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FEDERAL GUN STORAGE LEGISLATION: WILL THIS KEEP GUNS OUT OF THE HANDS OF OUR CHILDREN?

Erin P. Lynch*

INTRODUCTION

On May 20, 1999, a fifteen-year-old male sophomore armed with a rifle and a handgun walked into his Conyers, Georgia high school and began to fire indiscriminately, injuring six.1 The story that circulated was one of the painful end of young love, however its outcome was painful for many more than the young couple. The shooter was distraught over a recent breakup with his girlfriend,2 a rite of passage endured by every adolescent, regardless of era, locale, race or social clique. This latest in a string of school shootings came on the one-month anniversary of the horrific mass execution at Columbine High School in Littleton, Colorado.

The scene on April 20, 1999 in Littleton, Colorado was one that few in this country will ever forget. The entire nation watched anxiously as the National Guard, a SWAT team, and other law enforcement officials tried to enter the school building to assist the wounded and to disarm the gunmen. No one was sure how many gunmen there were, or whether the gunmen were alive or dead. The situation inside the school was worse than most could imagine in their worst nightmare.3 The library at Columbine High was the focus of the carnage, and various reports surfaced describing the scene. A boy draped himself over his sister and her friend to shield them from any bullets shot their way.4 A boy with ten bullet wounds in his leg picked up an explosive that landed by him and hurled it away from his wounded

* J.D. Candidate 2000, Columbus School of Law, The Catholic University of America; B.A. Boston College, 1997.
2. See id. at A16.
4. See id. at 25.
classmates. These are the images that surviving Columbine students and millions of young people surely will have in their minds as they step onto the school bus each morning or as they close their locker and head to homeroom. Each child will be asking: is today the day it will happen at my school?

Fifteen people were killed at Columbine, including the two gunmen, presumably by their own hands, and several others were seriously wounded. The two killers, aged seventeen and eighteen, casually walked into the school during the lunch hour armed with a TEC-9 semi-automatic handgun, a 9mm Hi-Point Carbine, and two sawed-off shotguns. In terms of fatalities and planning, this was the worst of the seven recent school shootings. Plans were already underway for various juvenile justice reforms and gun control legislation, which were pushed to the forefront after the tragedy at Columbine. Though no safe storage laws were passed after the 1998 shootings, that changed shortly after the incident at Columbine. It is likely no coincidence that the shooting in Conyers, Georgia happened on the one-month anniversary of the Columbine shooting, and the day the United States Senate passed new gun control bills. The first of these bills requires criminal background checks for all gun sales at gun shows and pawn shops, and needed Vice President Al Gore to cast the final tie-breaking vote. The second bill passed by a much larger margin and provides a broader juvenile justice bill including mandatory background checks and waiting periods for all firearms purchased at gun shows, a requirement that handguns be sold with child safety devices, and a ban on the importation of high-capacity ammunition clips. Gun control is again at the

5. See id.
6. See id.
7. See id. at 34. A “sawed-off shotgun” is a shotgun whose barrel has been filed down, resulting in the spray of bullets rather than one shooting straight ahead or where aimed. This allows for the user to hit a wide range of things rather than just one target. Sawed-off shotguns are illegal and have been form any years. (visited Nov. 5, 1999). <http://paleface.net/sawed.html>.
8. The six other school shootings were in Jonesboro, Arkansas; West Paducah, Kentucky; Pearl, Mississippi; Edinboro, Pennsylvania; Springfield, Oregon; and Conyers, Georgia.
10. See id.
Federal Gun Storage Legislation

foreground of the nation’s consciousness. Yet to be determined is whether legislative bodies have found a solution and whether that solution includes passing more gun control laws.

There is a current trend in state legislatures to criminalize the negligent storage of firearms. To date, sixteen states have enacted “safe storage” laws that punish gun owners if a child gains access to a firearm and injures or kills himself or another person. These laws are aimed towards achieving an extremely important objective: keeping guns out of the hands of children. Recently, school shootings and accidental deaths of young children have become an increasingly familiar story in our society. Federal and state legislation may stem this trend.

In April of 1998, Senators Richard Durbin (D-IL), and John Chafee (R-RI) introduced the bipartisan Child Firearms Access Prevention Act to the Senate, which was then referred to the Senate Judiciary Committee. Similar to the “safe storage” laws passed by sixteen state legislatures, this bill would “impose criminal penalties on an adult whose gun is used by a child to harm another person if the gun was not safely stored or did not have a safety lock.”

11. The Child Access Prevention (CAP) provisions have been put into a recent juvenile justice bill, which has been passed by the Senate in 1999. A vote in the House however, is being stalled and is not expected before Congress adjourns in November 1999. See Cassandra Burton, Fate of Gun Control Vote Uncertain (visited on Nov. 2, 1999) <http://www.ap.com>.


who has become increasingly concerned of late with attaining safe and drug free schools, strongly supported this bill. As stated above, an amendment was passed by the Senate on the day of the Conyers, Georgia school shooting, but that amendment is different from the one discussed here. The amendment passed on May 20, 1999 provides for mandatory safety devices to be sold with each handgun, but it does not address gun owner liability if that safety device is never used as a method of safe storage.

This Comment explores the proposed federal gun control legislation dealing with a gun owners' criminal liability, as well as similar legislation enacted in various states. The focus of this Comment is on the arguments set forth by the opposing lobbies in an effort to determine whether federal gun storage legislation will be effective. This Comment analyzes the effectiveness of the gun storage legislation already passed in sixteen states, the popular sentiment in the wake of the recent tragedies, as well as the feelings in the medical community that this is a health crisis reaching epidemic proportions. This Comment discusses these issues in an effort to determine the best means to protect America's children from gun violence.

Tragedies are a part of our everyday lives. Fortunately for most of us, these tragedies are not personal and happen somewhere else and to someone else. While many of these tragedies can be prevented, the necessity for prevention is not recognized until we hear stories such as a four-year-old boy who shot himself to death with his grandfather's gun used hours earlier to ring in the new year, the seventeen-year-old boy who accidentally shot his best friend in the face while showing off his father's revolver, or the high school student who obtained a gun from his grandfather's unlocked rack and opened fire on his schoolmates after pulling the fire alarm.

Although some of these deaths and injuries were not accidental, they could have been prevented. In 1998 alone, sixteen students and

19. See Ann Imse, Coping with Jonesboro Arkansas Grapples with Legacy of School Shootings, ROCKY MTN. NEWS, June 14, 1999, at 4A.
teachers were killed and forty-three others were wounded in shootings on school grounds in Pearl, Mississippi; Jonesboro, Arkansas; West Paducah, Kentucky; Edinboro, Pennsylvania; and Springfield, Oregon. In 1999, fifteen were killed and sixteen more wounded as a result of the shootings in Littleton, Colorado and Conyers, Georgia.

Although the answer has not yet become definitive, gun owners and gun control advocates have offered their solutions to this recent schoolyard violence. The National Rifle Association (NRA) contends that promotion of gun safety is the only solution. The group known as Handgun Control believes that CAP laws are a necessary first step in order to ensure the safety of our nation’s children. With the introduction of federal legislation to curb children’s access to guns, as well as the other gun control laws including mandatory safety devices to accompany every handgun sale, Congress has now entered the arena.

I. THE PROBLEM

There are 192 million privately owned firearms in the United States. While more than half of all handgun owners keep their handguns loaded, an alarming thirty-four percent keep these loaded handguns unlocked. Guns kept in the home for self-protection purposes

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22. The NRA has a gun safety program called “Eddie the Eagle Gun Safety Program” for children who are not yet ready to be trained in the use and handling of guns. Eddie teaches children that if they see a gun they should: (1) stop; (2) don’t touch; (3) leave the area; and (4) call an adult. See National Rifle Association (NRA), A Parent’s Guide to Gun Safety (visited Nov. 7, 1998) <http://www.nra.org>.

23. Handgun Control is an organization started by James Brady. Brady was Ronald Reagan’s Press Secretary who became paralyzed when he was hit with a bullet during an assassination attempt on the President. He and his wife, Sarah, run the organization whose purpose is gun control and gun safety. See Sarah Brady Offers New Year’s Resolution: ‘Let’s Make 1999 Safe For Our Children,’ U.S. NEWSWIRE, Dec. 31, 1998.

24. See Brady, Questions and Answers, supra note 12.


are forty-three times more likely to kill a friend or family member than to kill in self-defense. 27 There are various reasons for this statistic, ranging from drug abuse and domestic violence to socioeconomic variables such as the unemployment rate and immigration laws. 28 The reason for this view is the suggestion that socially disenfranchised groups such as minorities, youth, the unemployed, and alcoholics face serious social problems, which may lead to violent behavior. 29

Perhaps the most alarming fact is that children unintentionally fire guns 10,000 times a year, resulting in at least 800 deaths. 30 Strikingly, these incidents do not include children who are committing crimes, involved in school shootings, illegally obtaining weapons by stealing or buying them on the street, or minors involved in gang-related killings. Eighty-six percent of the 1,107 deaths caused by guns were among American children and a total of twenty-two percent of these gun-related deaths were accidental. 31 Often the unintentional discharges of deadly weapons are being caused by non-violent children in families who thought it could never happen to them. A good example of this is the story of the Colby family.

Ten-year-old Ryan Colby and his thirteen-year-old brother Shawn were inseparable. 32 One night before bed, they decided to sneak a peak

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27. See Brady, Questions and Answers, supra note 12.
29. See id.

Working with a total estimate of 2,872 child death[s], including homicides, suicides and[d] gun-related deaths, for all of the countries surveyed in a given year. The CDC noted: 73% of the 1,995 homicides were among U.S. children; 86% of the 1,107 deaths caused by guns were among U.S. children (22% of the deaths were unintentional); 54% of the 599 suicides were among U.S. children.

Id.

32. Accounts reflect that the boys were so close that Shawn would frequently sneak out of his classroom to check on his younger brother during the school day. They thought that they would be best friends forever. See Chris Grier, Boy Accidentally Shot, Killed Brother Parents, 5 Years Later, Urge Others to Watch Guns, Kids, VIRGINIAN-PILOT & LEDGER STAR, Jan. 18, 1998, at B1 [hereinafter Boy Accidentally Shot and Killed Brother].
at the handgun in their grandmother’s nightstand. Shawn knew enough to carefully remove the ammunition clip from the gun before handing it over to his brother. While Shawn looked into the chamber of the gun to make sure there were no bullets remaining, the gun, pointed at Ryan’s temple, went off. The boys’ parents and grandparents thought the noise was broken glass, and did not turn their attention from the football game on television. Not until twenty minutes later, when Shawn came down the stairs pale and shaking, did the adults realize that something tragic had occurred.

This family suffered more than just the loss of a child. Ryan’s parents blamed his grandmother and her husband for his death. Ryan’s mother believed that if their grandmother’s husband had not taken it upon himself to show the boys the gun, Ryan would be alive today. These feelings quickly tore the family apart. Shawn, who continues to have an extremely difficult time coping with the loss of his brother and the manner in which he was killed, became withdrawn soon after the incident and rarely spoke. His parents found seven suicide notes that Shawn wrote since the incident. Shawn moved cross-country, partly because he could not bear to see the house in which he killed his brother.

Although the names and ages of these children may vary, the story remains the same. One would be hard pressed to read a newspaper

33. The boys’ grandmother’s husband, T.J., is a retired Navy SEAL who taught the boys how to use the gun. See id. T.J. knew the effects that guns could have on children. See id. Before T.J. was born, one of his brothers shot the other while trying to “scare away” a burglar. See id.

34. See id.
35. See id.
36. See id.
38. See id.
39. See id.
40. See id.
41. Shawn’s grandparents live only a few houses away from his parents, so Shawn was forced to pass by the house on a daily basis. See id.
42. See Bill Duryea, Fully Responsible, Nearly Destroyed, ST. PETERSBURG TIMES, June 28, 1998, at F1 (stating that 11-year-old David killed his eight-year-old brother, Anthony, after carefully removing the magazine of the gun, while one bullet remained in the chamber).
regularly and not encounter a story about a child being shot by a classmate, playmate, or sibling. According to the Center for Disease Control and Prevention, "American youngsters are 12 times more likely to die by gunfire than their counterparts in the rest of the industrialized world, and those deaths are part of an overall surge in murders and suicides among the nation's youth." An advocacy group called the Gun Owners of America feels that while these statistics may be disconcerting, the problem is not that guns are more accessible, but that the children in today's society are different from previous generations, due to the violent nature of today's society. Similarly, an organization known as Handgun Control agrees that children are different today compared to past generations because we are a more violent society and throwing guns into the mix is simply a recipe for disaster.

Accidental deaths are not the only concern of gun owners and gun control activists. Another problem resulting from our violent society is that of suicides and homicides through the use of firearms. Gun control activists argue that if handguns were less readily accessible to adolescents and young adults contemplating suicide, some of them would be prevented from carrying out such acts. In 1995, over 2,000 children between the ages of ten and nineteen committed suicide.

No. 1 VERDICTS SETTLEMENTS AND TRIALS 27 (1999). Fourteen-year-old Michael S. removed the magazine and bullets from the gun and shot and killed 15-year-old Kenzo Dix with the one remaining bullet in the chamber. See id.


44. See id. John Velleco, spokesperson for the Springfield, VA group "Gun Owners of America" states that "[t]here is a problem with our young people. It's a serious problem not tied to the availability of firearms. They [guns] have never been more strictly regulated." Id.

45. See id. "We are a more violent society. When you add firearms, which are by far the most lethal means of injury, what you're going to see is an increase in death rates," said Handgun Control spokesperson Holly Richardson. Id.

46. See id.

47. "Because firearms are among the most lethal methods of suicide, access to an operable firearm can often mean the difference between life and death for a troubled teenager. Studies have shown a strong association between the risk of adolescent suicide and home gun ownership." Stephen P. Teret et al., Making Guns Safer, 14 ISSUES SCI. & TECH. 37, 37 (1998).
sixty-five percent of whom used a gun.\textsuperscript{48} Regarding homicide, some children deliberately kill other children with guns they find at home.\textsuperscript{49}

The most poignant examples are the multiple schoolyard shootings in recent years.\textsuperscript{50} In both Jonesboro, Arkansas and Conyers, Georgia, guns used by the children were found in the home, owned either by a parent or a grandparent.\textsuperscript{51} In Conyers, the guns were locked up, while in Jonesboro they were not.\textsuperscript{52}

Having guns in the home is seen as such a growing problem that medical organizations fear the likely health consequences.\textsuperscript{53} A number of medical organizations are becoming advocates for stricter gun regulations and more effective safety precautions.\textsuperscript{54} Members of these organizations, as well as the rest of the medical community, argue that it is time to look at the health implications of guns rather than focus on the Second Amendment issue of the right to bear arms.\textsuperscript{55}

Everyday, fourteen American children are killed by guns, either by accident, suicide, or homicide.\textsuperscript{56} A consensus exists that the United States possesses a societal problem with children and guns. The problem has

\begin{footnotes}
\footnote{48. See id.}
\footnote{49. See Child’s Death is Tragic Reminder Kids and Guns are Deadly Mix. Weapons Must be Securely Locked Up, ORLANDO SENTINEL, Jan. 31, 1999, at 6 [hereinafter Tragic Reminder] (stating that 11-year-old boy lost his temper with his 13-year-old sister, got their parents’ gun and shot her four times, killing her).}
\footnote{51. See When Suspect Talked, the Subject Was Guns, PROV. JOURN. BULL., May 21, 1999, at A16.}
\footnote{52. See id.}
\footnote{53. This has become such a concern that physicians are now urging fellow doctors to use their position as health specialists to warn parents of the dangers of guns in the home and equate it to such things as drinking in excess and smoking cigarettes. See Gary Kleck, Ph.D., What Are The Risks And Benefits of Keeping a Gun in the Home?, 280 JAMA 473, 473 (1998).}
\footnote{54. See Jane E. Brody, Personal Health: In Repeated Studies, Guns Turn Out to be “Protection” That Puts Families at Risk, N.Y. TIMES ABSTRACTS, May 21, 1997, at 11.}
\footnote{55. See Kwon et al., supra note 28, at 41.}
\footnote{56. “A 1996 Louis Harris Poll said more than half the teenagers who live in homes where there is a handgun or rifle believe that, if they wanted to, they could get the weapon without their parents’ knowledge.” VIEWPOINTS, NEWSDAY, Mar. 30, 1998, at A28.}
\end{footnotes}
been identified, however there is a great deal of difficulty deciding on a solution.

II. CURRENT STATE CAP LAWS

In the last ten years, sixteen states enacted Child Access Prevention Acts.57 The CAP laws in states such as California, North Carolina, and Rhode Island have generated much controversy, but in many states without a history of high-profile shootings, the laws receive scant attention and little statistical data on CAP laws exist in those states.

In 1989, Florida passed the country’s first CAP law.58 The law provides that a person is guilty of a misdemeanor if he/she knows, or reasonably should know, that a minor (defined as any person under the age of sixteen) could gain access to a firearm without the permission of his/her parent. A person also violates the law if he or she does not store the gun in a locked box or container, or secure the gun with a trigger lock.59 This law applies only if the minor gains access to the gun and specifically states its non-application to those who gain access to the firearm as a result of an unlawful entry.60 This law does,

57. See Brady, Questions and Answers, supra note 12.
58. See id.
59. See FLA. STAT. ANN. § 790.174 (2) (West 1998). Safe storage of firearms required:

A person who stores or leaves on the premises under his or her control, a loaded firearm, . . . and who knows or reasonably should know that a minor is likely to gain access to the firearm without the lawful permission of the minor’s parent, . . . or without the supervision required by law, shall keep the firearm in a securely locked box or container or in a location which a reasonable person would believe to be secure or shall secure it with a trigger lock, except when the person is carrying the firearm on his or her body or within such close proximity thereto that he or she can retrieve and use it as easily and quickly as if he or she carried it on his or her body.

Id.
60. See id.

It is a misdemeanor of the second degree, . . . if a person violates subsection (1) by failing to store or leave a firearm in the required manner and as a result thereof a minor gains access to the firearm, without the lawful permission of the parent or the person having charge of the minor, and possesses or exhibits it, without the supervision required by law. . . . This subsection does not apply if the minor obtains the firearm as a result of an unlawful entry by any person.

Id.
however, require gun dealers to provide purchasers with a written warning about the law as well as mandate the placement of a warning sign at the sale counter.\textsuperscript{61} Although Florida was the first state to pass such a law, its effectiveness is not quite clear. Like most states with CAP laws, Florida rarely prosecutes under the law.\textsuperscript{62}

Connecticut modeled its CAP law after Florida’s statute and went one step further. In 1990, Connecticut became the first state to make it a felony to improperly store firearms.\textsuperscript{63} This statute provides that a person is guilty of a Class D felony if anyone under the age of sixteen gains access to a negligently stored firearm and causes injury or death to himself or any other person.\textsuperscript{64} Connecticut also excuses gun owners from liability if the firearm is obtained through an unlawful entry.\textsuperscript{65} The law withstood judicial scrutiny in \textit{State of Connecticut v. Wilchinski}.\textsuperscript{66} In this case, a gun owner entered a plea of \textit{nolo contendere}, thus reserving his right for appeal, to the charge of the criminally negligent storage of a firearm used by his child in a homicide.\textsuperscript{67} The defendant’s two main arguments on appeal were: (1) that the statute was void for

\begin{itemize}
  \item 62. See FLA. STAT. ANN. § 790.174 (West 1998). There have still been accidental shootings by children in recent years. \textit{See id.}
  \item 63. See Brady, \textit{State Summaries}, supra note 61.
  \item 64. SeeCONN. GEN. STAT. ANN. § 53a-217a (West 1997).
  \item 65. SeeCONN. GEN. STAT. ANN. § 53a-217a (West 1997). Criminally Negligent Storage of a Firearm: Class D Felony is defined as
    \begin{itemize}
      \item (a) A person is guilty of criminally negligent storage of a firearm when he violates the provisions of section 29-37i and a minor obtains the firearm and causes the injury or death of himself or any other person. For the purposes of this section, “minor” means any person under the age of sixteen years.
      \item (b) The provisions of this section shall not apply if the minor obtains the firearm as a result of an unlawful entry to any premises by any person.
    \end{itemize}

\textit{Id.}
  \item 66. See 700 A.2d 1 (1997). Mr. Wilchinski had left his loaded firearm inside a snapped holster, which was inside a leather case placed underneath a dresser, in his bedroom. \textit{See id.} at 3. Defendant’s 14 and 13-year-old sons frequently watched television in the room where the gun was kept and knew that the gun was there. \textit{See id.} After taking the gun out and taking turns pulling the trigger the boys 15-year-old friend was shot in the face. \textit{See id.} The friend died two days later. \textit{See id.}
  \item 67. \textit{See id.}
vagueness, and (2) that the actions of the children were a sufficient intervening cause of death which precludes conviction of the gun owner for negligent storage of the firearm. Ultimately, neither of these arguments succeeded.

In his void for vagueness argument, the defendant contended that the statute was facially vague because the statute infringed upon his Second Amendment right to bear arms. The court held that the defendant did not meet his burden of proving that the statute had no clear meaning. The court stated that the text and legislative history of Section 53a-217a clearly indicates gun owners must use “age-appropriate physical impediments to prevent children from gaining access to and misusing guns.” The court further stated that the statute does not deny a Connecticut citizen the right to bear arms.

The court then dismissed Wilchinski’s intervening causation argument by explaining that the act for which the defendant is being punished is failure “to take proper safeguards with a loaded gun.” For this reason, the court stated the actions of the boys with respect to the gun cannot relieve him of liability. The court also stated that “the act of the defendant’s son was precisely the harm that the legislature sought to prevent when it enacted Section 53a-217a, [and] that foreseeable act cannot be invoked by the defendant as an efficient intervening cause of [the boy’s] death.”

In reaching its decision, the court turned to public policy for support. The opinion indicated that the law was enacted as a result of growing concerns regarding the accidental shootings of children in the

68. See id. at 4.
69. See U.S. CONST. amend. II. “... being necessary to secure a free State, the right of the people to keep and bear Arms, shall not be infringed.” Id.
70. See Wilchinski, 700 A.2d at 5-6. The Court explained that legislation carries a strong presumption of constitutionality, therefore the defendant would have a heavy burden to prove beyond a reasonable doubt that the statute is unconstitutional. See id. at 6-7. The “void for vagueness doctrine” requires that a crime be explained with definiteness so that ordinary people can understand and be on notice as to what conduct is and is not permitted. See id. at 6.
71. Id. at 6-7.
72. See id.
73. Id. at 12.
74. See id.
75. Id. at 13.
homes of gun owners. Because of these concerns, the court refused to construe the law to include unlocked containers in the statute's definition of the words "container" and "box." The citizens of Connecticut became concerned with the growing number of shootings involving children and guns. The legislature responded by making it a felony to improperly store a firearm. The Supreme Court of Connecticut then legitimized the law by declaring it adherent to both the state and federal constitutions. The court also explained that this law was of grave public concern, one that will not be taken lightly and one under which courts will not be afraid to convict.

California's CAP law also imposes a felony charge. This law, based on the original Florida statute, is believed to be the strongest in the nation. The California law applies when any person under the age of fourteen gains access to an improperly stored firearm. It allows for the negligent storage of firearms to be prosecuted in either the first or the second degree. Although this law is seemingly comprehensive, it

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76. See Wilchinski, 700 A.2d at 7.
77. See id. at 8.
78. See CONN. GEN. STAT. ANN. § 53a-217a (West 1997).
79. See Wilchinski, 700 A.2d at 4-13.
80. See id. at 13.
83. See id. Section 12035, entitled Criminal Storage of a Firearm, states:

(b)(1) . . . a person commits the crime of "criminal storage of a firearm of the first degree" if he or she keeps any loaded firearm within any premise which is under his or her custody or control and he or she knows or reasonably should know that a child is likely to gain access to the firearm without the permission of the child's parent or legal guardian and the child obtains access to the firearm and thereby causes death or great bodily injury to himself, herself or any other person.

(2) . . . a person commits the crime of "criminal storage of a firearm of the second degree" . . . if the child obtains access to the firearm and thereby causes injury, other than great bodily injury, to himself, herself, or any other person, or exhibits the firearm either in a public place or in violation of section 417.

(c) Subdivision (b) shall not apply whenever any of the following occurs:

(1)The child obtains the firearm as a result of an illegal entry to any premises by any person.
(2)The firearm is kept in a locked container or in a location which a reasonable person would believe to be secure . . . .
(4)The firearm is equipped with a locking device.

Id.
is rarely used. In an interview in March of 1998, a Deputy District Attorney in Santa Clara County recalled only a few cases in which criminal negligent storage was charged. In one such case, the Deputy District Attorney felt that placing a gun on a closet shelf covered by a sheet was a sufficient precaution to "keep the gun out of harm's way." The fact that the California law is rarely used to prosecute offenders does not necessarily mean that the law has fallen short of achieving its desired effect. A study by physicians at the Harborview Injury Prevention and Research Center in Seattle, Washington concluded that the number of accidental shootings in California dropped twenty-four percent in the first three years after the law was adopted. Groups such as the NRA claim that the lack of prosecution under the law proves that the law is ineffective. Yet, the law ostensibly works to protect children from the handling of firearms negligently stored by their owners. This objective, therefore, appears to have been reached because the incidence of accidental shootings has dropped significantly since the law's enactment. Hence, it does not matter if the number of criminal prosecutions under the law is few, as long as the desired result is achieved.

The Virginia CAP statute, on the other hand, is considered a weak counterpart in comparison to similar laws across the nation for two main reasons. First, Virginia identifies a minor as any child under the age of twelve, whereas California defines a minor as anyone under fourteen. Second, this law, enacted in 1991, holds the gun owner to a

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84. Eric Gorovitz, legal director of the Trauma Foundation at San Francisco General Hospital said, "Nobody knows about this law in part because it's never used, or very rarely. Often when it could be used, the DA is reticent to charge because there has been a tragedy." Seligman, supra note 17, at Al.

85. See id.

86. Id. In this case, a child found an unloaded gun covered by a sheet on a closet shelf. The child then found ammunition for the gun and accidentally shot another child. These, the Deputy District Attorney felt, were "pretty reasonable precautions." See id.

87. See id.


89. See Brady, State Summaries, supra note 61.

90. See VA. CODE ANN. § 18.2-56.2(B) (Michie 1996). The penalty for allowing access to firearms by children is: "B. It shall be unlawful for any
standard of recklessness rather than negligence, making the offense more difficult to prosecute. Negligence is a relatively low evidentiary standard that requires no showing of affirmative action or intent, but merely a showing of "the failure to use such care as a reasonably prudent and careful person would use under similar circumstances." Recklessness, however, requires the prosecutor to show that the conduct was "such to evince disregard of, or indifference to, consequences, under circumstances involving danger to life or safety to others, although no harm was intended." This conduct involves consciously disregarding a substantial and unjustifiable risk of such a gross fashion that no law-abiding person would so deviate from reasonable conduct.

While there is still no need to prove intent under Virginia law, a showing of recklessness necessitates a gross disregard for the standard of care, while the negligence standard only requires the failure to use such care. In the statute, there is not only the initial barrier to prosecution (the reluctance to prosecute the safe-storage offender based on the loss already suffered), but there are also the additional obstacles of the heightened standard and the lowered age for those considered children. There is little information available to show whether there have been any violations of the CAP law, or documented cases of this law being used to prosecute a gun owner for negligent storage.

The Wisconsin CAP statute uses the same recklessness standard as Virginia. Wisconsin provides for a Class C misdemeanor if a child, defined as any person under the age of fourteen, gains access to a firearm except when the child is under the supervision of an adult.

91. See VA. CODE ANN. §§ 18.2-56.2(A) (Michie 1996). The penalty for allowing access to firearms by children is: "It shall be unlawful for any person to recklessly leave a loaded unsecured firearm in such a manner as to endanger the life or limb of any child under the age of twelve. Any person violating the provisions of this subsection shall be guilty of a Class 3 misdemeanor."

93. Id. at 1270.
94. See id.
95. See VA. CODE ANN. §§ 18.2-56.2(A) (Michie 1996).
96. See WIS. STAT. ANN. § 948.55(2) (West 1996). Leaving or storing a loaded firearm within the reach or easy access of a child is a misdemeanor.
arm through reckless storage; if that child, causes an injury to himself or anyone else, the penalty becomes a Class A misdemeanor.97 Although this is one of the longer and more detailed CAP statutes, it's effectiveness remains elusive. The requisite standard is recklessness.98 To fit within the definition of recklessness in Wisconsin, the gun owner must show only that he "reasonably believed" the gun was properly stored or that he "reasonably believed" that a child was not likely to be present where the firearm was left.99 As with many other CAP laws, there is little in the way of statistical data or reported information regarding the effectiveness of the law. This law, like the California and Virginia statutes, encompasses fewer gun owners due to the younger age defining "child" and the heightened standard of care. It is also possible that the passage of the law has increased awareness so that more gun owners are locking up their guns.

The CAP statute in Hawaii, enacted in 1992, is recognized as the nation's broadest because it encompasses all firearms, loaded and unloaded.100 Hawaii's law can only be rendered inapplicable if the fire-

97. See id. at § 948.55. Leaving or storing a loaded firearm within the reach or easy access of a child is defined as:

(1) In this section "child" means any person who has not attained the age of 14 years.
(2) Whoever recklessly stores or leaves a loaded firearm within the reach or easy access of a child is guilty of a Class A misdemeanor . . .
(b) The child . . . discharges the firearm and the discharge causes bodily harm or death to himself, herself or another.
(3) Whoever recklessly stores or leaves . . . is guilty of a Class C misdemeanor if . . .
(b) The child . . . possesses or exhibits the firearm in a public place . . .
(4) Subsection (2) and (3) do not apply [if]:
(a) The firearm is stored or left in a securely locked box or container or in a location that a reasonable person would believe to be secure.
(b) The firearm is securely locked with a trigger lock . . .
(e) The child obtains the firearm as a result of an illegal entry by any person.
(g) The person who stores or leaves a loaded firearm reasonably believes that a child is not likely to be present where the firearm is stored or left.

Id.

98. See WIS. STAT. ANN. § 948.55 (4)(a),(g) (West 1998).
99. See id.
100. See HAW. REV. STAT. ANN. § 134-10.5 (Michie 1997) (discussing storage of firearms; responsibility with respect to minors). "No person shall store or keep any firearm on any premises under the person's control if the
arm is kept in a securely locked box or other container, or if the owner is carrying the firearm on his person. For purposes of the statute, Hawaii defines a minor as any person under the age of sixteen. Though stringent language is used in the Hawaii CAP law, evidence of effectiveness, or lack thereof, has not been documented.

The Maryland CAP statute, enacted in 1992, is narrower than Hawaii's, but provides few exceptions for violators. This CAP law includes no language to suggest the law's inapplicability when the gun owner "reasonably believes" the firearm was properly stored. The statute goes a step further than most CAP statutes by clearly spelling out the effect of a violation. A violation of the statute will not be considered evidence of negligence or contributory negligence, will not limit the liability of a party or an insurer, and will not diminish recovery for damages resulting from the ownership, maintenance, or operation of a firearm or ammunition. Again, absent media attention and statistical data, it is difficult to analyze what effect this law has had in Maryland.

North Carolina passed its CAP law in 1993. It states only that the firearm is not properly stored if the owner knows or has reason to know that an unsupervised minor would be able to gain access to it

person knows or reasonably should know that a minor is likely to gain access to the firearm without the permission of the parent or guardian of the minor."

Id.

101. See HAW. REV. STAT. ANN. § 134-10.5 (1),(2) (Michie 1997), which states that the law is inapplicable if the owner:

(1) Keeps the firearm in a securely locked box or other container or in a location that a reasonable person would believe to be secure; or
(2) Carries the firearm on the person or with such close proximity thereto that the person readily can retrieve and use it as if it were carried on the person.

Id.

102. See id. at § 134-10.5.

103. See Brady, State Summaries, supra note 61.

104. See MD. CODE ANN. § 36(K) (Michie 1997). Section 36(K) does not apply if: the minor's access to firearms is supervised by a person 18 years old or older; the minor obtained the firearm as a result of an unlawful entry; the firearm was in the possession or control of a law enforcement officer while the officer was engaged in his official duties; or the minor has a certificate in firearm and hunter safety. See id. at §§ 36K (4)(c) (1-4).

105. See id. at §§ 36K(4)(d)(1)(i-iv).

and the firearm must be in a condition in which it can be discharged. The penalty for violation of the safe storage law is a misdemeanor and not a felony. The North Carolina CAP law remains one of the nation's more lenient statutes, as it applies only to those who "reside in the same premises as a minor." Although lenient on its face, this statute is still used to prosecute offenders. In April 1998, (the same month Senators Chafee and Durbin introduced federal CAP legislation), a woman was convicted under the North Carolina statute after her six-year-old godson shot and killed his four-year-old friend. The gun owner now faces a possible prison term.

Rhode Island attempted to pass its first CAP law in 1994, but it failed due to fierce opposition by the NRA. The law nevertheless passed in 1995. The statute begins with a disclaimer, to assure each citizen that the law will in no way impede their constitutional right to bear arms. A firearm is considered to be safely stored, according to the Rhode Island law, if it is kept in a locked container, secured with a locking device, or where a reasonable person would believe it to be secured.

The most interesting part of the Rhode Island statute is the provision assuring the violator that the Attorney General's office will take

107. See id. The statute punishes gun owners who reside in the same premises as minors:

(a) Any person who resides in the same premises as a minor, owns or possesses a firearm and stores or leaves the firearm (i) in a condition that the firearm can be discharged and (ii) in a manner that the person knew or should have known that an unsupervised minor would be able to gain access to the firearm, is guilty of a Class 1 misdemeanor if a minor gains access to the firearm without the lawful permission of the minor's parents or a person having charge of the minor.

Id. at § 14-315.1(a).

108. See id.
109. Id. at §§ 14-315.1 (4)(b-c).
111. See Brady, Questions and Answers, supra note 12.
112. See id.
113. See R.I. Gen. Laws § 11-47-60.1 (1997) Safe Storage. "(A) Nothing in this section shall be construed to reduce or limit any existing right to purchase and own firearms and/or ammunition or to provide authority to any state or local agency to infringe upon the privacy of any family, home or business except by lawful warrant." Id.
114. See id. § 11-47-60.1 (c)(2)-(4).
such factors into consideration as the "impact of the injury or death" when deciding whether to prosecute.\footnote{115} This refers to the effect the injury or death the child caused with the weapon, meaning that the Attorney General before prosecuting would thus consider the fact that this gun owner lost a child due to the violation of the law. The law also states that a parent or guardian of a child who is injured or killed as a result of an accidental shooting will only be prosecuted if they were "grossly negligent" in their storage of firearms.\footnote{116} A child, for purposes of this law, is defined as any person under the age of sixteen.\footnote{117} There have been no accidental shootings involving children in Rhode Island in the last few years that have received any media attention. Although both of the state’s U.S. Senators (Chafee-R and Reed-D) support a Federal CAP law,\footnote{118} some Rhode Islanders feel this law is just an attempt to "disarm" Americans at all cost.\footnote{119}

In an attempt to pass its CAP law, the Texas legislature initially had trouble similar to that in Rhode Island, but passed the law in 1995 despite intense opposition by the NRA.\footnote{120} The Texas CAP law, like the original Florida law, mandates that gun dealers display a sign at the counter alerting their customers to the law.\footnote{121} The Texas law goes further by mandating specific language that the display must contain in order to comply with the statute.\footnote{122} Many of the exceptions are the

\footnotesize

\footnote{115}{One provision of the Rhode Island code states that:
(D) If the person who allegedly violated this section, is the parent or guardian of a child who is injured or who dies as the result of the accidental shooting the attorney general’s department shall consider among other factors, the impact of the injury or death on the person who has allegedly violated this section when deciding whether to prosecute an alleged violation. It is the intent of the general assembly that a parent or guardian of a child who is injured or who dies of an accidental shooting, shall be prosecuted only in those instances in which the parent or guardian behaved in a grossly negligent manner.

\footnote{116}{See id.}

\footnote{117}{See id.}

\footnote{118}{See Guns and Youth, PROV. JOURN. BULL., May 5, 1998, at B4.}

\footnote{119}{See Henry Montuori, *By This Reasoning Ban Stoves Too!*, PROV. JOURN. BULL., May 18, 1998, at B5.}

\footnote{120}{See Deborah January-Bevers, *Viewpoints*, HOUST. CHRON., Mar. 8, 1999, at A21.}

\footnote{121}{See TEX. CODE ANN. [WEAPONS] § 46.13 (West 1999).

\footnote{122}{"IT IS UNLAWFUL TO STORE, TRANSPORT, OR ABANDON AN UNSECURED FIREARM IN A PLACE WHERE CHILDREN ARE
same as the other state CAP laws.\textsuperscript{123} The only noticeably different exception provides that if the “actor was engaged in an agricultural enterprise” the law does not apply.\textsuperscript{124}

The purpose behind CAP laws remains the same throughout the sixteen states that have enacted them. Most statutes define a child as someone under the age of sixteen. Generally, the laws are not enforced if the child has gained access to the gun through unlawful means. The standard of care required for the gun owner ranges from a reasonable person standard to one of recklessness. Violations of the law are punished in different degrees as a felony and/or a misdemeanor. The purpose of federal legislation in this area would not be to preempt state law, but to insure the safe storage of firearms in those states that have not passed such laws.\textsuperscript{125}

\section*{III. ANALYSIS}

The Child Firearm Access Prevention Act would apply to all firearms shipped through interstate commerce,\textsuperscript{126} or that will, in some way, substantially affect interstate commerce.\textsuperscript{127} Like its state counterparts, the bill is designed to impose criminal penalties on an adult who does not properly store a firearm to which a child gains access and harms himself or another person.\textsuperscript{128} The law requires the use of

\begin{itemize}
  \item LIKELY TO BE AND CAN OBTAIN ACCESS TO THE FIREARM.” \textit{Id.} at § 46.13(g).
  \item \textsuperscript{123} Such exceptions are a child’s use of the firearm in the lawful defense of people or property and the child gaining the firearm through the unlawful entrance onto the property. \textit{See id.}
  \item \textsuperscript{124} \textit{See id.} at § 46.13(c)(4).
  \item \textsuperscript{125} \textit{See Child Firearm Access Prevention Act S. 1917, 105th Cong. § 2 (1998), proposed amendment to 18 U.S.C. § 926 (d). The proposed bill, “Child Firearm Access Prevention Act” states in part: “(d) No Effect on State Law- Nothing in this section or the amendments made by this section shall be construed to preempt any provision of the law of any State, the purpose of which is to prevent children from injuring themselves or others with firearms.” \textit{Id.}
  \item \textsuperscript{126} \textit{See id.}
  \item \textsuperscript{127} \textit{See U.S. v. Lopez, 514 U.S. 549 (1995). Congress uses interstate commerce as a means to reach the type of activity they want to regulate. Using the “substantial effects” test, Congress is able to regulate virtually anything that was formally under only state control. \textit{See id.} at 559.
  \item \textsuperscript{128} \textit{See Chafee Introduces Bipartisan Act, supra note 13.}
\end{itemize}
trigger locks or a of "lock box" or a safe for guns. 129 The federal law creates a reasonable person standard for the storage of the weapon. 130 The federal law, like the North Carolina and Delaware laws, would define a "child" as any person under eighteen years of age. This means that until a person can lawfully purchase a gun, he/she is considered a child and therefore will be protected by the Act. 131

In April 1998, the Chafee-Durbin bill was introduced and referred to the Senate Judiciary Committee. 132 It was tabled at the time and not voted on before the conclusion of the 105th Congress, but with the school shootings of 1998 and 1999 and a stronger public sentiment in favor of more stringent gun control, the bill is expected to be reintroduced. Congress will likely continue to consider such laws to safeguard America's children from negligently stored firearms.

After looking at the state CAP laws passed thus far, the proposed federal legislation incorporates many of the characteristics of the more stringent state laws. 133 One provision of the bill explains that the law will not preempt state laws enacted for the purposes of preventing children from being injured by firearms. 134 The main motivation behind this provision seems to be the protection of federalism. Congress is not trying to override the power of the state legislatures, but rather intends to create a minimum level of protection. State legislatures are free to make their laws as strict as they see fit, but Congress wants to create a minimum guideline to which each state must adhere. Because of the broad application of the law, it has many vocal opponents. The most boisterous and most politically powerful of these is the NRA, which calls the law "ultimately unsound and unsafe." 135

130. See id. The "reasonable belief" standard is also used in Virginia and Rhode Island. See VA. CODE ANN. §§ 18.2-56.2 (Michie 1994), R.I. GEN. LAWS § 11-47-60.1 (1997).
133. There are few instances in which the law would not apply. For example, there is no provision for discretion of the attorney general's office if the violation of the law results in injury or in the death of the child of the gun owner like in the Rhode Island law. Cf. S. 1917, 105th Cong. § 2 (1998), R.I. GEN. LAWS § 111-47-60.1 (1997).
134. See S. 1917, 105th Cong. § 2 (1998); see also Brady, State Summaries, supra note 61.
135. National Rifle Association, 500,000 Home Invasions vs. A One Size-
A. The Gun Lobby

The gun lobby generally takes the position that although a strict CAP law may create a safe environment for families with small children, it will lead to tragedy for other families faced with violent intruders. For support, the NRA cites a recent study of the National SAFE KIDS campaign reporting a thirty-four percent decline in accidental fatalities of children over the last decade. The NRA also points out that, as a result of the study, SAFE KIDS recommends firearm safety programs for both children and adults, while making no mention of gun control laws. The fact that the study reflects education, rather than gun control, as the reason for the lower number of accidental fatalities pleases the NRA, which has been promoting its "Eddie the Eagle" safety program throughout the debate regarding children and guns. The NRA contends that making children aware of what they should do when they see a gun – stop, don’t touch, leave the area, tell an adult – is far more effective than hiding the gun from them. Finding a hidden gun and having no idea how to handle the situation is what can lead to disaster for those children and their families.

The NRA also focuses on the rise of juvenile criminal activity as a


136. Tanya K. Metaksa, Director of the NRA Institute for Legislative Action, explained that 500,000 homes are invaded each year by criminals when at least one family member is at home. See id.


138. See id.

139. Don Saba, director of junior shooting activities at the Tucson Rod & Gun Club, says that safety is the number one concern of the NRA. This is illustrated by the "Eddie the Eagle" program. "That’s our whole focus – gun safety. Everything we do is safety, safety, safety." C.T. Revere, Safety Pledge A "Gimmick" Say Gun Enthusiasts, the NRA’s Heston Has Been Asked to OK "10 Commandments" to Prevent Accidents, TUCSON CITIZEN, June 8, 1998, at B1.


possible cause of the huge number of child deaths caused by guns each year.\textsuperscript{142} NRA spokesman Bill Powers stated that "troubled youth and violence is a problem that's not addressed by the quick, easy legislative answer."\textsuperscript{143} The recent school shootings give the NRA ammunition for their argument. For example, discussing the Jonesboro tragedy, a representative for the gun manufacturer Glock, Inc. indicated five felonies committed by the boys apart from gaining access to improperly stored guns.\textsuperscript{144} "[Y]ou've got two kids who committed a break-and-entry in two different places, they steal a car, they take a firearm within 1,000 feet of a school, they pull a fire alarm."\textsuperscript{145} The gun lobby firmly maintains that it is not accidental shootings and suicides that are not causing the problem, instead "nearly everything juveniles do with their guns is against the law."\textsuperscript{146} The NRA, as well as many conservative politicians, holds fast to the argument that we should be more concerned with how our children are being raised and address such issues as the amount of attention, degree of discipline, whether both parents are living at home, and if there is religion in the child's life. Many feel that resolving these issues will help solve the problem of juvenile gun violence. The answer is not, the gun lobby contends, more gun control.

The NRA is more focused on making criminals responsible for their actions rather than imposing penalties on law-abiding gun owners.\textsuperscript{147} This is illustrated by the NRA's continued support of trying violent juveniles publicly and in criminal courts as adults, rather than secretly as children in family courts.\textsuperscript{148} The main focus of this position is that the guilty party, not the innocent gun owner, should be held responsi-

\begin{itemize}
  \item \textsuperscript{142} See Making Gun-Owners Liable is Unfair to the Law-Abiding, BUFFALO NEWS, Apr. 28, 1997, at B3.
  \item \textsuperscript{143} NRA Aiming for Fight, supra note 50, at A1.
  \item \textsuperscript{144} Paul Jannuzzo, vice president and general counsel of Glock, Inc., states, "Five felonies were committed, what is another law going to do?" Gun Control Advocates Seize School Shootings to Push for New State, National Laws, DALLAS MORNING NEWS, June 7, 1998, at A5.
  \item \textsuperscript{145} NRA Aiming for Fight, supra note 50, at A1.
  \item \textsuperscript{146} National Rifle Association, For the Children, supra note 137.
  \item \textsuperscript{147} See Steven McClure Manito, NRA for Reasonable Limits, PEORIA J. STAR, June 22, 1999, at A4.
  \item \textsuperscript{148} See Lawrence M. O'Rourke, House Votes for Looser Restrictions on Gun Show Sales, NEWS & OBSERVER (Raleigh, NC), June 18, 1999, at A11; House Votes for Limit of 24 Hours on Gun Checks, STAR TRIB. (Minneapolis-St. Paul), June 18, 1999, at A1.
\end{itemize}
ble for his/her actions, even if he/she is a child.\textsuperscript{149}

1. Accidental Shootings as a Public Health Issue

Gun advocates have a fundamental problem with the fact that their opponents are making accidental shooting deaths into a public health issue.\textsuperscript{150} The gun lobby feels that by making this into a "public health" issue, members of the medical community are merely promoting their own political agendas.\textsuperscript{151} "Gun control activists in the public health field try to frame the debate as one about diseases and its causes, and thus, one that they are best equipped to solve."\textsuperscript{152} The NRA claims these studies are conducted by politically motivated anti-gun activists who frame them to fit their needs.\textsuperscript{153} The NRA maintains guns do not cause but actually deter violence and therefore gun violence is neither an epidemic, nor approaching epidemic status.\textsuperscript{154}

The NRA contends that emotionalism and the anti-gun lobby are fueling this debate,\textsuperscript{155} as illustrated by President Clinton seeking support for the federal CAP law while standing beside the mother of a child killed in the Jonesboro shooting.\textsuperscript{156} According to the NRA, accidental shootings are not the epidemic that the anti-gun lobby claims and cite as proof the accidental death rate among children, which has decreased thirty-four percent in the last ten years.\textsuperscript{157}

2. Most Americans Own Guns to Protect Their Families

Most people have a gun in the home for one reason: to protect their family from intruders.\textsuperscript{158} Eighty-nine percent of people who own guns for self-defense purposes feel safer knowing that there is a gun in the

\begin{itemize}
  \item \textsuperscript{149} See id.
  \item \textsuperscript{150} See National Rifle Association, \textit{For the Children}, supra note 137.
  \item \textsuperscript{151} See Don B. Kates et al., \textit{Guns and Public Health: Epidemic of Violence or Pandemic of Propoganda?}, 62 Tenn. L. Rev. 513, 516 (1995).
  \item \textsuperscript{152} National Rifle Association, \textit{Fables, Myths & Other Tall Tales}, (visited Feb. 21, 1999), <http://nra.org/research/Fables.html> at 15.
  \item \textsuperscript{153} See id.
  \item \textsuperscript{154} See id.
  \item \textsuperscript{155} See National Rifle Association, \textit{For the Children}, supra note 137.
  \item \textsuperscript{156} See \textit{Clinton Wants Guns Secured From Kids}, PORTLAND OREGONIAN, July 9, 1998, at A11.
  \item \textsuperscript{157} See National Rifle Association, \textit{For the Children}, supra note 137.
  \item \textsuperscript{158} See id.
\end{itemize}
home.\textsuperscript{159} Based on a national victim survey, the U.S. Census Bureau concluded that gun-using victims of crimes are less likely to be injured or lose property than those victims in similar circumstances using other self-defense measures.\textsuperscript{160} Evidence also suggests that such usage is effective in preventing injury, and that defensive gun usage in the home occurs substantially more than criminal, aggressive uses in the home.\textsuperscript{161}

Lastly, the gun lobby argues that a federal child access prevention law simply will not work. The emotion stirred from the school shootings in Jonesboro, Arkansas; Springfield, Oregon; West Paduca, Kentucky; Edinboro, Pennsylvania; Littleton, Colorado; and Conyers, Georgia resurrected this debate.\textsuperscript{162} As the NRA noted after Jonesboro, the gunmen would not have been stopped or even slowed by another law because they had already committed five felonies.\textsuperscript{163} Hence, in the NRA’s view, there is no point in passing an additional law that infringes on the rights of law-abiding gun owners.\textsuperscript{164} The NRA believes that this federal legislation would allow the police to enter the homes of innocent citizens to ensure that their weapons are properly stored. This would involve violating not only the Second Amendment but the Fourth Amendment rights of citizens as well.\textsuperscript{165} The NRA contends that this is exactly what the framers of the Constitution intended to prevent by including the Second Amendment in the Bill of Rights.\textsuperscript{166} The advocacy group argued that at the very least, this law puts a foot in the door for those who want to slowly erode the right to bear arms. The possibility of this occurring frightens many Americans, especially

\textsuperscript{159}See David Hemenway et al., Firearms and Community Feelings of Safety, 86 J. CRIM. L. \\& CRIMINOLOGY 121, 121 (1995).
\textsuperscript{160}See Kleck, supra note 53, at 474.
\textsuperscript{161}See id.
\textsuperscript{162}See Gun Storage Legislation Makes Sense, supra note 20, at A20.
\textsuperscript{164}See National Rifle Association, For the Children, supra note 137.
\textsuperscript{165}See Revere, supra note 139, at B1.
\textsuperscript{166}See U.S. Const. amend. II, IV. The Fourth Amendment states: [t]he right of people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or Affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

\textit{Id.} at amend IV.
gun owners.

B. The Gun Control Lobby

The gun control lobby, led by the organization known as Handgun Control, Inc., feels that this proposed federal legislation for the safe storage of firearms is not only a good idea, but a necessary one for the safety of our children. As far as gun control proponents are concerned, the sixteen states that already passed safe storage legislation should be models for the rest of the country.

The nation’s emotions have been stirred and awareness heightened due to the six highly publicized school shootings over the past two years. The President urged states and Congress to pass stricter gun control laws with harsher penalties against gun owners who fail to keep their firearms away from children. The gun control lobby maintains that while this law will not violate anyone’s right to bear arms, it will save children. Although the gun owner may feel safer having a gun in the home, his neighbors or those whose children play with his children may not feel as safe. The ultimate goal, according to gun control advocates, is to save the lives of children.

An average of fourteen children per day are killed by guns. This is a major problem that demands immediate attention. Handgun Control was elated when a study published in the Journal of the

167. See Brady, Questions and Answers, supra note 12.
168. See id.
169. See Clinton Wants Guns Secured From Kids, supra note 156, at A11.
170. See Brady, Questions and Answers, supra note 12.
171. See Hemenway, supra note 159, at 127.
172. Dr. Joel Alpert, vice president of the American Academy of Pediatrics, expressed his concern over accidental shootings to the National Press Club. “Nearly 14 children and adolescents are dying each day from gunshot wounds. If an infectious disease were killing 14 children a day, the public would be in an uproar. This is an epidemic and there is a cure. Keep guns out of your homes so they cannot harm your children.” Center to Prevent Handgun Violence Warns December is One of Deadliest Months, U.S. NEWSWIRE, Dec. 18, 1997 [hereinafter Center to Prevent Handgun Violence].
174. See id.
American Medical Association (JAMA) lent significant credence to the call for more “safe storage” legislation.\(^\text{175}\)

The goal of the JAMA study was to determine whether state laws requiring safe storage of firearms are associated with a reduction of child deaths caused by firearms.\(^\text{176}\) The study concluded that among children under fifteen, unintentional shooting deaths were reduced by twenty-three percent in states that have passed child access prevention laws.\(^\text{177}\) The gun control lobby argues that, regardless of the number of prosecutions these laws produce, the main objective of saving children’s lives is being met.\(^\text{178}\) Although education is always beneficial, and gun control advocates encourage it, the study proves that it is these laws and not education that is saving children’s lives. Educating children on gun usage is not always effective and will only be effective in cases of accidental shootings, not those of teen suicide and homicide.\(^\text{179}\) If twenty-three percent of children are being saved in sixteen states, logic dictates the same percentage of children could be saved in all fifty states.\(^\text{180}\)

Handgun Control agrees that emotionalism is fueling the arguments in favor of gun storage legislation; their contention is, however, that there is no harm in that.\(^\text{181}\) The organization is trying to save children’s lives and it is not until a major tragedy brings the issue to the forefront

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\(^\text{176}\) See Peter Cummings et al., State Gun Safe Storage Laws and Child Mortality Due to Firearms, 278 JAMA 1084, 1084 (1997).

\(^\text{177}\) See id.

\(^\text{178}\) See id. Shawn and Ryan Colby, the brothers from the beginning of this Comment, were instructed by their step-grandfather on the proper maintenance and use of a gun, but this education did not save young Ryan’s life. See Grier, Boy Accidentally Shot, Killed Brother, supra note 32.

\(^\text{179}\) Eleven-year-old David Hayes had seen, on more than one occasion, the NRA video “The Fundamentals of Gun Safety,” before he shot and killed his eight-year-old brother. See Bill Duryea, Fully Responsible, Nearly Destroyed, ST. PETERSBURG TIMES, June 28, 1998, at F1.


that people are forced to deal with such a problem.\textsuperscript{182} Some of the century’s most infamous crimes have led to new gun control laws, which is direct evidence of the fact that the people of this nation do not want to fix what is not perceived as broken.\textsuperscript{183} Gun control activists maintain the only thing this law would restrict is children’s access to firearms.\textsuperscript{184}

Another, more recent tragedy also sparked immediate reaction from Congress. During the summer of 1998, two police officers were killed when a crazed gunman stormed into the U.S. Capitol Building.\textsuperscript{185} In the wake of this tragedy, Congress approved the construction of a $120 million underground visitor’s center, designed for added protection in the Capitol.\textsuperscript{186} Gun control activists argue that building a fortress may protect the government from handgun violence, but it will not save young children who are gunned down on the playground during an apparent fire drill, or those who are shot in their school library because they believe in God.\textsuperscript{187}

Accidental shootings are not the only societal evil CAP laws will help prevent. They will also aid in reducing the number of suicides and homicides involving children and guns.\textsuperscript{188} Suicide would not be such an easy answer for many teenagers if they did not have easy access to guns.\textsuperscript{189} Access to an operable firearm can often mean the difference between life and death for a troubled teenager.\textsuperscript{190}

\textsuperscript{182} See id.
\textsuperscript{183} See NRA Aiming For Fight, supra note 50 at A1.
\textsuperscript{184} See id.

Gang shootings and an assassination attempt against President Roosevelt in 1934 moved Congress to restrict machine guns. The assassinations of Robert Kennedy and Martin Luther King fueled laws against cheap, imported “Saturday Night Specials” in 1968. And President Bush barred imported assault weapons in 1989 after a man killed five children with an AK-47 at a California playground.

\textsuperscript{185} See James Brady, Still Hostage to the Gun Lobby; Shouldn’t School Children be as Safe as Congressmen?, WASH. POST, Aug. 10, 1998, at A17 [hereinafter Still Hostage to the Gun Lobby].
\textsuperscript{186} See id. See also Gibbs, supra note 3, at 30.
\textsuperscript{187} See Brady, Still Hostage to the Gun Lobby, supra note 185.
\textsuperscript{188} See Teret et al., supra note 47, at 37.
\textsuperscript{189} Most children feel that if they wanted to, they could gain access to a gun without their parents’ knowledge. See Viewpoints, NEWSDAY, Mar. 30, 1998, at A28.
\textsuperscript{190} See Teret et al., supra note 47, at 37.
Handgun Control argues that incidents such as the Jonesboro school shooting and the massacre at Columbine High School would have been avoided if the boys had not attained firearms so quickly and easily.\textsuperscript{191} The advocacy group contends it is not the youth that has changed, as the NRA argues, but society as a whole.\textsuperscript{192} Handgun Control agrees with the NRA that Americans live in a more violent society today, evidenced in part by violent video games, television programs and movies. On one hand, the NRA wants to get to the root of the problem and fix society, but on the other hand, Handgun Control asserts a radical reconstruction of society will not save many lives in the short-term. For this reason, they want to begin by keeping guns out of the hands of young people.

The American Academy of Pediatrics (Academy) considers this an issue seriously affecting public health.\textsuperscript{193} It is such a concern that physicians are now urging fellow doctors to use their unique position as health specialists to warn parents of the dangers of guns in the home.\textsuperscript{194} The Academy’s president labeled the problem an epidemic, one for which there is a cure: keep guns out of your homes and they cannot harm your children.\textsuperscript{195} Understanding that removal of all handguns from all homes in America is not only implausible, but unconstitutional,\textsuperscript{196} pediatricians decided to support CAP laws as well as educational programs designed to reduce firearm injuries and deaths among children.\textsuperscript{197}

The medical community sees the worst results of gun violence through injuries and death. Also, pediatricians feel that children, unlike most healthy adults, see their doctors regularly, and parents will listen and take very seriously whatever their pediatrician tells them concerning the welfare of their child. For these reasons pediatricians are in a unique position to help the cause of Handgun Control. Although the NRA feels members of the medical community are using this position to further their own politics, Handgun Control feels pe-

\textsuperscript{191} See Clinton Wants Guns Secured From Kids, supra note 156, at A11.
\textsuperscript{193} See Center to Prevent Handgun Violence, supra note 172.
\textsuperscript{194} See Kleck, supra note 53.
\textsuperscript{195} See Center to Prevent Handgun Violence, supra note 172.
\textsuperscript{196} See U.S. CONST. amend. II.
\textsuperscript{197} See Center to Prevent Handgun Violence, supra note 172.
diatricians are using their position of authority to intervene at the earliest possible stage, and therefore saving more lives.

IV. CONCLUSION

Members of the medical community, mainly pediatricians and nurses, feel the current situation regarding children and gun violence amounts to a public health crisis of epidemic proportions. The same group supports using educational programs aimed at children showing them what to do when they see a gun, so that injury or death does not occur. A study found in the Journal of the American Medical Association declares accidental deaths among children under fifteen have declined twenty-three percent in states with CAP laws.

It is crucial for Congress to examine all the facts in light of the gun lobby’s power. The Child Access Prevention laws passed in sixteen state legislatures across the country have already had positive results. Educational programs such as “Eddie the Eagle” and the Firearm Injury Prevention Training Project are effective in increasing the awareness of the dangers of handguns, but it seems that CAP laws are doing an even better job. It is unclear whether the risk of penalty, the warning given by gun dealers at the sales counter, or the educational programs sponsored by the NRA are affecting the change, yet CAP laws are producing positive results. Though lately there are more incidents of children and gun violence in the newspapers, studies show fewer children being injured or killed as a result of accidental shootings.

The NRA argues that a decline in accidental shootings eliminates the need for gun control legislation. It credits the lowered statistics of accidental shootings to the “Eddie the Eagle” program. Yet, the leaders and members of the NRA have not considered that CAP legislation is an equally plausible reason accidental shootings among children are down. It is disturbing to think that the threat of criminal prosecution, rather than the need to keep a child safe from harm, would lead some gun owners to safely store their weapons. Regardless, more guns are

198. See id.
199. See id.
200. See Cummings, supra note 176.
201. Firearm Injury Prevention Training Project is the educational program started by the American Academy of Pediatrics. See id.
202. See id.
being safely stored and kept out of the hands of children. It is also possible, maybe even likely, that because accidental shootings have been reported in the news, the general public is more aware of the possibility of accidental shootings within the home.

Often when a difficult decision has to be made, especially when constitutional rights are involved, a balancing of competing interests takes place. This balance weighs the interest of the individual, in this case the Second Amendment right to bear arms, against society’s interest in protecting its children from accidental shootings. Taking both sides of the debate into consideration, it seems the benefit of a federal safe storage law would far outweigh the burden it imposes on gun owners.

Many Americans believe that the best protection against intruders is keeping a loaded weapon in the home, a constitutional right guaranteed to every American. Yet, having a gun in the home is more than a right, it is also a responsibility. If one chooses to accept that responsibility, it is essential to take the time to ensure the gun is properly stored in such a way so it is easily accessible in case of emergency. At the same time, the gun must also be out of the reach of children and their friends when they are looking for something to play with, or when a teenager has a bad week at school and is considering drastic action.

Many argue against the need for another gun control law. The argument of non-enforcement of existing laws is often made and may even be believed, however, the legislative process should not be stunted due to a failure to catch the violators of existing laws. Congress does not stop passing laws involving the tax code even though some people evade the law. Similarly, children should not be sacrificed because some gun owners fail to adhere to all gun control laws.

There are so many tragedies in the world that cannot be prevented. There are so many illnesses that rise to the level of an epidemic for which we have no cure. Although all accidental shootings cannot be prevented, many can be. A law that can save only one child is worth the time and effort, especially to that child’s family, to enact it. It may make it a little easier for parents to put their kids on the school bus, or allow them to play at a friend’s house after school. A law that requires gun owners to store their firearms so that a child cannot access the gun does not violate that gun owners right to bear arms, but may save a

203. See U.S. Const. amend. II.
child's life.