

ISSUE BRIEF



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Preventing Firearm Injuries and Fatalities Among Ohio's Youth: The Need to Implement a Comprehensive and Effective Child Access Prevention Law in Ohio

The Problem: Loaded and Unlocked Guns are Injuring and Killing Ohio's Youth

On July 5, 2012, Levi Reed, a fourteen-year-old boy and resident of Clintonville, Ohio accidentally shot his friend Noah McGuire, also fourteen years old.¹ The boys were having a sleepover at Levi's grandparents' home when Levi found his grandfather's loaded and unlocked gun.² There were no charges brought against the grandfather, but Levi was charged with delinquency counts of reckless homicide.³ There is no law on the books in Ohio that would have required Levi's grandfather to store his gun safely. But as this brief will describe, and as accidents like Noah's demonstrate, the need for such a law is urgent.

The Ohio legislature should enact a comprehensive and effective Child Access Prevention (CAP) law that would require all guns to be stored safely and securely in any place; whenever gun owners know or reasonably should know that children may access their guns, they must store them unloaded and locked, with ammunition locked in a separate location. Felony liability would be imposed for any violation of the law that results in injury or death. The evidence shows that CAP laws prevent gun fatalities and injuries among children and teenagers, and they may also reduce significant economic, psychological, and emotional costs.



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Jodi Sandoval holds a portrait of her fourteen-year-old son, Noah McGuire, who was shot accidentally by a friend in Clintonville this past July.

The Statistics of Firearm-Related Deaths and Injuries Are Staggering With Respect to Children and Teenagers

Gun violence kills and injures thousands of children and teens every year. Since 1979, 116,385 children and teens in America have died from gun violence.⁴ The U.S. Centers for Disease Control and Prevention (CDC) reports that 5,740 children and teens were killed by guns in the United States in 2008 and 2009, and 34,387 children and teens were injured.⁵ More male teenagers die from firearms than from all natural causes combined.⁶

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Gun-related deaths and injuries among youth include intentional shootings, suicides, and accidental shootings. In 2008 and 2009, 3,892 children and teens in the United States died from, and 26,255 were injured from intentional shootings.⁷ An additional 1,548 children died from, and 576 were injured from gun suicide.⁸ Finally, 300 children died from, and 7,586 were injured from accidental shootings.⁹

The source of many fatal and nonfatal gun injuries among youth is the easy accessibility of loaded and unlocked guns in the home.¹⁰ Researchers have found that over 1.6 million children and teens under the age of eighteen are living in homes with loaded and unlocked firearms.¹¹ It is not surprising then, that “[a]pproximately 90% of fatal firearm incidents involving children occur within the home;” these incidents include intentional shootings, suicides, and unintentional shootings.¹² According to one study of youth younger than nineteen years old, “more than 75% of the guns used in youth suicide attempts and unintentional injuries were stored in the residence of the victim, a relative, or a friend.”¹³ A study of California youth younger than fourteen years old found that 40% of the unintentional shootings examined involved a firearm located in the room in which the shooting occurred.¹⁴ At least “two studies have found that the risk of suicide increases in homes where guns are kept loaded and/or unlocked.”¹⁵ Further, firearms in the home are used in over half of youth suicides.¹⁶

Ohio is not immune to the problem of loaded and unlocked guns

Loaded and unlocked guns claim the lives of Ohio's children and teens every year. Between 2004 and 2008, 26 children and teens, eighteen years old and younger, died from accidental shootings in Ohio.¹⁷ That number does not include injuries that occurred as a result of accidental shootings.¹⁸ Within the past four months, two others besides Noah McGuire have died from unintentional shootings in the Columbus area: Lucas Heagren, three years old, accidentally shot himself with his father's gun¹⁹ and 24-year-old Walter

Call III was accidentally shot by his three-year-old son²⁰—all as a result of loaded and unlocked guns in the home.²¹

Even more Ohio children kill themselves using loaded and unlocked guns. Between 2004 and 2008, 110 children and teens, eighteen years old and younger, died from gun suicide in Ohio.²² That number does not include self-inflicted firearm injuries. In 2008, suicides made up 25% of the weapons deaths among children and teens in Ohio.²³ Within the month of May, two Dayton-area youths took their lives with guns found in the home. Thirteen year old Dylan Roach, a resident of Eaton, Ohio, shot himself with his father's gun on May 12, 2012.²⁴ Less than two weeks later, Paul Hauan, a thirteen-year-old eighth-grade student at Mad River Middle School in Riverside, Ohio also shot himself with his mother's fiancé's gun.²⁵

Firearm homicides claim the highest number of Ohio's children and teens. Between 2004 and 2008, 234 children and teens, eighteen years old and younger, died from firearm homicides in Ohio.²⁶ That number does not include intentional gun injuries. In 2008, homicides constituted 70% of the weapons deaths among children and teens in Ohio.²⁷ Earlier this year, T.J. Lane, a seventeen-year-old student from Chardon, Ohio, a small suburb of Cleveland, brought a semi-automatic pistol to his high school and started firing rounds in the cafeteria.²⁸ Three victims died and two were wounded.²⁹ Authorities and news sources reported that T.J. had taken the gun from a family member, possibly his grandfather.³⁰

Tragic events like these demonstrate the lurking danger of loaded and unlocked guns for children and their families. While parents may think they have adequately protected their families by placing their guns out of reach, or by talking to their children about the danger of guns, “this sense of security is often misplaced.”³¹ According to Lucas's mother, “he so kn[ew] better,” and he had “never ever . . . messed with a gun” because he'd “always known better.”³² Yet Lucas still managed to pick up the .45-caliber handgun that had been on top of the television where his parents believed “[he]

couldn't reach it."³³ Paul's mother "didn't know that he even knew about the gun" that "had been safely hidden" in the home.³⁴ But when police arrived at the house, they found the gun lying next to his body.³⁵

Current State of CAP Laws

Nearly half of all states have passed Child Access Prevention (CAP) laws, also commonly referred to as safe-storage laws.³⁶ CAP laws take a variety of forms. Generally, most CAP laws impose criminal liability³⁷ "when a minor gains access to a negligently stored firearm;" some CAP laws "prohibit persons" from intentionally, knowingly, and/or recklessly "providing a firearm to a minor."³⁸ Liability attaches under various circumstances. For instance, two states, Hawaii and Massachusetts, permit prosecution for negligent storage of an *unloaded* gun, while the rest expressly limit liability to *loaded* guns.³⁹ Six states impose criminal liability when a minor gains access to a gun, regardless of whether the minor uses it or injury results, while eight states impose criminal liability only if the minor gains access to the gun and actually fires the gun, causing death or injury.⁴⁰ Further, the age of the protected class (i.e., "minor" or "child") varies by state. For example, some states cover children under fourteen years old, while other states cover children under eighteen years old.⁴¹

The most effective state CAP laws prohibit negligent storing of guns by requiring gun owners to use locking devices whenever (a) their guns are not under their immediate control and (b) they know or reasonably should know that a child may gain access to their guns. California provides an instructive example. California prohibits gun owners from storing or leaving firearms "within any premises" when they "know or reasonably should know that a child is likely to gain access to the firearm."⁴² The law does not apply, however, when firearms are "kept in a locked container" or when firearms are "locked with a locking device that has rendered [them] inoperable."⁴³ The law also does not apply when firearms are "carried on the [gun owners'] person[s]."⁴⁴



Photo © Michael Collopy

“As a nation we must step down from our role as world leader in child gun deaths and work together to make America a moral leader in protecting children in the world. [We] must begin with preventing and reducing gun deaths of children and teens and of all who reside here. Every child’s life is sacred and it is long past time that we protect it.”

– **Marian Wright Edelman,**
President, Children’s Defense Fund

How Do CAP Laws Work?

CAP laws work because they provide notice to gun owners that they will be held criminally liable if they do not properly store and lock their guns; this mandate, in turn, helps to make gun owners more responsible. Children do not know better when it comes to guns, and adults are not as careful as they need to be in

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“securing” their guns.⁴⁵ Lucas’s parents never thought he could reach the .45-caliber handgun on top of the television, but unfortunately he did.⁴⁶ As Toby Hoover, the executive director of the Ohio Coalition Against Gun Violence (OCAGV) stated: “[g]un owners may have all the good intentions in the world, but they don’t follow through.”⁴⁷ Although “[p]eople think they are being safe,” it takes a tragedy to stop and make them think, “What can I do to prevent this?”⁴⁸ CAP laws help to ensure that gun owners take enough care and precaution in securing their guns *before* tragedy strikes.

Educating and reminding gun purchasers of the potential for criminal penalties⁴⁹ helps to ensure that they comply with the law. New Jersey requires that warnings about its state CAP law be distributed to gun purchasers and displayed in establishments where firearms are sold. The conspicuous warning—“IT IS A CRIMINAL OFFENSE, PUNISHABLE BY A FINE AND IMPRISONMENT, FOR AN ADULT TO LEAVE A LOADED FIREARM WITHIN EASY ACCESS OF A MINOR”⁵⁰—puts them on notice that they must act responsibly or there will be consequences.

Research Demonstrates that CAP Laws are Effective at Reducing Gun Injuries and Fatalities among Youth

It is established that the implementation of CAP laws is associated with a reduction in the rate of both fatal and nonfatal gun injuries among youth. In a recent study examining the effect of these laws on firearm deaths as a result of accidental shootings, suicides, and crimes (including homicides), the death rate was significantly lower in states that mandate safe-storage requirements for guns.⁵¹ The economist who conducted the study found a substantial correlation of -.48 between firearm deaths and states that mandate safe storage requirements—meaning as states implement CAP laws, the rate of firearm deaths decreases.⁵² In another study examining the effect of CAP laws on gun-related injuries, CAP laws were found to have substantially reduced non-fatal gun injuries among children younger than eighteen.⁵³ For instance, CAP laws reduced self-inflicted firearm

injuries among children by 64% and all other firearm injuries by 33%.⁵⁴

Other studies of CAP laws have reached similar findings. One of the first studies to examine whether CAP laws minimize children’s access to firearms found that unintentional shooting deaths were reduced by 23% among children younger than fifteen.⁵⁵ A similar study three years later found a 17% decline in unintentional firearm death rates among children younger than fifteen.⁵⁶ All of these findings are consistent and “perhaps, perfectly predictable”⁵⁷ as they demonstrate that policies that mandate safe storage “actually work.”⁵⁸

Ohio Must Institute a Strong CAP Law in Order to Save Children’s Lives and Reduce Costs for Everyone

Ohio does not currently have a CAP law.⁵⁹ Ohio does have a locking device law, Ohio Revised Code (ORC) § 2923.25, but it simply requires licensed firearm dealers to *offer* locking devices with all firearm transfers to their buyers.⁶⁰ The law as it stands is not sufficient in protecting children from guns because it does not require the purchaser to actually *buy* the locking device, nor does it require the purchaser to *use* the locking device.⁶¹

Ohio needs to implement a strong CAP law for multiple reasons. Most significantly, the evidence suggests that CAP laws do, in fact, work to reduce the number of gun fatalities and injuries among children.⁶² It is important to note that correlation does not imply causation. Nevertheless, the research strongly demonstrates what common sense tells us: when guns are kept locked up and “secured from unauthorized users, children and others are not able to use them to cause harm either accidentally or intentionally.”⁶³ In this way, CAP laws “codify common sense.”⁶⁴ They codify responsible gun safety practices that save children’s lives. A strong CAP law in Ohio could have saved at least thirteen out of the 26 lives that were lost between 2004 and 2008 to accidental shootings.⁶⁵ That is thirteen young people who would still be alive today.

State Laws to Prevent Child Access to Guns*

| | Child Access Prevention (CAP) Laws | | | State Minimum Age Requirements | | | |
|----------------------|------------------------------------|------------------------------------------|-----------------------------------------------|------------------------------------------|-------------------------------------|---------------------------------------|-----------------------------------------|
| | Require Locking Devices | Criminal Liability for Negligent Storage | Criminal Liability for Providing Gun to Minor | Definition of a Minor for State CAP Laws | Minimum Age for Handgun Purchases** | Minimum Age for Handgun Possession*** | Minimum Age for Long Gun Possession**** |
| Alabama | | | | | | | 16 |
| Alaska | | | | | 18 | | |
| Arizona | | | | | 18 | | |
| Arkansas | | | | | 18 | | |
| California | X | X | | <18 | 21 | | |
| Colorado | | | X | <18 | | | |
| Connecticut | X | X | | <16 | | 21 | |
| Delaware | | | X | <18 | 21 | | |
| District of Columbia | | | | | 21 | 21 | 21 |
| Florida | | X | | <16 | 18 | | 18 |
| Georgia | | | X | <18 | | | |
| Hawaii | | X | | <16 | 21 | 21 | 18 |
| Idaho | | | | | 18 | | 18 |
| Illinois | X | X | | <14 | 21 | 21 | 21 |
| Indiana | | | X | <18 | | | 18 |
| Iowa | | X | | <14 | 21 | 21 | 18 |
| Kansas | | | | | | | |
| Kentucky | | | X | <18 | | | |
| Louisiana | | | | | 18 | | |
| Maine | | | | | 18 | | |
| Maryland | X | X | | <16 | 21 | 21 | |
| Massachusetts | X | X | | <18 | 21 | 21 | |
| Michigan | X | | | | | | 18 |
| Minnesota | | X | | <18 | | | 16 |
| Mississippi | | | X | <18 | 18 | | |
| Missouri | | | X | <18 | 18 | | |
| Montana | | | | | | | 14 |
| Nebraska | | | | | | | |
| Nevada | | | X | <18 | 18 | | 18 |
| New Hampshire | | X | | <16 | | | |
| New Jersey | X | X | | <16 | 21 | 21 | 18 |
| New Mexico | | | | | | 19 | |
| New York | X | | | | | 21 | 16 |
| North Carolina | | X | | <18 | | | |
| North Dakota | | | | | 18 | | |
| Ohio | | | | | 21 | | |
| Oklahoma | | | X | <18 | 18 | | 18 |
| Oregon | | | | | 18 | | 18 |
| Pennsylvania | X | | | | 18 | | 18 |
| Rhode Island | X | X | | <16 | 21 | | 18 |
| South Carolina | | | | | 21 | 21 | |
| South Dakota | | | | | | | |
| Tennessee | | | X | <18 | | | |
| Texas | | X | | <17 | 18 | | |
| Utah | | | X | <18 | | | 18 |
| Vermont | | | | | 16 | | |
| Virginia | | | X | <14 | | | |
| Washington | | | | | | | 18 |
| West Virginia | | | | | | | |
| Wisconsin | | | X | <14 | 18 | | 18 |
| Wyoming | | | | | | | |
| TOTAL | 10 states | 14 States | 13 States | 13 States | 28 States and D.C. | 10 States and D.C. | 20 States and D.C. |

*Blank spaces in the chart indicate absence of any state legislation or regulation for minimum age requirement.

**These state laws apply to both licensed and unlicensed dealers. Federal law prohibits licensed dealers from selling handguns or ammunition to anyone under 21. Unlicensed dealers are barred from selling handguns or handgun ammunition to anyone under 18.

***Federal law makes it illegal for anyone under 18 to possess a handgun or handgun ammunition.

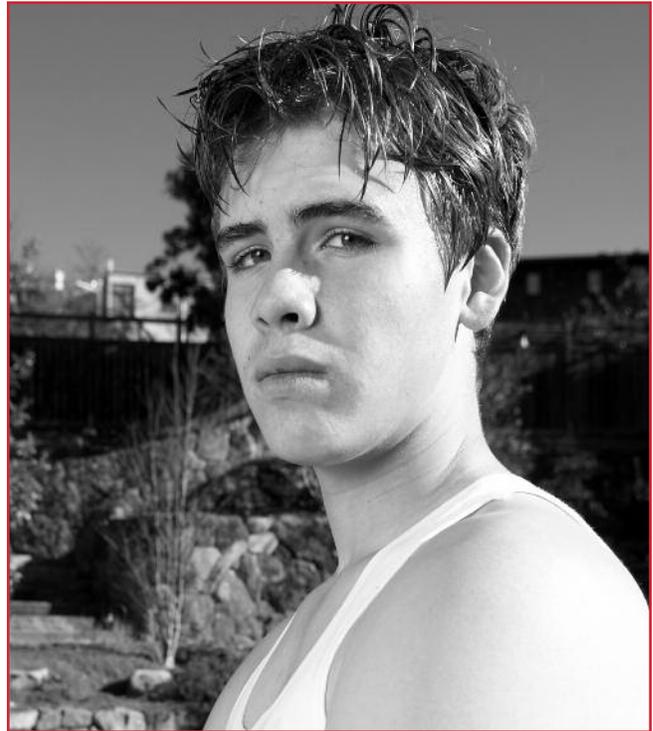
****There is no federal minimum age for possession of long guns.

Source: Legal Community Against Violence. 2008. Regulating Guns in America: An Evaluation and Comparative Analysis of Federal, State and Selected Local Gun Laws. Available at https://lcav.org/publications-briefs/regulating_guns.asp. Accessed December 2011.

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And CAP laws not only save lives, they reduce costs. Gun violence imposes significant direct and indirect economic costs on all of us. “The most obvious” and direct economic costs associated with firearm injuries and fatalities “are health-related” including costs for medical care, mental health, and emergency transport.⁶⁶ In Ohio, the average hospital charge for a gunshot patient between 2005 and 2007 was \$34,896, and firearm-related hospitalizations accounted for an annual average of \$37.2 million.⁶⁷ While private health insurance may pay for some of these costs, taxpayers and insurance holders are burdened by paying the rest, as approximately 80% of gunshot victims are uninsured.⁶⁸ Indirect economic costs include lost productivity of gunshot victims; hiring law enforcement to ensure safety, especially children’s safety; prosecuting and incarcerating perpetrators; and increased housing costs as families flee from neighborhoods with decreased property values due to gun violence.⁶⁹ Two economists from Duke University and Georgetown University estimated that gun violence, including homicides, accidental shootings, and gun suicides, costs Americans \$100 billion per year, “of which roughly \$15 billion is attributable to gun violence against youth.”⁷⁰ The Ohio Commission on the Prevention of Injury reported that firearm-related fatalities cost Ohioans approximately \$733 million a year.⁷¹

Gun violence also takes an obvious emotional and psychological toll on friends and family members. Common negative psychological effects associated with exposure to gun violence are sleep distortion, anger, withdrawal, nervousness, loneliness, depression, post traumatic stress, poor school performance, increased substance abuse, and desensitization to violence.⁷² All children exposed to gun violence, no matter if they are the victims, perpetrators, or witnesses, experience these effects,⁷³ but it is the children directly affected by it who are at highest risk for psychological trauma from gun violence. They include the children who are injured, who witness gun violence at close proximity, and who are exposed to high levels of gun violence in their homes, schools or communities.⁷⁴ Noah’s mother, Jodi Sandoval, understood this fact well when she



spoke out against the prosecution of Levi Reed, Noah’s friend who pulled the trigger. She recognized the mental and psychological anguish that could result if Levi were charged: “I can’t see the sense of making [Levi] suffer more than he already is.”⁷⁵

CAP Laws are Constitutional

If instituted in Ohio, a CAP law would pass constitutional muster because CAP laws intend to protect children without taking away one’s Second Amendment right. After the 2010 Supreme Court case of *McDonald v. City of Chicago*, which held that the Second Amendment’s guarantee of an individual right to bear arms for self-defense extended to the states,⁷⁶ the constitutionality of state CAP laws were challenged across the country. The Brady Center to Prevent Gun Violence has reported however, that since the *McDonald* decision, “the courts have overwhelmingly rejected” more than 400 challenges to state and local gun safety laws, including CAP laws.⁷⁷

The Massachusetts Supreme Judicial Court (SJC) in the case of *Commonwealth v. Runyan* explained very well why CAP laws survive after *McDonald*. In *Runyan*, the

constitutionality of Massachusetts' CAP law—imposing criminal liability on gun owners who fail to store their firearms in locked containers or bound by triggers locks when not under their control⁷⁸—was challenged.⁷⁹ Although the case was decided before *McDonald*, the SJC stated in dicta that the CAP law complies with the Second Amendment because it places only a minor restriction on the owners' ability to access a firearm for self-defense.⁸⁰ *Runyan* stands for the proposition that even the strongest CAP laws pass constitutional muster.

Moreover, CAP laws are straightforward in their intent and purpose without taking away one's Second Amendment right. As one scholar stated, CAP laws tell gun owners:

You own a dangerous instrumentality that can be used to instantly end a human life. You must store it in a reasonably safe way. If you fail to do so and a child or other unauthorized user gains possession of it and uses it to inflict harm, you will be held responsible.⁸¹

CAP laws simply require gun owners to “act reasonably in safeguarding a product”⁸² that contributes to thousands of deaths and injuries for children every year.⁸³

Recommendations for a Model CAP Law in Ohio

Ohio needs to implement a strong CAP law so that guns will be stored safely and securely—reducing firearm injuries and deaths among children, and reducing economic and psychological costs for all Ohioans. A comprehensive and effective CAP law:

- *Prohibits negligent storage of guns “in any place” or “within any premises.”*

A model CAP law that mandates safe storage “in any place,” like Massachusetts, or “within any premises,” like California, is all-inclusive. Although, “[a]pproximately

90% of fatal firearm incidents involving children occur within the home,”⁸⁴ there are 10% of fatal firearm incidents that occur elsewhere. For instance, one fatal firearm incident occurred in a car when a father of a three-year-old boy stopped for gas and left his gun underneath his car seat.⁸⁵ The father's young son scrambled out of his child seat, found the gun, and fatally shot himself in the head.⁸⁶ A CAP law that prohibits negligent storage of guns “in any place” could have saved the boy's life.

- *Imposes felony liability on gun owners whenever minors gain access to guns and injury or death occurs as a result.*

A model CAP law should include a provision that imposes felony liability because studies show that CAP laws with felony charges appear to have a stronger effect in reducing accidental shootings than those with misdemeanor charges.⁸⁷ For instance, one study reported a greater reduction in non-fatal gun injuries in states with CAP laws that imposed felony penalties.⁸⁸ While all state CAP laws were associated with a 17% decline in unintentional firearm death rates among children, Florida's CAP law, which permits felony prosecution,⁸⁹ was associated with a 51% decline.⁹⁰

- *Obligates gun owners to store guns (1) unloaded, (2) locked, with (3) ammunition locked and (4) ammunition stored in a separate location whenever they know or reasonably should know that children are likely to gain access to guns.*

A model CAP law should include a provision that mandates these safe storage practices because evidence shows that the risk of injury or death is greatly reduced when all four practices above are implemented.⁹¹ One study found that each practice was “associated with a protective effect,” as each significantly reduced “the risk of unintentional and self-inflicted firearm injuries and deaths among adolescents and children.”⁹² Locking guns reduces the risk of unintentional firearm injury by 74% and the risk of suicide by 73%; unloading guns reduces the risk of unintentional firearm injury by 81% and the risk of

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suicide by 61%; locking ammunition reduces the risk of unintentional firearm injury by 65% and the risk of suicide by 60%; storing guns and ammunition in different locations reduces the risk of unintentional firearm injury by 40% and the risk of suicide by 44%.⁹³ Implementing all four of these measures (unloading, locking, storing ammunition locked, and storing ammunition in a separate location) reduces the risk of unintentional firearm injuries by 99% and the risk of suicide by 97.6%.⁹⁴ It is clear that the odds of preventing firearm injuries and deaths among children increase when these feasible safe storage practices are implemented. These practices save children's lives.

- *Provides an exception to the law for carrying guns or holding guns under one's immediate control.*

An exception in the CAP law that allows for an individual to engage in self-defense is necessary in order for the law to pass constitutional muster. As stated earlier, Massachusetts provides an exception to its CAP law for guns “carried by or under the control of the owner.”⁹⁵ The Massachusetts Supreme Judicial Court made clear in *Runyan* that it was this exception that maintained the law's constitutionality.⁹⁶

- *Defines minors as children under the age of eighteen.*

A model CAP law should define minors as children under the age of eighteen because if the definition included an age limit lower than eighteen, it would leave out a critical age group that needs protection from guns. In 2010, firearm homicide was the second leading cause of death among fifteen to eighteen year olds, followed by firearm suicide as the third leading cause.⁹⁷ Preventing access to firearms among this age

group, therefore, is absolutely imperative. One scholar has argued that “minors” should be defined as persons under the age of twenty-one because “the limitations on when someone is mature enough to use a gun should be more restrictive than drinking and voting, not less,” especially “[c]onsidering the dangerous nature of guns.”⁹⁸

- *Requires that warnings be distributed to gun purchasers—educating them on the law and informing them of the consequences they face if they do not store guns safely and securely.*

Warnings, similar to New Jersey's,⁹⁹ must be distributed to gun purchasers because the act of passing a model CAP law does not “automatically guarantee,”¹⁰⁰ that gun owners will comply. A model warning provision would put gun purchasers on notice by stating: “IT IS A CRIMINAL OFFENSE, PUNISHABLE BY LAW, FOR AN ADULT TO LEAVE A LOADED, UNLOCKED FIREARM WITHIN EASY ACCESS OF A MINOR. IF A MINOR IS LIKELY TO ACCESS A FIREARM, THE ADULT MUST STORE THE GUN UNLOADED, LOCKED, WITH AMMUNITION LOCKED IN A SEPARATE LOCATION.”

Conclusion

A model CAP law that includes all of these provisions is “common-sense” legislation. It is the most effective means of reducing and ultimately eliminating firearm deaths and injuries among children in Ohio.¹⁰¹ The research shows that CAP laws work: they could mean “the difference between life and death.”¹⁰² The Ohio legislature, therefore, has no excuse but to enact a comprehensive and effective CAP law. We must protect our youth from the proliferation of guns.

Endnotes

- ¹ Rebecca McKinsey & Jim Woods, *Teen Boy Killed after Sleepover: Police Say 14-Year-Old Was Shot By Friend in Apparent Gun Accident*, COLUMBUS DISPATCH, July 6, 2012, available at <http://www.dispatch.com/content/stories/local/2012/07/06/teen-boy-killed-after-sleepover.html>.
- ² *Id.*
- ³ Allison Manning, *Boy Charged in Shooting Death of Friend: Victim's Mother to Fight Homicide Counts*, COLUMBUS DISPATCH, July 27, 2012, available at <http://www.dispatch.com/content/stories/local/2012/07/27/boy-charged-in-friends-shooting-death.html>. Jodi Sandoval, Noah's mother, opposed the charges by stating: "The child [Levi] is innocent . . . putting him in the criminal-justice system will not help anyone . . . [it] will only bring about more suffering." *Id.*
- ⁴ CHILDREN'S DEFENSE FUND, PROTECT CHILDREN NOT GUNS 2012, at 2 (2012), available at <http://www.childrensdefense.org/child-research-data-publications/data/protect-children-not-guns-2012.pdf> [hereinafter CDF GUN REPORT].
- ⁵ *Id.*, at 2–3 citing CENTERS FOR DISEASE CONTROL AND PREVENTION, FATAL INJURY REPORTS 2008–09, which CDF accessed by using the Web-based Injury Statistics Query and Reporting System (WISQARS), available at <http://www.cdc.gov/injury/wisqars/index.html>.
- ⁶ L.T. Dresang, *Gun Deaths in Rural and Urban Settings: Recommendations for Prevention*, 14 J. AM. Bd. FAM. PRAC. 107, 107 (2001).
- ⁷ CDF GUN REPORT, at 2–3 citing FATAL INJURY REPORTS 2008–09, *supra* note 5.
- ⁸ *Id.*
- ⁹ *Id.*
- ¹⁰ See U.S. DEPARTMENT OF JUSTICE, PROMISING STRATEGIES TO REDUCE GUN VIOLENCE 170 (1999), available at http://www.ojjdp.gov/pubs/gun_violence/173950.pdf (1999) (estimating that approximately 30 percent of all handguns in the home are left loaded and unlocked—making them easily accessible to children and teens).
- ¹¹ Catherine A. Okoro et al., *Prevalence of Household Firearms and Firearm-Storage Practices in the 50 States and the District of Columbia: Findings from the Behavioral Risk Factor Surveillance System, 2002*, 116 PEDIATRICS e370, e372 (2005), available at <http://pediatrics.aapublications.org/cgi/content/full/116/3/e370> (finding in a 2005 national sample study that an estimated "1,692,610 children and youth in the United States" were living in households with loaded and unlocked guns).
- ¹² *Id.*, at e370; see Adrienne T. Washington, *Unlocked Guns are an Open Door to Tragedy*, WASH. TIMES, Dec. 1, 1998, at C2.
- ¹³ David C. Grossman et al., *Self-Inflicted and Unintentional Firearm Injuries Among Children and Adolescents: The Source of the Firearm*, 153 ARCH PEDIATR. ADOLESC. MED. 875, 875 (1999) (sample included youth who sought medical treatment at a level I trauma center for a self-inflicted or accidental firearm injury).
- ¹⁴ See Garen J. Wintermute et al., *When Children Shoot Children: 88 Unintended Deaths in California*, 257 JAMA 3107, 3107–09 (1987).
- ¹⁵ LAW CENTER TO PREVENT GUN VIOLENCE, *Locking Devices Policy Summary, in REGULATING GUNS IN AMERICA—AN EVALUATION AND COMPARATIVE ANALYSIS OF FEDERAL, STATE AND SELECTED LOCAL GUN LAWS* 223, 223 (2008), available at <http://smartgunlaws.org/regulating-guns-in-america-an-evaluation-and-comparative-analysis-of-federal-state-and-selected-local-gun-laws/>.
- ¹⁶ NATIONAL INSTITUTE OF MENTAL HEALTH, SUICIDE IN THE U.S.: STATISTICS AND PREVENTION: A FACT SHEET OF STATISTICS ON SUICIDE WITH INFORMATION ON TREATMENTS AND SUICIDE PREVENTION, available at <http://www.nimh.nih.gov/health/publications/suicide-in-the-us-statistics-and-prevention/index.shtml> (last visited Nov. 7, 2012).
- ¹⁷ CENTERS FOR DISEASE CONTROL AND PREVENTION, FATAL INJURY REPORTS 2004–2008, which was accessed by using the Web-based Injury Statistics Query and Reporting System (WISQARS), available at <http://www.cdc.gov/injury/wisqars/index.html>.
- ¹⁸ *See Id.*
- ¹⁹ Lori Kurtzman, *Dad is Indicted in Son's Death: Child, 3, Shot Himself in the Eye with Gun Found in his Home*, COLUMBUS DISPATCH, Sept. 19, 2012, at B1.
- ²⁰ Laren Arenschiold, *Child Endangerment: Felony Charges Possible for Dad: Toddler Found His Gun, Then Shot Him in Side as He Slept*, COLUMBUS DISPATCH, Sept. 25, 2012, available at <http://www.dispatch.com/content/stories/local/2012/09/25/felony-charges-possible-for-dad.html>.
- ²¹ *See supra* notes 19–20.
- ²² FATAL INJURY REPORTS 2004–2008, *supra* note 17.
- ²³ *See* Ohio Department of Health & Ohio Children's Trust Fund, OHIO CHILD FATALITY REVIEW TENTH-ANNUAL REPORT 2010, at 43–44 (2010), available at <http://www.childdeathreview.org/reports/OH2010.pdf>.
- ²⁴ Lawrence Budd, et al., *More Youth Try Suicide in Disturbing Local Trend: Families Searching for Answers in 3 Children's Deaths this Spring*, DAYTON DAILY NEWS, June 2, 2012, available at <http://www.daytondailynews.com/news/news/local/more-youths-try-suicide-in-disturbing-local-tren-1/nPRzC/>.
- ²⁵ *Id.*
- ²⁶ FATAL INJURY REPORTS 2004–2008, *supra* note 17.
- ²⁷ *See* OHIO CHILD FATALITY REVIEW TENTH-ANNUAL REPORT 2010, *supra* note 23 at 43–44.
- ²⁸ Sabrina Tavernise & Jennifer Preston, *Ohio Shooting Suspect Confesses Prosecutors Say*, NY TIMES, Feb. 28, 2012, available at <http://www.nytimes.com/2012/02/29/us/ohio-school-shooting-suspect-confesses-prosecutor-says.html?pagewanted=all>.
- ²⁹ *Id.*
- ³⁰ *See id.*; Christopher Johnston, *The Cleveland High School Shooting: Portrait of the Suspect as Teenager*, TIME.COM, Mar. 2, 2012, available at <http://www.time.com/time/nation/article/0,8599,2108135,00.html>.
- ³¹ CDF GUN REPORT, *supra* note 4, at 6; see Baxley & Miller, *Parental Misperceptions About Children and Firearms*, 160 ARCHIVES PEDIATRICS & ADOLESCENT MED. 542, 546 (2006) (finding from a study of 314 parent-child groups that "common preventative measures for ensuring children's safety around household guns" (i.e., discussing gun safety) "fail to prevent children from gaining unacknowledged access to household guns and may, in fact, lead parents to have misplaced confidence in their ability to accurately predict their children's broader experience with guns in the home"); see also Holly Zachariah, *Legal Fight Ends, But Case Has No Winners*, COLUMBUS DISPATCH, July 24, 2011, available at <http://www.dispatch.com/content/stories/local/2011/07/24/legal-fight-ends-but-case-has-no-winners.html> (reporting the self-inflicted accidental shooting of a 16-year-old boy whose family did not at first believe he shot himself because he "was an experienced hunter" and "weapons enthusiast" who "practiced gun safety").
- ³² Kurtzman, *supra* note 19, at B2.
- ³³ *Id.*
- ³⁴ Budd, *supra* note 24.
- ³⁵ *Id.*

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³⁶ See LAW CENTER TO PREVENT GUN VIOLENCE, *Child Access Prevention, in REGULATING GUNS IN AMERICA—AN EVALUATION AND COMPARATIVE ANALYSIS OF FEDERAL, STATE AND SELECTED LOCAL GUN LAWS* 233, 234–35 (2008), available at <http://smartgunlaws.org/regulating-guns-in-america-an-evaluation-and-comparative-analysis-of-federal-state-and-selected-local-gun-laws/>. CAP laws are mostly state laws as opposed to federal or local laws. See *supra*, at 233.

³⁷ Violations of safe-storage laws are generally misdemeanors, but some states “classify violations as felonies.” Andrew J. McClurg, *Child Access Prevention Laws: A Common Sense Approach to Gun Control*, 18 ST LOUIS PUB. L. REV. 47, 63 (1999).

³⁸ LAW CENTER TO PREVENT GUN VIOLENCE, *supra* note 36, at 236; see CDF GUN REPORT, *supra* note 4, at 27 (Safe storage laws impose criminal liability on gun owners when they “know or reasonably should know” that a “minor” or “child” may gain access to a gun.); McClurg, *supra* note 37, at 61.

³⁹ See CDF GUN REPORT, *supra* note 4, at 27.

⁴⁰ *Id.*

⁴¹ See *id.*, at 27, n.37; McClurg, *supra* note 37, at 62–63.

⁴² Cal. Penal Code § 12035(b)(2) (2012).

⁴³ Cal. Penal Code § 12035(c).

⁴⁴ *Id.*

⁴⁵ See e.g., *supra* notes 31–35; Jennifer Sullivan, *After Third Child Is Shot, Some Say State's Gun Laws Are Too Lax*, SEATTLE TIMES, March 14, 2012, available at http://seattletimes.com/html/localnews/2017752432_shooting15m.html (describing a tragic accident involving the death of a three-year-old, where the child scrambled out of his child seat and found a gun that his mother's boyfriend left under the driver's seat of the car while the boyfriend was pumping gas).

⁴⁶ See Kurtzman, *supra* note 19, at B1–B2.

⁴⁷ Laura Arenschiold, *Child Endangerment: Felony Charges Possible for Dad: Toddler Found His Gun, Then Shot Him in Side As He Slept*, COLUMBUS DISPATCH, Sept. 25, 2012, available at <http://www.dispatch.com/content/stories/local/2012/09/25/felony-charges-possible-for-dad.html>; see also McClurg, *supra* note 37, at 77–78 (telling the story of his friend “Ted,” a responsible, intelligent, well-educated, successful lawyer and great father, who was embarrassed when he found out he left his semi automatic pistol lying in plain view on his dresser).

⁴⁸ Holly Zachariah, *Are Adults to Blame When Kids Shoot Kids?: Arms Found at Home Used in 3 Incidents Since Jan. 1*, COLUMBUS DISPATCH, Feb. 22, 2009, available at http://www.dispatch.com/content/stories/local/2009/02/22/SHOOTINGS.ART_ART_02-22-09_A1_P7DOCHV.html (Capt. David Hall of the Scioto County sheriff's office spoke these words after an eight-year-old boy found a shotgun in his house and accidentally shot and killed his baby brother; he “used the tragedy as a opportunity to preach gun safety, specifically, the benefits of gun locks.”).

⁴⁹ See McClurg, *supra* note 37, at 68.

⁵⁰ N.J. STAT. ANN § 2C:58-16(a)(2012).

⁵¹ Richard Florida, *The Geography of Gun Deaths*, ATLANTIC, Jan. 13, 2011, available at <http://www.theatlantic.com/national/archive/2011/01/the-geography-of-gun-deaths/69354/> (finding “substantial negative correlations between firearm deaths and states that . . . mandate safe storage requirements for guns”); see also Andrew J. McClurg, *supra* note 37, at 58–59 (arguing that CAP laws reduce intentional shootings because they prevent guns from being stolen and because “large numbers of stolen guns are used in crimes,” CAP laws therefore must also reduce the rates of crimes, or intentional shootings). *But see* John R. Lott, Jr. & John E. Whitley, *Safe-Storage Gun Laws: Accidental Deaths, Suicides, and Crime*, 44 J LAW & ECON 659, 659–86 (2000) (finding that CAP laws produce no significant change in accidental deaths or suicides, and they raise crime rates). According to McClurg, Lott “has been called the ‘latest

darling of gun advocates’ for his prolific advocacy against gun control and for concealed weapons laws.” See McClurg, *supra*, at 48 n.2 quoting M.W. Guzy, *Soft Logic of Hard Facts On Guns*, ST. LOUIS POST DISPATCH, July 22, 1998, at B7.

⁵² Florida, *supra* note 51.

⁵³ See Jeff DeSimone & Sara Markowitz, *The Effect of Child Access Prevention Laws on Non-Fatal Gun Injuries* 3–4 (National Bureau of Econ. Research, Working Paper No. 11613, 2005), available at <http://www.nber.org/papers/w11613.pdf>.

⁵⁴ *Id.*, at 24.

⁵⁵ See Peter Cummings et al., *State Gun Safe Storage Laws and Child Mortality Due to Firearms*, 278 JAMA 1084, 1084–86 (1997).

⁵⁶ Daniel Webster et al., *Reexamining the Association Between Child Access Prevention Gun Laws and Unintentional Shooting Deaths of Children*, 106 PEDIATRICS 1466, 1466–69 (2000). Webster's study also revealed that the laws' effects were not equal across states likely due to the criminal charge attached. See *id.* States with felonies had more significantly reduced rates than states with lower criminal liability CAP laws. *Id.* Florida was found to have a 51% decline in unintentional firearm death rates. *Id.*

⁵⁷ Ezra Klein, *Six Facts About Guns, Violence, and Gun Control* WASHINGTON POST, July 23, 2012, available at <http://www.washingtonpost.com/blogs/ezra-klein/wp/2012/07/23/six-facts-about-guns-violence-and-gun-control/> (reporting that what the economist Richard Florida found in his study was “perhaps, perfectly predictable: states with tighter gun control laws appear to have fewer gun-related deaths”).

⁵⁸ Editorial, *Candidates Cower on Gun Control*, NY TIMES, July 27, 2012, at A22 (Studies prove policies that require safe storage “actually work.”).

⁵⁹ See CDF GUN REPORT, *supra* note 4, at 27.

⁶⁰ Ohio Revised Code (ORC) § 2923.25 (2012) (“Each federally licensed firearms dealer who sells any firearm, at the time of the sale of the firearm, shall offer for sale to the purchaser of the firearm a trigger lock, gun lock, or gun locking device that is appropriate for that firearm.”).

⁶¹ Locking device laws do not mention the term “minors” or “persons under the age of eighteen.” Unlike CAP laws, they are not intended by design to protect children.

⁶² See *supra* notes 51–56.

⁶³ McClurg, *supra* note 37, at 52.

⁶⁴ *Id.*, at 78.

⁶⁵ See *supra* notes 17 and 56 (using Florida's 51% decline in unintentional firearm death rates).

⁶⁶ Kathleen Reich, et al., *Children, Youth, and Gun Violence: Analysis and Recommendations*, in CHILDREN, YOUTH, AND GUN VIOLENCE, 12 FUTURE OF CHILDREN 5, 10 (Richard Behrman, ed. 2002), available at http://futureofchildren.org/futureofchildren/publications/docs/12_02_FullJournal.pdf; see John Rosenthal, *Health Care Costs and Gun Violence*, HUFFINGTON POST, Dec. 15, 2009, available at http://www.huffingtonpost.com/john-rosenthal/health-care-costs-and-gun_b_393054.html.

⁶⁷ CENTER FOR INJURY RESEARCH AND POLICY, OHIO INJURIES: FIREARMS, NATIONWIDE CHILDREN'S (last visited October 26, 2012), available at <http://www.nationwidechildrens.org/center-for-injury-research-and-policy-ohio-injuries-firearms>.

⁶⁸ John Rosenthal, *Healthcare Costs and Gun Violence*, HUFF POST, Dec. 15, 2009, available at http://www.huffingtonpost.com/john-rosenthal/health-care-costs-and-gun_b_393054.html.

⁶⁹ See Philip J. Cook & Jens Ludwig, *The Costs of Gun Violence Against Children*, in CHILDREN, YOUTH, AND GUN VIOLENCE, 12 FUTURE OF CHILDREN 87, 87–97 (Richard Behrman, ed. 2002), available at http://futureofchildren.org/futureofchildren/publications/docs/12_02_FullJournal.pdf.

⁷⁰ *Id.*, at 88. Cook and Ludwig arrived at that number by looking at a nationally representative telephone survey of 1,200 people, in which researchers asked each person how much he or she would pay per year to reduce criminal gunshot injuries. *Id.* at 97. They reached a figure of around \$80 billion. See *id.*, at 95; Fox Butterfield, *2 Economists Give Far Higher Cost of Gun Violence*, NY TIMES, September 15, 2000, available at <http://www.nytimes.com/2000/09/15/us/2-economists-give-far-higher-cost-of-gun-violence.html?pagewanted=print&src=pm>. The remaining sum of \$20 billion came from previous studies estimating the costs of nonfatal injuries such as accidental shootings and gun suicides. See Cook & Ludwig, *supra* note 71, at 96; see Butterfield, *supra*.

⁷¹ OHIO COMMISSION ON THE PREVENTION OF INJURY, FIREARM-RELATED INJURIES 2(2003) available at <http://www.publicsafety.ohio.gov/links/Firearm%20injuries.pdf> (\$733 million includes “direct (medical, legal and administrative costs) and indirect (productivity and work loss) costs.”).

⁷² See Gabarino et. al., *Mitigating the Effects of Gun Violence on Children and Youth*, in CHILDREN, YOUTH, AND GUN VIOLENCE, 12 FUTURE OF CHILDREN 73, 73–83 (Richard Behrman, ed. 2002), available at http://futureofchildren.org/futureofchildren/publications/docs/12_02_FullJournal.pdf.

⁷³ See *id.*, at 76 (explaining that “exposure to violence in the community, in schools, or in the media” puts children at risk for psychological trauma).

⁷⁴ See *id.* (“[C]hildren are especially at risk for psychological trauma if they are directly exposed to or victimized by violence.”).

⁷⁵ Rebecca McKinsey, *Mom Who Lost Son Speaks at Children’s Defense Fund Conference*, THE COLUMBUS DISPATCH, July 24, 2012, available at <http://www.dispatch.com/content/stories/local/2012/07/24/mom-who-lost-son-speaks-at-childrens-defense-fund-conference.html>.

⁷⁶ McDonald v. City of Chicago, 130 S. Ct. 3020, 3050 (2010). The Supreme Court held two years earlier in *District of Columbia v. Heller* that there is a Second Amendment individual right to bear arms for self-defense. *District of Columbia v. Heller*, 554 U.S. 570, 636 (2008) (holding that the Second Amendment takes “absolute prohibition of handguns held and used for self-defense in the home” “off the table”).

⁷⁷ DAN VICE & KELLY WARD, BRADY CENTER TO PREVENT GUN VIOLENCE, HOLLOW VICTORY? GUN LAWS SURVIVE THREE YEARS AFTER DISTRICT OF COLUMBIA V. HELLER, YET CRIMINAL AND THE GUN LOBBY CONTINUE THEIR LEGAL ASSAULT (2011), available at <http://www.bradycampaign.org/studies/view/235/>.

⁷⁸ Mass. Gen. Laws ch. 140 § 131L(a)(2012) (“It shall be unlawful to store or keep any firearm, rifle or shotgun in any place unless such weapon is secured in a locked container or equipped with a tamper-resistant mechanical lock or other safety device, properly engaged so as to render such weapon inoperable by any person other than the owner or other lawfully authorized user.”).

⁷⁹ Commonwealth v. Runyan, 922 N.E.2d 794, 797–98 (2010).

⁸⁰ *Runyan*, 922 N.E.2d at 799–800 (distinguishing the Massachusetts’ CAP law from the outright ban on handguns, struck down by the Supreme Court in *Heller* and concluding that the Massachusetts law allows for an individual to engage in self-defense); see Brian Driscoll, Note, 45 SUFF LAW REV. 91, 122 (2011), available at http://www.law.suffolk.edu/highlights/stuorgs/lawreview/Volume_45/upload/4-Driscoll_Note_PDF.pdf.

⁸¹ McClurg, *supra* note 37, at 53.

⁸² McClurg, *supra* note 37, at 78.

⁸³ See *supra* note 4.

⁸⁴ See *supra* note 12.

⁸⁵ Donna Blankinship & Doug Esser, *Gun Safety an Issue in Three Kids’ Shootings: Accident in Wash. Occur Over 3 Weeks*, COLUMBUS DISPATCH, Mar. 16, 2012, available at http://www.dispatch.com/content/stories/national_world/2012/03/16/gun-safety-an-issue-in-three-kids-shootings.html.

⁸⁶ *Id.*

⁸⁷ See e.g., Webster, *supra* note 56, at 1468.

⁸⁸ *Id.*

⁸⁹ FLA. STAT. ANN. § 784.05(3) (permitting felony prosecution whenever minors use negligently stored guns “to inflict injury or death” upon themselves or others).

⁹⁰ Webster, *supra* note 56, at 1468.

⁹¹ The American Academy of Pediatrics recommends that if families with children and teens must have guns in their homes, the firearms should be “stored unloaded and locked, with the ammunition locked in a separate place.” American Academy of Pediatrics, *American Academy of Pediatrics Renews Commitment to Preventing Gun Injuries in Children*, AAP.ORG, Oct. 18, 2012, available at <http://www.aap.org/en-us/about-the-aap/aap-press-room/Pages/American-Academy-of-Pediatrics-Renews-Commitment-to-Preventing-Gun-Injuries-in-Children.aspx>.

⁹² David C. Grossman et al., *Gun Storage Practices and Risk of Youth Suicide and Unintentional Firearm Injuries*, 293 JAMA 707, 712 (2005), available at <http://depts.washington.edu/hiprc/pdf/LockboxJAMA.pdf>. In another study of protective factors for risk of suicide, researchers found that those who stored their firearms locked or unloaded, or both, were less likely to commit suicide. See Edmond D. Shenassa et al., *Safer Storage of Firearms at Home and Risk of suicide: A study of Protective Factors in a Nationally Representative Sample*, 58 J. EPIDEMIOLOG COMMUNITY HEALTH 841, 841 (2004), available at <http://jech.bmj.com/content/58/10/841.full.pdf> (The researchers attributed this finding to the fact that unloading and locking guns prolong “the period between the initial decision to commit suicide and the suicidal act;” having these safety measures in place “can potentially decrease” the child’s “fleeting intention to die.”).

⁹³ Grossman, *supra* note 92, at 713.

⁹⁴ *Id.*

⁹⁵ Mass. Gen. Laws ch. 140 § 131L(a)(2012) (“For purposes of this section, such weapon shall not be deemed stored or kept if carried by or under the control of the owner or other lawfully authorized user.”).

⁹⁶ See *supra* notes 80–81.

⁹⁷ See CENTERS FOR DISEASE CONTROL AND PREVENTION, LEADING CAUSE OF DEATH REPORTS 2010, which was accessed by using the Web-based Injury Statistics Query and Reporting System (WISQARS), available at <http://www.cdc.gov/injury/wisqars/index.html>.

⁹⁸ Rachel Shaffer, *Child Access Prevention Laws: Keeping Guns out of Our Children’s Hands*, 27 FORDHAM URB. L.J. 1985, 2023 (1999).

⁹⁹ N.J. STAT. ANN. § 2C:58-16(a) (2012) (“IT IS A CRIMINAL OFFENSE, PUNISHABLE BY A FINE AND IMPRISONMENT, FOR AN ADULT TO LEAVE A LOADED FIREARM WITHIN EASY ACCESS OF A MINOR”); see McClurg, *supra* note 37, at 68.

¹⁰⁰ Shaffer, *supra* note 98.

¹⁰¹ See McClurg, *supra* note 37, at 78; see also Okoro et al., *supra* note 11, at e370 (“The National Rifle Association, medical organizations, and public health agencies all support safe firearm-storage practices in homes with children and youth.”) (citations omitted).

¹⁰² *Id.*



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CDF Mission Statement

The Children's Defense Fund Leave No Child Behind® mission is to ensure every child a *Healthy Start, a Head Start, a Fair Start, a Safe Start* and a *Moral Start* in life and successful passage to adulthood with the help of caring families and communities.

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