, or by confinement in the County jail for not longer than the time shown below, or by both the fine and confinement, in the discretion of the court, in which the violator is convicted. Any violation may, in the

alternative and at the discretion of the enforcing agency, be punishable as a civil violation under Section 1-18.

This Bill thus authorizes significant prison time for a violation, not to mention substantial fines that could quickly accumulate and thus put gun shops out of business.

FIRST AMENDMENT

The Bill is content-based compelled speech and is thus presumptively unconstitutional under the First Amendment. See *Nat'l Inst. of Fam. & Life Advocs. v. Becerra*, 138 S. Ct. 2361 (2018) (“*NIFLA*”). As the Supreme Court recently stated, “our ‘leading First Amendment precedents...have established the principle that freedom of speech prohibits the government from telling people what they must say.’” *303 Creative LLC v. Elenis*, 143 S.Ct. 2298, 2317 (2023), quoting *Rumsfeld v. Forum for Academic & Institutional Rights, Inc.*, 547 U. S. 47, 61-62 (2006). Forced display and distribution of government literature is “compelled speech” under controlling precedent. See *NIFLA*, 138 S.Ct. at 2369-72; *Greater Baltimore Center for Pregnancy Concerns, Inc. v. Mayor and City Council Of Baltimore*, 879 F.3d 101, 111 (4th Cir.), *cert. denied*, 138 S.Ct. 2710 (2018). The Bill is thus facially violative of the First Amendment.

The compelled speech imposed by this Bill is not constitutional under *Zauderer v. Off. of Disciplinary Couns. of Supreme Ct. of Ohio*, 471 U.S. 626, 628 (1985). *NIFLA* holds that *Zauderer* is “limited to ‘purely factual and uncontroversial information about the terms under which ... services will be available.’” *NIFLA*, 138 S.Ct. at 2372, quoting *Zauderer*, 471 U.S. at 651 (emphasis added). In the very next sentence, the Court relied on *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston*, 515 U.S. 557, 575 (1995), as “explaining that *Zauderer* **does not apply outside of these circumstances.**” *Id.* (Emphasis added). Those twin statements could hardly be clearer. The literature addressed in this Bill does not remotely purport to regulate “the terms under which services will be available” by gun shops. Nor is the County’s literature likely to be “purely factual and uncontroversial.” If enacted, the Bill will be challenged under the First Amendment.

The Staff Report attached to the Bill suggests that the Bill is inspired by a similar ordinance enacted by Anne Arundel County. While a federal district court sustained that ordinance under an unprecedented reading and application of *Zauderer*, that holding is currently on appeal in *Maryland Shall Issue, Inc. v. Anne Arundel County*, No. 23-1351 (4th Cir.). That appeal has been fully briefed and is currently set for oral argument before the United States Court of Appeals for the Fourth Circuit on December 8, 2023, in Richmond, Virginia.

There is no urgency to this Bill. The County should thus wait until the Fourth Circuit decides the appeal concerning the Anne Arundel County ordinance prior to acting. Otherwise, enacting the Bill now will ensure that it will be challenged. When Anne Arundel County loses on appeal, as it likely will, Anne Arundel County will be on the hook for many tens of thousands of dollars in fees and costs under federal law, 42 U.S.C. § 1988, as well as damages under 42 U.S.C. § 1983. A successful suit

on this Bill will likewise make Montgomery County liable for Section 1988 fees, costs, and damages. The path of wisdom is to wait until the outcome of the appeal before enacting Bill 36-23. The residents of this County, including the undersigned, are better served by putting these funds to other uses.

STATE LAW PREEMPTION

The ordinance is open to attack on preemption grounds as well. State law, MD Code, Public Safety, § 5-104 provides: “This subtitle supersedes **any restriction** that a local jurisdiction in the State imposes on a sale of a regulated firearm, **and the State preempts the right of any local jurisdiction to regulate the sale of a regulated firearm.**” (Emphasis added). The “gun shops” subject to this bill are licensed by the Maryland State Police under MD Code, Public Safety, subtitle 1 of Title 5, and sell “regulated firearm,” which State law defines to include ordinary handguns. See MD Code, Public Safety, § 5-101(r)(1). This bill would condition the right of the gun shop to sell regulated firearms under State law and thus impose a “restriction” on such sales within the meaning of Section 5-104. The Bill is thus expressly preempted. The Bill is also implied preempted by the State’s comprehensive regulatory scheme for the regulation of firearm sales. See *Board of County Commissioners v. Perennial Solar, LLC*, 464 Md. 610, 619-20, 212 A.3d 868 (2019).

The Maryland Constitution, Article XI-A, § 3, commands that all local laws enacted by a charter county or the City of Baltimore “shall be subject to the same rules of interpretation as those now applicable to the Public Local Laws of this State, **except that in case of any conflict between said local law and any Public General Law now or hereafter enacted the Public General Law shall control.**” (Emphasis added). Similarly, the Maryland Express Powers Act, MD Code, Local Government, MD Code, Local Government, §10-206(a), provides that a charter county may pass an ordinance, resolution, or bylaw only if such laws are “not inconsistent with State law.” Similarly, MD Code, Local Government, §10-206(b), provides that “[a] county may exercise the powers provided under this title only to the extent that the powers are not preempted by or in conflict with public general law.”

Thus, in all cases, where there is a conflict or inconsistency between a State law and a county law, the county law must yield. See *Boulden v. Mayor and Com’rs of Town of Elkton*, 311 Md. 411, 415, 535 A.2d 477 (1988) (“In cases of conflict, however, the public general law must prevail”). Such conflict is present here as the Bill would impose restrictions on the sale of a firearm otherwise permitted by State law by a State licensed dealer. See *City of Baltimore v. Sitnick*, 254 Md. 303, 317, 255 A.2d 376, 382 (1969) (“a political subdivision may not prohibit what the State by general public law has permitted”); *Rosberg v. State*, 111 Md. 394, 74 A. 581, 584 (1909) (“ordinances which assume directly or indirectly to permit acts or occupations which the state statutes prohibit, or to prohibit acts permitted by statute or constitution, are under the familiar rule for validity of ordinances uniformly declared to be null and void”).

Such a restriction is also expressly preempted by MD Code, Criminal Law, § 4-209(a), which provides that “[e]xcept as otherwise provided in this section, the State 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.” It is beyond obvious that this Bill would “regulate” the “sale” and “purchase” of firearms and ammunition by requiring the display and the distribution of the County’s literature. After all, a failure to display and distribute the County’s literature is punishable by jail time and fines. The Bill is thus preempted by subsection 4-209(a).

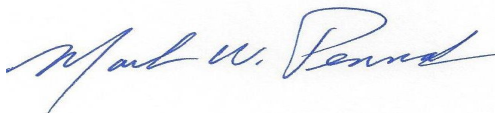
Section 4-209(b) contains exceptions to this general preemption, one of which is that a “county, municipal corporation, or special taxing district may regulate the purchase, sale, transfer, ownership, possession, and transportation of the items listed in subsection (a) of this section: *** (iii) * * * within 100 yards of or in a park, church, school, public building, and other place of public assembly.” MD Code, Criminal Law, 4-209(b)(1)(iii). However, the provisions of subsection 4-209(b)(1) are narrowly construed because they are mere exceptions to the otherwise broad preemption imposed by subsection 4-209(a). See, e.g., *Blue v. Prince George's County*, 434 Md. 681 76 A.3d 1129 (2013) (“Under the canons of statutory construction, ‘[w]hen a general provision in a statute has certain limited exceptions, all doubts should be resolved in favor of the general provision rather than the exceptions.’”) (quoting Norman J. Singer and J.D. Shambie, *Sutherland Statutes and Statutory Construction* (2013), § 47:11).

Thus, in *Mora v. City of Gaithersburg*, 462 F.Supp.2d 675, 689 (D.Md. 2006), modified on other grounds, 519 F.3d 216 (4th Cir. 2008), a federal district court here in Maryland held that “the Legislature” has “occup[ie]d virtually the entire field of weapons and ammunition regulation,” holding further there can be no doubt that “the exceptions [in Section 4-209(b)] to otherwise blanket preemption [in Section 4-209(a)] are narrow and strictly construable.” Certainly, nothing in subsection 4-209(b)(1) purports to authorize a municipality to enact an ordinance that is preempted by other state law, such as Section 5-104, or barred by Article XI-A of the Maryland Constitution. Under that provision of the Maryland Constitution, the General Assembly has no power to authorize a county to enact a local ordinance that is otherwise preempted by or in conflict with State law.

The scope of the County’s authority accorded by subsection 4-209(b)(1) is currently in active litigation in Montgomery County Circuit Court in *Maryland Shall Issue, Inc. v. Montgomery County*, No. Case No.: 485899V. Oral argument on cross motions for summary judgment in that case is currently scheduled for October 10, 2023, the same day as the hearing on this Bill. That litigation also involves Article XI-A, § 3 of the Maryland Constitution and preemption provisions of State law, including Section 5-104. If plaintiffs prevail in that litigation, this Bill will also fail for the same reason, *viz.*, because it is expressly preempted by and in conflict with State law. If the County loses in that suit, such a decision would mean that the County likewise lacks the authority to enact Bill 36-23 as well. Again, there is nothing urgent about this Bill. The County would be well-advised to await a decision before doubling down on its misguided reliance on Section 4-209(b)(1)(iii).

The County cannot say it was not put on notice.

Respectfully,



Mark W. Pennak
President, Maryland Shall Issue, Inc.
mpennak@marylandshallissue.org

Thank you for giving me the opportunity to provide testimony in support of the SAFE Act today.

I'm Stephanie Rosen, the Executive Director of the National Alliance on Mental Illness or NAMI of Montgomery County, Maryland. NAMI is the nation's largest grassroots mental health organization dedicated to building better lives for the millions of Americans affected by mental illness. We envision a future where all people affected by mental health conditions live healthy, fulfilling lives supported by a community that cares. We are individuals living with mental health conditions and their families, loved ones, and caregivers and we provide education, support, and advocacy for all affected by mental health conditions.

As the voice of those directly affected by mental health conditions, we strongly support the passage of Bill 36-23 Sale of Firearms or Ammunition - Suicide Awareness and Firearm Education (SAFE) Act.

Suicide and gun violence are public health crises in America, threatening our communities' health and well-being. In 2020, firearm-related injuries rose to the [highest number on record](#) and became the [leading cause of death](#) for children and adolescents. Most firearm deaths each year are suicides, and firearms are the most common method used for suicide. As a result, in 2020, [over 24,000 lives](#) were tragically lost to suicide using firearms. You might be asking why guns? It's because firearms are particularly lethal; nearly [90%](#) of all gun suicide attempts result in death. Who in our community is most at risk? Suicide is the [second](#) leading cause of death for people ages 10-14 and the third leading cause of death for people ages 15-24. Veterans are also at a greater risk of suicide. In 2019, [70%](#) of all male veteran suicides and [50%](#) of all female Veteran suicides resulted from a self-inflicted gunshot wound.

Suicide doesn't just affect the person who dies; it shatters families and devastates communities.

I want to make clear that individuals living with mental health conditions are not violent or a danger to others. I am talking about self-directed gun violence. Research shows that individuals living with a mental health condition are more likely to be victims of violence instead of perpetrators.

This type of legislation can serve as a partnership with firearms retailers to prevent suicide, it is not a penalty. Even people who sell firearms or ammunition can be part of this beautiful act of helping someone get help when they need it the most.

This isn't about restriction, this legislation is not anti-gun. This is about saving lives. This legislation highlights the imperative role we can all play in suicide prevention.

Interventions at the point of sale of ammunition or firearms are an evidence-based and recommended strategy to prevent suicide. Collaboration between firearm retailers and public health professionals is not new. It started in New Hampshire in 2009 when a suicide prevention researcher and a local firearm retailer connected after a series of three suicides in 1 week involving guns purchased from a single

store. In the years since the New Hampshire initiative, numerous other states have created similar partnerships across the country. Gun stores can have a role in preventing suicide. In 2012 the surgeon general called for health officials to partner with firearm dealers and gun owner groups to incorporate suicide awareness as a basic tenet of firearm safety and responsible firearm ownership.

This morning I accepted a proclamation from the Montgomery County Executive and Montgomery County Council marking today as World Mental Health Day. This morning I spoke about hope and how hope starts with ALL of us. Hope starts with talking about mental health. Hope starts with making information accessible. Hope starts with providing resources and practical advice. Hope starts with us sharing our stories. Hope starts with breaking the stigma that mental illnesses are different than physical illnesses.

Let's give hope to the many affected by mental health conditions and suicide. Let's work together to save lives. Let's provide life-saving information at the time of the sale of ammunition and firearms.

You might be wondering how a pamphlet or brochure can save a life. In the spirit of sharing our stories, I live with depression. I have had suicidal ideation, and I have created a plan. When I or anyone is experiencing suicidal ideation, your brain is telling you the only way to feel better is death, that death is the solution. We know that is not reality, we know that is the mental illness talking, and most people living with a mental health condition respond to treatment and go on to live meaningful lives. Every opportunity we give to tell people there is hope and your brain is wrong, you have options, prevents suicide.

Thank you,



Stephanie Rosen
NAMI Montgomery County
Executive Director

**Testimony of Regina Schneider on behalf of Atlantic Guns, Inc.
in Opposition to Bill 36-23.**

Good afternoon. Thank you for including me in today's hearing.

My name is Regina Schneider. I have been a Mental Health First Aid Instructor and NAMI Affiliate board member. I have completed ASIST, CALM and QPR suicide prevention trainings and have been recognized for my extensive mental health awareness work with faith communities. My husband Steve is the owner of Atlantic Guns, a Montgomery County Designated Legacy Business serving our community since 1960. Atlantic Guns has voluntarily provided our customers suicide awareness brochures and information for many years.

In 2016 we were honored to be guest speakers at a conference coordinated by the American Foundation for Suicide Prevention and the San Francisco Veterans Administration. We talked about our suicide information and prevention effort which included brochures, posters and awareness information that was sent to retailers and ranges throughout Maryland. The Maryland Licensed Firearms Dealers Association, Grassroots Crisis and national experts supported our efforts. Anne Arundel County has contacted me several times because of our involvement in these efforts. Atlantic Guns currently offers our customers excellent brochures developed in a joint effort between the National Shooting Sports Foundation and the American Foundation for Suicide Prevention. They are right inside our front door. This the same informational brochure Anne Arundel County is mandating. We also provide qualified firearm safety training which include safe handling and storage information.

I strongly oppose Bill 36-23. It mandates that we must provide the information that we already make available to our customers. It

authorizes the county to charge us with a potential criminal violation which includes hefty fines and jail time if an employee forgets to hand a customer a brochure. Atlantic Guns and others in our industry are clearly trying to be part of the solution to the serious and complex problem of suicide. We should not be subject to this tremendous burden and potential risk to our survival as a responsible, law abiding, business with deep concerns for personal and community safety. There is also an unintended consequence of this bill. I am aware that some customers at Anne Arundel County gun stores have been very upset because they feel they are personally being presumed to have a mental health problem or be at risk of suicide when given the brochure. This creates a stigma which must be avoided.

Catherine Barber is a senior researcher at the Harvard School of Public Health's Injury Research Center. She is the founding director of Means Matter, a project aimed at reducing a suicidal person's access to highly lethal suicide methods and lead author of CALM (Counseling on Access to Lethal Means). She was an originator of the Gun Shop Project, a successful collaborative effort. I spoke with Cathy this morning. She is opposed to this Bill for the same reasons I have stated. She said: "mandates do not engender good will and presume opposition; they create enemies; go against good public health practice are impolite and create resistance on an issue where there is already some shared mutual concern."

We welcome you to visit Atlantic Guns on Frederick Road to see the materials we make available to customers, and we would welcome the opportunity to meet with you to further discuss our mutual interest in suicide prevention.

Thank you!

Testimony in Support of SAFE legislation

October 10, 2023

My name is Mindy Landau, and I am writing to voice my support for Councilman Glass's bill (SAFE) that would require literature on suicide prevention to be distributed during firearm sales at all Montgomery County gun stores. Sadly, suicides represent 42% of all gun deaths in the state of Maryland. The presence of a gun in the home increases the risk of suicide by 300%. As a long time advocate of gun violence prevention, and the co-founder of the Montgomery County Chapter of Brady United, I have heard of and seen multiple instances of preventable gun injuries and suicides in our county. I believe that education is a meaningful step towards alerting gun owners to the threat of suicide. Instruction on keeping guns locked and away from ammunition, along with storing them in a special gun safe, providing trigger locks, gun vaults and lock boxes, including keeping them far away from children, would go a long way toward reducing these senseless, and often impulsive, acts. Statistics show that gun deaths from suicide are far more lethal than other methods that are often survivable.

Since 2006, the firearm suicide rate for male minors has increased by approximately 60%. Firearms account for just 5% of American suicide attempts, but more than half of all suicide deaths. Importantly, of those who survive and receive care post-suicide attempts, 70% will live without attempting suicide again.

These facts are sobering, but by strengthening existing gun safety education, we can avoid a countless number of firearm suicide attempts and save lives in Montgomery County.

TESTIMONY OF JULIO BARRETO JR, COUNTY RESIDENT, IN OPPOSITION TO BILL 36-23

I am Julio Barreto Jr. a Montgomery County resident for close to 40 years. I am currently an entrepreneur involved in real estate and other ventures and recently became a firearms instructor. In my previous life I spent over 25 years representing local governments in Congress covering a range of issues including violence prevention (<https://www.linkedin.com/in/juliobarretojr/>).

My educational training has been in social work and the lessons learned from the exposure has helped tremendously in my career. I do strongly support efforts to prevent and reduce suicides. Fortunately, no one in my circle has ever attempted or successfully committed suicide. I have had friends who battled depression, but have been able to get the help they need.

I am opposed to this bill for two reasons. First, the objective of this legislation is not clear. Is it designed to decrease acts of suicide or is it designed to blame the gun community for this unfortunate act? If the objective is to ultimately prevent suicides, why are other businesses not required to display this information as well? Suicide is a mental health issue, not a gun issue. Psychology Today and the World Health Organization state clearly that strict gun laws do nothing to prevent suicide

<https://www.psychologytoday.com/us/blog/the-new-brain/201607/fact-check-gun-control-and-suicide>

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2649482/>

<https://www.who.int/news-room/fact-sheets/detail/suicide>

Two interesting facts emerge from the literature: first, gun control laws do nothing to reduce or prevent suicides. Pesticides and hanging are just as prevalent as firearms as the tool used to commit suicide. Why isn't Home Depot required to hand out this information since they sell pesticides? Why not Walgreens or CVS since they sell prescription drugs which are also used to commit suicide?

Second, individuals who decide to commit suicide will find a way to do so. I am a native New Yorker, buildings like the Empire State Building create iron barriers to prevent people from jumping off the building. Why aren't building owners above a certain height not required to display and distribute this information? If suicide prevention is the objective, why limit the scope of this initiative to firearm establishments?

My second reason for opposing this bill is due to the continued demonization of firearm owners and businesses. Referencing the Anne Arundel County requirement is a good reference for how firearms are demonized when this issue is raised. Putting aside the constitutional issues pertaining to the county mandate, the literature clearly suggests that simply owning a firearm leads to suicidal tendencies. This is ridiculous. I own firearms and have never once thought of using them to commit suicide.

Do people use firearms to commit suicide? Yes! Is handing out information at gun stores going to prevent that from happening again? Doubtful. It seems as if the county is using something as sensitive and gut wrenching as suicide to target gun owners and the businesses they establish as opposed to developing strategies and providing adequate resources to prevent suicide.

Whether you own a firearm or not, everyone agrees suicide is not to be taken lightly. It is unfortunate and horrific for the families who sometimes are left guilt ridden for not being aware

of the depth of emotional distress their loved one experience or feel guilt about not being able to do more to help. If you are serious at reducing the number of suicide attempts, the focus should be on adequate MENTAL HEALTH resources so help can be provided and address the root cause for the individual's mental state.

Thank you.