

## Child Access Prevention

### Background

Child access prevention (CAP) laws impose criminal liability on adults who negligently leave firearms accessible to children or otherwise allow children access to firearms. Researchers have found that millions of children live in homes with easily accessible guns. A 2000 study of firearm storage patterns in U.S. homes found that “[o]f the homes with children and firearms, 55% were reported to have 1 or more firearms in an unlocked place,” and 43% reported keeping guns without a trigger lock in an unlocked place.<sup>1</sup> A 2005 study on adult firearm storage practices in U.S. homes found that over 1.69 million children and youth under age 18 are living in homes with loaded and unlocked firearms.<sup>2</sup>

The presence of unlocked guns in the home increases the risk of both accidental gun injuries and intentional shootings. A recent study found that 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.<sup>3</sup> At least two studies have found that the risk of suicide increases in homes where guns are kept loaded and/or unlocked.<sup>4</sup>

In October of 2000, the U.S. Secret Service published a study of 37 school shootings in 26 states. That study found that in more than 65% of the cases, the attacker got the gun from his or her own home or that of a relative.<sup>5</sup>

Child access prevention laws have been shown to be effective at reducing unintentional firearm deaths among children. One study found that in twelve states where such laws had been in effect for at least one year, unintentional firearm deaths fell by 23% from 1990-94 among children under 15 years of age.<sup>6</sup> A 2005 study found that the practices of keeping firearms locked, unloaded, and storing ammunition in a locked location separate from firearms serves as a protective measure to reduce youth suicide and unintentional injury in homes with children and teenagers where guns are stored.<sup>7</sup>

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<sup>1</sup> Mark A. Schuster et al., *Firearm Storage Patterns in U.S. Homes with Children*, 90 Am. J. Pub. Health 588, 590 (Apr. 2000).

<sup>2</sup> 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, e371-e372 (Sept. 2005), at <http://pediatrics.aappublications.org/cgi/content/full/116/3/e370>.

<sup>3</sup> David C. Grossman, Donald T. Reay & Stephanie A. Baker, *Self-Inflicted and Unintentional Firearm Injuries Among Children and Adolescents: The Source of the Firearm*, 153 Arch. Pediatr. Adolesc. Med. 875, 875 (Aug. 1999).

<sup>4</sup> Matthew Miller & David Hemenway, *The Relationship Between Firearms and Suicide: A Review of the Literature*, 4 Aggression & Violent Behavior 59, 62-65 (1999) (summarizing the findings of multiple studies).

<sup>5</sup> United States Secret Service, U.S. Department of the Treasury, *An Interim Report on the Prevention of Targeted Violence in Schools* 6 (Oct. 2000).

<sup>6</sup> Peter Cummings et al., *State Gun Safe Storage Laws and Child Mortality Due to Firearms*, 278 JAMA 1084, 1084 (Oct. 1997).

<sup>7</sup> David C. Grossman et al., *Gun Storage Practices and Risk of Youth Suicide and Unintentional Firearm Injuries*, 293 JAMA 707, 711-13 (2005).

## Summary of Federal Law

There are no child access prevention laws at the federal level.<sup>8</sup>

### **SUMMARY OF STATE CHILD ACCESS PREVENTION LAWS**

#### **States with Child Access Prevention Laws**

<a href="#">California</a>	<b>Cal. Penal Code §§ 12035, 12036; Cal. Civ. Code § 1714.3</b>
<a href="#">Colorado</a>	<b>Colo. Rev. Stat. § 18-12-108.7</b>
<a href="#">Connecticut</a>	<b>Conn. Gen. Stat §§ 29-37i, 52-571g, 53a-217a</b>
<a href="#">Delaware</a>	<b>Del. Code Ann. tit. 11, §§ 603, 1456</b>
<a href="#">District of Columbia</a> <sup>9</sup>	<b>D.C. Code Ann. § 7-2507.02</b>
<a href="#">Florida</a>	<b>Fla. Stat. Ann. § 790.174</b>
<a href="#">Georgia</a>	<b>Ga. Code Ann. § 16-11-101.1</b>
<a href="#">Hawaii</a>	<b>Haw. Rev. Stat. Ann. §§ 134-10.5, 707-714.5</b>
<a href="#">Illinois</a>	<b>720 Ill. Comp. Stat. 5/24-9(a); 430 Ill. Comp. Stat. 65/4(c)</b>
<a href="#">Indiana</a>	<b>Ind. Code Ann. § 35-47-10-7</b>
<a href="#">Iowa</a>	<b>Iowa Code § 724.22(7)</b>
<a href="#">Kentucky</a>	<b>Ky. Rev. Stat. Ann. § 527.110</b>
<a href="#">Maryland</a>	<b>Md. Code Ann., Crim. Law § 4-104</b>
<a href="#">Massachusetts</a>	<b>Mass. Gen. Laws ch. 140, § 131L</b>
<a href="#">Minnesota</a>	<b>Minn. Stat. § 609.666</b>
<a href="#">Mississippi</a>	<b>Miss. Code Ann. §§ 97-37-14, 97-37-15</b>
<a href="#">Missouri</a>	<b>Mo. Rev. Stat. § 571.060.1(2)</b>
<a href="#">Nevada</a>	<b>Nev. Rev. Stat. Ann. §§ 41.472, 202.300(1) – (3)</b>
<a href="#">New Hampshire</a>	<b>N.H. Rev. Stat. Ann. § 650-C:1</b>
<a href="#">New Jersey</a>	<b>N.J. Stat. Ann. § 2C:58-15</b>
<a href="#">North Carolina</a>	<b>N.C. Gen. Stat. § 14-315.1</b>
<a href="#">Oklahoma</a>	<b>Okla. Stat. tit. 21, § 1273(B)</b>
<a href="#">Rhode Island</a>	<b>R.I. Gen. Laws § 11-47-60.1</b>

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<sup>8</sup> Federal law does prohibit federally licensed firearms dealers from transferring handguns to persons under 21 and long guns to persons under 18. Unlicensed sellers may not transfers handguns to persons under 18. 18 U.S.C. §§ 922(b)(1), 922(x)(1) and (2). Federal and state laws imposing a minimum age for purchase and possession of firearms are discussed in the section on [Minimum Age to Purchase and Possess Firearms](#).

<sup>9</sup> In 2007 the U.S. Court of Appeals for the District of Columbia Circuit struck down the District of Columbia's strict laws banning most handgun possession in the District, and requiring lawfully owned firearms to be kept unloaded and disassembled or bound by a trigger lock or similar device. *Parker v. District of Columbia*, 478 F.3d 370 (D.C. Cir. 2007). The court held that the laws violate the Second Amendment, interpreting the Amendment to protect an individual right to keep and bear firearms unrelated to service in the militia. The U.S. Supreme Court granted *certiorari* on the following question: Whether the challenged provisions violate the Second Amendment rights of individuals who are not affiliated with any state-regulated militia, but who wish to keep handguns and other firearms for private use in their homes? *District of Columbia v. Heller*, 128 S. Ct. 645, 169 L. Ed. 2d 417 (2007). The Supreme Court is expected to issue its ruling in the case by June 2008.

**States with Child Access Prevention Laws** *(continued from previous page)*

<a href="#">Tennessee</a>	<b>Tenn. Code Ann. §§ 39-17-1319, 39-17-1320</b>
<a href="#">Texas</a>	<b>Tex. Penal Code Ann. § 46.13</b>
<a href="#">Utah</a>	<b>Utah Code Ann. § 76-10-509.6</b>
<a href="#">Virginia</a>	<b>Va. Code Ann. § 18.2-56.2</b>
<a href="#">Wisconsin</a>	<b>Wis. Stat. § 948.55</b>

**State Laws Based on Negligent Storage**

California	Massachusetts
Connecticut	Minnesota
Florida	New Hampshire
Hawaii	New Jersey
Illinois	North Carolina
Iowa	Rhode Island
Maryland	Texas

**States Imposing Criminal Liability for Allowing a Child to Gain Access to the Firearm, Regardless of Whether the Child Uses the Firearm or Causes Injury**

Hawaii  
Maryland  
Massachusetts  
Minnesota  
New Jersey  
Texas

**States Imposing Criminal Liability Only if a Child Uses or Possesses the Firearm**

California  
Connecticut  
Florida  
Illinois  
Iowa  
New Hampshire  
North Carolina  
Rhode Island

**States Imposing Criminal Liability for Negligent Storage of Unloaded Firearms**

California  
Hawaii  
Massachusetts

## State Laws Prohibiting Intentional, Knowing or Reckless Provision of Firearms to Minors

Colorado	Nevada
Delaware	Oklahoma
Georgia	Tennessee
Indiana	Utah
Kentucky	Virginia
Mississippi	Wisconsin
Missouri	

## Description of State Child Access Prevention Laws

The majority of states have laws designed to prevent children from accessing firearms. These laws take a variety of forms. The strongest laws impose criminal liability when a minor gains access to a negligently stored firearm. The weakest merely prohibit persons from directly providing a firearm to a minor. There is a wide range of laws that fall somewhere between these extremes, including laws that impose criminal liability for negligently stored firearms, but only where the child uses the firearm and causes death or serious injury. Weaker laws impose liability only in the event of reckless, knowing or intentional conduct by the adult. States also differ on the definition of “minor” for purposes of preventing access to firearms by children.

1. *Laws Imposing Criminal Liability when a Child Gains Access as a Result of Negligent Storage of a Firearm:* Fourteen states (California, Connecticut, Florida, Hawaii, Illinois, Iowa, Maryland, Massachusetts, Minnesota, New Hampshire, New Jersey, North Carolina, Rhode Island, and Texas) have laws that impose criminal liability on persons who negligently store firearms, where minors could or do gain access to the firearm. Typically, these laws apply whenever the person “knows or reasonably should know” that a child is likely to gain access to the firearm.

There are a number of variations in these types of laws, including whether the child must use the firearm, and whether the firearm must be loaded. The most significant variations are described below:

a. *States Imposing Criminal Liability for Allowing a Child to Gain Access:* The broadest laws apply regardless of whether the child even gains possession of the firearm. Massachusetts and Minnesota impose liability in circumstances where a child *may* (Massachusetts) or *is likely to* (Minnesota) gain access to a firearm. In Hawaii, Maryland, New Jersey and Texas, liability exists whenever a child gains access to an improperly stored firearm. In these states, it is not necessary for the child to use the firearm or cause any injury.

b. *States Imposing Criminal Liability Only if Child Uses or Possesses the Firearm:* California, Connecticut, Florida, Illinois, Iowa, New Hampshire, North

Carolina<sup>10</sup> and Rhode Island require that the child possess or use the firearm in some way before liability attaches. In California, Connecticut, Illinois, Iowa, and Rhode Island, the statute applies when the child uses the firearm to cause death or serious injury. California,<sup>11</sup> Iowa, Florida, New Hampshire and North Carolina also impose liability when the minor takes the firearm to a public place, and/or uses the firearm in a threatening manner. The New Hampshire and North Carolina statutes also impose liability when the child uses the firearm in the commission of a crime.

c. *States Imposing Criminal Liability for Negligent Storage of Unloaded Firearms:* Hawaii and Massachusetts impose liability even if the firearm is unloaded. In the case of handguns only, California imposes liability when the child carries a loaded or unloaded handgun off-premises. All other states require that the firearm be loaded for liability to attach.

d. *Common Exceptions:* States allow several exceptions to their child access prevention laws. The most common exception applies where the firearm is stored in a locked container (California, Connecticut, Florida, Hawaii, Illinois, Iowa, Minnesota, New Hampshire, New Jersey, North Carolina,<sup>12</sup> Rhode Island, Texas). Another common exception applies where the minor gains access to the firearm via illegal entry of the premises (California, Connecticut, Florida, Hawaii, Illinois, Iowa, Maryland, Minnesota, New Hampshire, New Jersey, North Carolina, Rhode Island, Texas). Other exceptions include cases where the firearm is used for hunting, sport shooting and/or agricultural purposes, where the minor uses the firearm in defense of self or others, where the firearm is used in aid of law enforcement, or where the child has completed a firearm safety course.

2. *States Preventing Persons from Intentionally, Knowingly and/or Recklessly Providing Firearms to Minors:* Several states impose a weaker standard for criminal liability when a child is allowed to access a firearm. Colorado, Delaware, Georgia, Indiana, Kentucky, Mississippi, Missouri, Nevada, Oklahoma, Tennessee, Utah, Virginia and Wisconsin prohibit persons from intentionally, knowingly, and/or recklessly providing some or all firearms to children.

- a. *All firearms:* Indiana, Missouri, Nevada,<sup>13</sup> Oklahoma and Utah<sup>14</sup> laws apply to all firearms.
- b. *All loaded firearms:* Delaware,<sup>15</sup> Wisconsin<sup>16</sup> and Virginia<sup>17</sup> prohibit persons from providing loaded firearms to children.

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<sup>10</sup> North Carolina's statute only applies to the negligent storage of firearms by persons who reside with a minor.

<sup>11</sup> California criminalizes the negligent storage of any firearm a child finds and carries to any school or school-sponsored event or activity.

<sup>12</sup> In North Carolina, liability is imposed if the firearm is stored or left "in a condition that the firearm can be discharged."

<sup>13</sup> Nevada makes it a crime to "aid or knowingly permit" a child to possess a firearm, except for hunting under the immediate supervision of an authorized adult.

<sup>14</sup> Utah's law applies only to parents and guardians.

- c. *Handguns only:* Colorado,<sup>18</sup> Georgia, Kentucky, Mississippi<sup>19</sup> and Tennessee laws only prohibit providing handguns to minors.
  - d. *Lesser standard for parents/guardians:* Georgia, Indiana, Kentucky, Oklahoma, Tennessee and Utah impose a lesser standard on parents and guardians, providing that parents may be held liable for providing firearms to children only where they know of a substantial risk that the minor will use the firearm to commit a crime.
3. *Definition of “Minor”:* The age which triggers a state’s child access prevention law varies, ranging from children under 14 to those under 18.

Under 18: California, Colorado, Delaware, Georgia, Indiana, Kentucky, Massachusetts, Minnesota, Mississippi, Missouri, Nevada, North Carolina, Oklahoma, Tennessee, Utah

Under 17: Texas

Under 16: Connecticut, Florida, Hawaii, Maryland, New Hampshire, New Jersey, Rhode Island

Under 14: Illinois, Iowa, Virginia, Wisconsin

4. *States Requiring that All Firearms be Stored with a Locking Device in Place:* Massachusetts and the District of Columbia require that all firearms be stored with locking devices in place to prevent accidental discharge. These laws are another important means to protect children from gaining unauthorized access to firearms and causing death or injury.<sup>20</sup>

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<sup>15</sup> In Delaware, the minor must use the firearm to cause death or serious injury.

<sup>16</sup> Wisconsin’s law applies only where the minor uses the firearm to cause death or serious injury, or exhibits the firearm in a public place.

<sup>17</sup> Virginia also prohibits any person from knowingly authorizing a child under 12 to use a firearm, except when supervised by an adult.

<sup>18</sup> Colorado prohibits providing firearms other than handguns to minors without parental consent.

<sup>19</sup> Mississippi’s statute applies only to parents and guardians.

<sup>20</sup> Additional information about locking devices is contained in the section on [Locking Devices](#).

5. *States Imposing Civil Liability on Persons who Fail to Store Firearms Properly.*<sup>21</sup> California imposes civil liability on the parent/guardian of a minor for damages resulting from the minor's discharge of a firearm, where the parent/guardian permitted the minor to have the firearm or left it accessible to the minor. Connecticut imposes strict liability in civil actions on persons who fail to store firearms securely, where a minor gains access and causes injury or death. In Illinois, when a minor under the age of 21 legally acquires a firearms license by obtaining the permission of a parent/guardian, that parent/guardian becomes liable for civil claims for damages resulting from the minor's use of firearms or ammunition. In Nevada, a parent/guardian is jointly and severally liable with the minor for civil damages caused by permitting the minor to possess a firearm, where the parent/guardian knows or has reason to know that the minor has a propensity to commit violent acts, intends to use the firearm for an unlawful purpose, or has been previously adjudicated delinquent.<sup>22</sup>

## SUMMARY OF SELECTED<sup>23</sup> LOCAL CHILD ACCESS PREVENTION LAWS

### Local Child Access Prevention Laws

**Chicago**

**Chicago, Ill., Code §§ 8-16-090, 8-20-140(c)**

**Cleveland**

**Cleveland, Ohio, Code §§ 627A.02, 627A.03(b)**

*Chicago:* Chicago prohibits any person from selling, loaning, or furnishing to any minor any gun, pistol or other firearm. Minors may be permitted, with the consent of their parents or guardians, to use firearms on the premises of a licensed shooting gallery or gun club.<sup>24</sup> Chicago also requires any person with a registered firearm to keep the firearm

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<sup>21</sup> In October 2005, as part of the Protection of Lawful Commerce in Arms Act (PLCAA), Congress passed and the President signed into law legislation requiring that sales or transfers of handguns by licensed dealers, manufacturers and importers be accompanied by a secure gun storage or safety device. 18 U.S.C. § 922(z). The PLCAA also immunizes any person from a "qualified civil liability action" who is in lawful possession and control of a handgun and who uses a secure gun storage or safety device with the handgun. "Qualified civil liability action" is defined as a civil action for damages resulting from the criminal or unlawful misuse of a handgun by a third party if: (A) the handgun was accessed by another person who did not have the authorization of the lawful possessor; and (B) at the time the handgun was accessed it had been made inoperable by the use of a secure gun storage or safety device. 18 U.S.C. § 922(z)(3). LCAV has not analyzed the impact, if any, of these provisions on civil liability provisions of state child access prevention laws. LCAV notes that in June 2006, the U.S. House of Representatives voted to include in the 2007 appropriations bill funding the Department of Justice (which includes ATF) a provision prohibiting use of the appropriated funds for enforcement of the safety device law. H. Amdt. 1156 to H.R. 5672, 109th Cong. (2006).

<sup>22</sup> In addition, Hawaii imposes absolute liability on the owner of a firearm if the discharge of the firearm causes injury to any person or property. Haw. Rev. Stat. Ann. § 663-9.5.

<sup>23</sup> This section is based on research and analysis of existing firearms laws in: Boston, Massachusetts; Chicago, Illinois; Hartford, Connecticut; Los Angeles, California; Newark, New Jersey; New York, New York; Omaha, Nebraska; and San Francisco, California. LCAV selected these cities because they are located in states that grant local jurisdictions broad authority to regulate firearms. It also includes existing laws in Cleveland and Columbus, Ohio. Note, however, that in 2006, the Ohio Legislature passed House Bill 347 (overriding the Governor's veto), which created Ohio Rev. Code Ann. § 9.68(A), a provision that purports to preempt all local authority to regulate firearms with few, limited exceptions. Legal challenges to the law are pending. Additional information about state laws governing local authority to regulate firearms is contained in the section of this report titled "[The Legal Background.](#)"

<sup>24</sup> Chicago does not define "minor" for purposes of this provision.

unloaded and disassembled or bound by a trigger lock or similar locking device, unless the firearm is in his or her possession at the person's place of residence or business, or while being used for lawful recreational purposes within the city.<sup>25</sup>

*Cleveland:* Cleveland prohibits any person, including a parent or legal guardian, from storing or leaving a loaded or unloaded firearm in any place where the person knows or reasonably should know that a child under age 18 is able to gain access to it. The prohibition is subject to specified exceptions, including supervised use for firearm safety or marksmanship, where access was gained by unlawful entry, and use for lawful self-defense within a domicile.

## FEATURES OF COMPREHENSIVE CHILD ACCESS PREVENTION LAW

The features listed below are intended to provide a framework from which policy options may be considered and debated. LCAV has not attempted to include every provision or every creative approach identified in the analysis above, nor have we addressed appropriate exceptions so that the regulation does not produce unintended consequences. A jurisdiction considering modifying existing, or developing new legislation in this area should consult with counsel to ensure its legal sufficiency and compatibility with existing codes and statutes, as appropriate.

- Criminal liability is imposed on persons who negligently store firearms under circumstances where minors could gain access to the firearm, regardless of whether the minor actually gains access to or uses the firearm (*Massachusetts, Minnesota, Cleveland*)
- Criminal liability is imposed on persons who negligently store firearms even when the firearm is unloaded (*Hawaii, Massachusetts, Cleveland*)
- Civil liability for damages resulting from the discharge of a firearm is imposed on persons who negligently store firearms when a minor gains access<sup>26</sup>

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<sup>25</sup> New York City also requires firearm owners to render their weapons inoperable by use of a safety locking device while the weapon is out of their immediate possession or control. New York, N.Y., Admin. Code §§ 10-311, 10-312(a). Additional information on locking devices is contained in the section on [Locking Devices](#).

<sup>26</sup> Civil liability laws require careful drafting in light of the new Protection of Lawful Commerce in Arms Act (PLCAA). The PLCAA, passed by Congress and signed into law by the President in 2005, grants firearms dealers and others immunity from some civil lawsuits. 15 U.S.C. §§ 7901 - 7903. The Act includes, *inter alia*, the following exceptions:

- (ii) an action brought against a seller for negligent entrustment or negligence per se;
- (iii) an action in which a manufacturer or seller of a [firearm] knowingly violated a State or Federal statute applicable to the sale or marketing of the [firearm], and the violation was a proximate cause of the harm for which relief is sought, including —
  - (I) any case in which the manufacturer or seller knowingly made any false entry in, or failed to make appropriate entry in, any record required to be kept under Federal or State law with respect to the [firearm], or aided, abetted, or conspired with any person in making any false or fictitious oral or written statement with respect to any fact material to the lawfulness of the sale or other disposition of a [firearm]; or
  - (II) any case in which the manufacturer or seller aided, abetted, or conspired with any other person to sell or otherwise dispose of a [firearm], knowing, or having reasonable cause to believe, that the actual buyer of the [firearm] was prohibited from possessing or receiving a

- “Minor” is defined as a child under the age of 18 for long guns (*California, Colorado, Delaware, Georgia, Indiana, Kentucky, Massachusetts, Minnesota, Mississippi, Missouri, Nevada, North Carolina, Oklahoma, Tennessee, Utah*), and a child under the age of 21 for handguns, for purposes of the child access prevention law
- All firearms are required to be stored with a locking device in place (*Massachusetts, District of Columbia, Chicago, New York City*)

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firearm or ammunition under subsection (g) or (n) of section 922 of title 18, United States Code[.]

15 U.S.C. § 7903(5)(A)(ii), (iii).

The scope of the PLCAA and its exceptions is being tested in the courts in several pending cases. In 2005, a federal district court denied a motion to dismiss a suit brought by the City of New York against gun manufacturers and distributors alleging a public nuisance, finding that the case was not precluded by the PLCAA. *City of New York v. Beretta U.S.A. Corp.*, 401 F. Supp.2d 244, 298 (E.D.N.Y. 2005); *but see District of Columbia v. Beretta U.S.A. Corp.*, 2008 D.C. App. LEXIS 4 (D.C. Cir. 2008); *and Illeto v. Glock, Inc.*, 421 F. Supp.2d 1274 (C.D. Cal. 2006) (both granting defendants’ motion for judgment on the pleadings under PLCAA). *See also supra* note 21.