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State Law Regarding Child Access Prevention (CAP) To Firearms

What are CAP Laws?

Child Access Prevention (CAP) laws provide a framework for how firearms should be stored to prevent children from accessing them. There are a variety of levels of CAP laws in the United States. Some CAP laws impose liability on gun owners when a minor gains access to a negligently stored firearm. In other states, CAP laws prohibit directly providing a firearm to a minor. Florida passed the first CAP law in 1989 and today 27 states and Washington D.C. have CAP laws in place.¹

Reasons for the Existence of CAP Laws

CAP laws provide regulations that require safe storage of firearms in order to ensure the safety of youth in homes possessing firearms. According to research published in the *Journal of the American Medical Association*, storing guns securely is likely to prevent accidental injuries among young children.² In addition, the presence of a household firearm is associated with an increased risk of suicide among adults and adolescents.³ In 2004, suicide was the third leading cause of death among children and young adults in the U.S. accounting for 4,599 deaths. Firearms are among the three most common suicide methods.⁴ Suicide is the leading cause of death by firearms in the U.S.⁵ According to the Bureau of Justice Statistics, homicides

¹ Public Health Law Research, "Child Access Prevention (CAP) Laws for Guns."

<http://www.publichealthlawresearch.org/public-health-topics/injury-prevention/gun-safety/evidence-brief/child-access-prevention-cap-laws-gu> (accessed February 8, 2011).

² David C. Grossman, Beth A. Mueller, Christine Riedy, M. Denise Dowd, Andres Villaveces, Janice Prodzinski, Jon Nakagawara, John Howard, Norman Thiersch, and Richard Harruff, "Gun Storage Practices and Risk of Youth Suicide and Unintentional Firearm Injuries," *Journal of the American Medical Association* 293 (2005) <http://jama.ama-assn.org/content/293/6/707.full.pdf+html> (accessed February 2, 2011).

³ Grossman, et al., "Gun Storage Practices and Risk of Youth Suicide and Unintentional Firearm Injuries."

⁴ KM Lubell, SR Kegler, AE Crosby, D Karch, "Suicide Trends Among Youths and Young Adults Aged 10--24 Years-United States, 1990-2004," Division of Violence Prevention, National Center for Injury Prevention and Control, <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5635a2.htm> (accessed February 2, 2011).

⁵ U.S. Centers for Disease Control and Prevention.

committed by teens are most likely to involve guns.⁶ Although youth gun crime is less common than it has been in the past, the use of guns is significantly higher than other methods of homicide.⁷

Negligent storage of firearms in the home allows children of all ages to access them. This may result in experimentation with firearms as well as the use of firearms in crime and suicides. Of the homes with children and firearms, 55% were reported to have one or more firearm in an unlocked place, and 43% contained unlocked firearms (i.e., not in a locked place and not locked with a trigger lock or other locking mechanism).⁸

“The American Academy of Pediatrics (AAP) recommends that homes with children should not have guns, and if a family has a gun, proper storage requires keeping it unloaded and locked up, with ammunition locked up separately from the firearm loaded, and stored with ammunition. A total of 1.4 million homes with 2.6 million children reported storing firearms in a manner that made them potentially accessible to children.”⁹

Summary of State Action

State legislation regarding Child Access Prevention differ both in severity of penalties, as well as in defining what consists of an offense. In some states, like Florida, California, and Connecticut, an offender can be charged with a felony. In most other states, the offense can only be considered a misdemeanor. Most state CAP laws require that a firearm be locked or have a locking mechanism to prevent child access. Certain state CAP laws apply only to loaded firearms, while others apply to both loaded and unloaded firearms. Finally, some state CAP laws require that the child use the firearm to cause death or injury in order to prosecute the owner of the gun. In other states no incident is required and the law can be applied when a child simply gains access to a firearm. In Table 1 we catalogue some of these variations in CAP laws and for U.S. state.

⁶ National Conference of State Legislatures, “Addressing Gun Violence: Guiding Principles for Policy Makers,” last modified May 2005, NCSL Law and Criminal Justice Committee Report, 2011,

<http://ncsl.org/default.aspx?tabid=16211> (accessed February 3, 2011).

⁷ National Conference of State Legislatures, “Addressing Gun Violence: Guiding Principles for Policy Makers.”

⁸ Mark A. Schuster, Todd M. Franke, Amy M. Bastian, Sinaroth Sor, and Neal Halfon, “Firearm Storage Patterns in US Homes with Children,” *American Journal of Public Health*, (April 2000): Vol. 90-4,

<http://www.rand.org/pubs/reprints/RP890.html> (accessed February 2, 2011).

⁹ Sandra M. Sanguino, M. Denise Dowd, Sean A. McEnaney, Jane Knapp, Robert R. Tanz, “Handgun Safety: What Do Consumers Learn from Gun Dealers?” *Archives of Pediatric & Adolescent Medicine* (August 2002): Vol 156, p. 777, <http://archpedi.ama-assn.org/cgi/reprint/156/8/777> (accessed February 2, 2011).

Table 1: State CAP Laws

State (s)	Description of CAP Law(s)
California ¹⁰	Can be applied up to a felony if a child (<18) uses a firearm to threaten, injure or kill, or if the child takes a firearm off the premises without permission. Does not apply if the gun has a child lock, or was stored in a locked container. ⁱ Gun does not have to be loaded.
CO, ¹¹ DE, ¹² GA, ¹³ IN, ¹⁴ KY, ¹⁵ MS, ¹⁶ MO, ¹⁷ NV, ¹⁸ OK, ¹⁹ TN, ²⁰ UT, ²¹ VA, ²² WI ²³	Prohibit unlawful, unknowing or reckless, providing or permitting a juvenile to possess a firearm
Connecticut ²⁴	Illegal to store a Loaded firearm within easy access of a child(<16) if they use it to cause injury or death. Does not apply if: gun has a child lock, or was stored in a locked container. ⁱⁱ Can be applied up to a felony.
District of Columbia ²⁵	States that no person store or keep a firearm on any premises under his or her control if he or she knows or reasonably should know that a minor (< 18) is likely to gain access to the firearm without the permission of the parent or guardian. ⁱⁱⁱ
Florida ²⁶	A person can be charged up to a felony who “stores or leaves, on a premise under his or her control, a loaded firearm, as defined in s. 790.001, 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 the person having charge of the minor.” ^{iv}
Hawaii, ²⁷ Massachusetts ²⁸	Prohibit negligent storage of a firearm (loaded or unloaded) regardless of if the child uses it, requires firearms to have locks or be in locked cases.
Illinois, ²⁹ Iowa, ³⁰ New Hampshire, ³¹ North Carolina, ³² Rhode Island ³³	Prohibit negligent storage of a loaded firearm. Child must use firearm to cause injury or death in order to charge parent/guardian.
Maryland, ³⁴ Minn., ³⁵ N.J., ³⁶ Texas ³⁷	Prohibit negligent storage of a loaded firearm regardless of if the child uses it.

¹⁰ California. penal code. 12035, 12036, Ca. civil code. 1714.3

¹¹ Colo. rev. stat. 18-12-108.7

¹² Del. code ann. Tit. 11; 603,1456

¹³ GA. code ann. 16.11-101.1

¹⁴ Indiana. Code ann. 35-47-10-7

¹⁵ Ky. Rev. stat. ann 527.110

¹⁶ Miss.code.ann.97-37-14,97-37-15

¹⁷ Mo.rev.stat. 571.060.1 (2)

¹⁸ Nev.rev.stat. ann 41.472,202.300 (1)-(3)

¹⁹ Okla.stat.tit. 21, 1273 B

²⁰ Ten. Code ann. 39-17-1319, 39-17, 1320

²¹ Utah code ann. 76-10-509.6

²² VA. Code ann. 18.2-56.2

²³ Wis. Stat. 948.55

²⁴ Connecticut. General stature 29-37i, 52-571g, 53a-217a

²⁵ D.C. Code Ann. § 7-2507.02

²⁶ FL. State Annex 790-174

²⁷ Hawaii. Rev. stat. ann 134-10.5 707-714.5

²⁸ Mass. gen laws. ch.140 131 L

²⁹ 720 Ill. Comp. stat. 5/24-9 (a; 430 Ill. Comp. state.65/4 (c)

³⁰ Iowa code 724.22 (7)

³¹ Nh. Rev. stat. ann 650-c:1

³² NC. gen stat. 14-315.1

³³ RI. gen laws. 11-47-60.1

³⁴ MD. code ann. Crim law 4-104

³⁵ Minn.stat. ann. 609.666

³⁶ Nj. State. Ann. 2c:58-51

³⁷ Tex. Penal Code Ann. 46.13

Effectiveness of CAP Laws

One of the studies regarding the effectiveness of Child Access Prevention (CAP) Laws, published in the *Journal of the American Medical Association* in 1997, estimated the effect of 12 different state CAP laws, which were enacted prior to 1994.³⁸ The study concluded that the CAP laws were associated with a 23% decrease in unintentional shootings among children under 15 years old, with the strongest evidence coming from states that made failure to follow CAP laws a felony. The study found no decline in gun-related suicide deaths following the adoption of CAP laws.³⁹

A more recent and comprehensive study, performed by the Center for Gun Policy and Research at the Johns Hopkins University School of Public Health, investigated the issue of CAP laws from a public health perspective.⁴⁰ This study, completed in the year 2000, took the model and methods of the Cummings study and applied it across the country, accounting for states with and without CAP laws. Their results found that only Florida's CAP law was associated with a decline in accidental deaths of children by firearms. Florida's law, which is the oldest and one of the toughest (violation of it is a felony), resulted in a 51 percent reduction in accidental firearm deaths among children in that state over the eight years for which there was data. While the 14 other states with CAP laws saw no statistically significant reduction in accidental deaths for children, the authors caution that, given the significant findings in Florida, such findings should not be interpreted to say that CAP laws are ineffective—those findings could be because the laws were not in effect long enough, or because those laws are not enforced with felony penalties, or because changes in accidental deaths are hard to track because of deficiencies in the data collection on these incidents.⁴¹

Several medical experts also conducted a study in order to measure the relationship between firearm storage and the risk of firearm injuries by evaluating incidents in which a youth under the age of 20 used a firearm to harm themselves or another, whether intentionally or unintentionally. The factors evaluated were, "(1) whether the subject firearm was stored in a locked location or with an extrinsic lock; (2) whether the firearm was stored unloaded; (3) whether the firearm was stored both unloaded in a locked location; (4) whether the ammunition for the firearm was stored separately; and (5) whether the ammunition was stored in a locked location."⁴² The study concluded that "the 4 practices of keeping a gun locked, unloaded, storing ammunition locked, and in a separate location are each associated with a protective effect and suggest a feasible strategy to reduce these types of injuries in homes with

³⁸ Peter Cummings, David Grossman, Frederick Rivara, and Thomas Koepsell, "State gun safe storage laws and child mortality due to firearms," *Journal of the American Medical Association* 278 (1997): 1084-1086, <http://jama.ama-assn.org/content/278/13/1084.full.pdf+html> (accessed February 2, 2011).

³⁹ Cummings et al., "State gun safe storage laws and child mortality due to firearms."

⁴⁰ Daniel W. Webster and Marc Starnes, "Child Access Prevention Gun Laws and Unintentional Shooting Deaths of Children," *Pediatrics*, Volume 106, No. 6 (December 2000), pp. 1466-1469, accessed February 14, 2011, <http://pediatrics.aappublications.org/cgi/content/abstract/106/6/1466>.

⁴¹ Webster and Starnes, "Child Access Prevention Gun Laws and Unintentional Shooting Deaths of Children."

⁴² Grossman, et al., "Gun Storage Practices and Risk of Youth Suicide and Unintentional Firearm Injuries."

children and teenagers where guns are stored.”⁴³

Vermont firearm statistics

H.83, a law relating to negligent storage of a firearm, was introduced in the Vermont House of Representatives in January 2011. This law is similar to a CAP Law in that it would regulate the safe storage of firearms in U.S. homes. In Vermont, 43.8% of homes possess a firearm.⁴⁴ Between 2000 and 2007, the use of firearms resulted in 25 deaths of youth under the age of 19.⁴⁵

Conclusion

Twenty-seven states in the United States have CAP laws. These laws vary but all deal with some level of criminal liability for adults who put children at risk of accessing a firearm. Studies of the effectiveness of CAP laws have produced some mixed findings. CAP laws seem to be most effective if failure to follow the law is a felony (misdemeanor penalties do not seem to be effective). The strongest (and perhaps only evidence) comes from Florida’s experience under their CAP law—the oldest and one of the toughest in the nation. Furthermore, there does seem to be some reduction of injuries associated with proper storage of firearms and ammunition.

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⁴³ Grossman, et al., “Gun Storage Practices and Risk of Youth Suicide and Unintentional Firearm Injuries.”

⁴⁴ Harvard School of Public Health, “Means Matter,” <http://www.hsph.harvard.edu/means-matter/basic-suicide-facts/state-information/index.html - data> (accessed January 31, 2011).

⁴⁵ National Center for Injury Prevention and Control, U.S. Centers for Disease Control and Prevention, “WISQARS VT Firearm Injury Mortality Reports, 2000-2007 Ages 0-19,” http://webappa.cdc.gov/sasweb/ncipc/mortrate10_sy.html, (accessed February 2, 2011).