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Age-Related Gun Regulations and Public Opinion

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AGE-RELATED GUN REGULATIONS AND PUBLIC OPINION

Rebecca Valek, M.S.P.H.(c), Cassandra Crifasi, Ph.D., M.P.H.,** & Alexander McCourt, J.D., Ph.D., M.P.H.****

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INTRODUCTION

Gun violence rates in the U.S. have reached all-time highs in recent years.¹ Overall, in 2022, more than 48,000 Americans died by guns.² Since 2019, the rate of gun deaths in the U.S. increased 21%.³ These increases in gun deaths have especially impacted young Americans.⁴ Between 2013 and 2022, rates of gun deaths among children and teens increased 87%.⁵ Nearly 4,600 American youth (aged 1–19) were killed by guns in 2022, fueled by increases in both homicide and suicide.⁶ Increased deaths have prompted Americans to call for legislative action.⁷ Despite the growth in dissatisfaction with U.S. gun laws and high levels of support for stricter gun legislation, some gun laws have become more permissive in the past two decades, particularly in states with Republican majorities.⁸ Supreme Court decisions have accelerated this shift, beginning with *District of Columbia v. Heller* in 2008, which expanded the understanding of the Second Amendment to include an individual right to own handguns for self-defense,

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1. See CDC Provisional Data: Gun Suicides Reach All-Time High in 2022, Gun Homicides Down Slightly from 2021, JOHNS HOPKINS BLOOMBERG SCH. OF PUB. HEALTH (July 27, 2023), <https://publichealth.jhu.edu/2023/cdc-provisional-data-gun-suicides-reach-all-time-high-in-2022-gun-homicides-down-slightly-from-2021> [https://perma.cc/W8K5-WY5Z].

2. *Id.* at para. 4.

3. *Id.*

4. See *id.* at para. 7.

5. *Id.*

6. *Id.*

7. See Megan Brenan, *Dissatisfaction with U.S. Gun Laws Hits New High*, GALLUP NEWS (Feb. 15, 2023), https://news.gallup.com/poll/470588/dissatisfaction-gun-laws-hits-new-high.aspx?utm_source=alert&utm_medium=email&utm_content=morelink&utm_campaign=syndication [https://perma.cc/MJ25-NVCN]; see also ARI DAVIS ET AL., *A Year in Review: 2021 Gun Deaths in the U.S.*, JOHNS HOPKINS BLOOMBERG SCH. OF PUB. HEALTH CTR. FOR GUN VIOLENCE SOLS., at 26–29 (June 2023), <https://publichealth.jhu.edu/sites/default/files/2023-06/2023-june-cgvs-u-s-gun-violence-in-2021.pdf> [https://perma.cc/8GTJ-GE4M]; Open letter from the United States Conference of Mayors, to the United States Congress, Urging Immediate Action on Gun Safety Legislation (Apr. 19, 2023).

8. Paul M. Reeping et al., *State Gun Laws, Gun Ownership, and Mass Shootings in the U.S.: Cross Sectional Time Series*, BMJ, at 4 (2019). See generally Brenan, *supra* note 7.

and *McDonald v. City of Chicago* in 2010, which held that the Second Amendment applies to state and local governments.⁹ These decisions, along with the 2022 decision preventing states from requiring proper cause to obtain concealed carry licenses in *New York State Rifle & Pistol Association Inc. v. Bruen*, have expanded gun rights and limited the abilities of state legislatures and Congress to regulate gun violence.¹⁰ John Feinblatt, president of the nonprofit gun violence prevention advocacy group Everytown for Gun Safety, described the *Bruen* decision as “out of step with the bipartisan majority in Congress that is on the verge of passing significant gun safety legislation, and out of touch with the overwhelming majority of Americans who support gun safety measures.”¹¹ At a time when gun violence has become the leading cause of death of Americans under 20 years old, the successful enactment and implementation of such highly supported policy is essential.¹²

Public opinion can directly affect legislative and executive actions and, while the effect on the judiciary may be less clear, there is often a connection between public opinion and court decisions.¹³ Many scholars have noted a significant influence of public mood and public opinion on the decisions of the Supreme Court.¹⁴ The Supreme Court’s sociological legitimacy, a term used by legal scholars to refer to the public’s view and respect of the Court, depends largely on the extent to which the Court’s decisions align with public opinion.¹⁵ When the Court’s decisions are affected by public opinion to promote sociological legitimacy, the Court’s legal legitimacy — or its Justices’ consistent application of their preferred approach to interpreting the

9. *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008); *McDonald v. City of Chicago*, 561 U.S. 742, 791 (2010).

10. 597 U.S. ___, 142 S. Ct. 2111, 2122, 2157 (2022); see Mark A. Lemley, *The Imperial Supreme Court*, 136 HARV. L. REV. F. 97, 109 (2022).

11. Moms Demand Action for Gun Sense in America, *Everytown Responds to Decision in NYSRPA v. Bruen* (June 23, 2022), <https://momsdemandaction.org/everytown-responds-to-decision-in-nysrpa-v-bruen/> [https://perma.cc/48GC-UMQM].

12. See DAVIS ET AL., *supra* note 7, at 6.

13. See Christopher J. Casillas, Peter K. Enns, & Patrick C. Wohlfarth, *How Public Opinion Constrains the U.S. Supreme Court*, 55 AM. J. POL. SCI. 74, 86 (2011); Micheal W. Giles, Bethany Blackstone, & Richard L. Vining, Jr., *The Supreme Court in American Democracy: Unraveling the Linkages between Public Opinion and Judicial Decision Making*, 70 J. POL. 293, 303 (2008); Lee Epstein & Andrew D. Martin, *Does Public Opinion Influence the Supreme Court – Possibly Yes (But We’re Not Sure Why)*, 13 U. PA. J. CONST. L. 263, 280 (2010).

14. See *supra* note 13 and accompanying text. But see Ben Johnson & Logan Strother, *The Supreme Court’s (Surprising?) Indifference to Public Opinion*, 74 POL. RES. Q. 1, 29 (2021).

15. See Richard H. Fallon, Jr., *Legitimacy and the Constitution*, 118 HARV. L. REV. 1787, 1795–96 (2004); Tara Leigh Grove, *The Supreme Court’s Legitimacy Dilemma*, 132 HARV. L. REV. 2240, 2245–46 (2019).

law — may be diminished.¹⁶ In *Bruen*, the majority of the justices adopted an approach that uses elements from originalism and textualism without adhering completely to either.¹⁷ The *Bruen* standard requires courts to evaluate gun laws by looking to text, history, and tradition to determine whether the law at issue is “consistent with the Nation’s historical tradition of firearm regulation.”¹⁸

To date, very few courts have evaluated age-restrictive gun laws, but legislatures continue to adopt new gun laws and courts, including the Supreme Court, are hearing new Second Amendment-related challenges.¹⁹ Public opinion will play a role in this process. The views of the public — both nationwide and in specific constituencies — may affect what gun policies are introduced and enacted by legislators, what laws are challenged in court, and what decisions courts reach in those challenges. In addition, as courts continue to grapple with *Bruen* and its standards, public opinion — whether historical or modern — may shape how judges think about history and tradition. Age-related gun laws may be of particular interest as rates of gun violence among youth have elevated and government officials evaluate existing laws and explore new laws in their search for solutions.

Section I of this Article describes the problem of gun violence in America in more detail, emphasizing how this problem impacts American children and youth. Section II outlines existing policy options to reduce gun violence and injury among young adults. Section III summarizes the methods and results of our nationwide public opinion survey to measure public support for these policies. Section IV ends with a discussion of what these public opinion results tell us about policy options and implications and what these results mean for analyzing future policies under *Bruen*’s history and tradition standards.

16. See Grove, *supra* note 15, at 2250–72.

17. See Jacob D. Charles, *The Dead Hand of a Silent Past: Bruen, Gun Rights, and the Shackles of History*, 73 DUKE L. J. (forthcoming 2023), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4335545 [<https://perma.cc/3S5D-2889>] (describing scholarship that has identified originalist and traditionalist elements in the *Bruen* opinion).

18. N.Y. State Rifle & Pistol Ass’n v. Bruen, 597 U.S. ___, 142 S. Ct. 2111, 2126 (2022).

19. See Charles, *supra* note 17, at 49–68; Adam Liptak, *Do People Subject to Domestic Violence Abuse Orders Have the Right to Be Armed?*, N.Y. TIMES (June 12, 2023), <https://www.nytimes.com/2023/06/12/us/supreme-court-guns-domestic-violence-orders.html> [<https://perma.cc/LF9W-HLND>].

I. GUN VIOLENCE IN AMERICA

The U.S. leads the globe in its rates of gun violence, with an overall firearm death rate ten times that of all other high-income countries.²⁰ Among high-income countries, 82% of all firearm fatalities occurred in the U.S.²¹ In particular, approximately 90% of firearm fatalities among women and those under the age of 25 occurred in the U.S.²² In 2020 alone, firearms killed 45,222 Americans, totaling an estimated 1,131,105 years of potential life lost.²³ In 2021, the number of firearm deaths rose to 48,830.²⁴

Examining only mortality from firearm-related injury paints an incomplete picture of the problem. The Centers for Disease Control and Prevention (CDC) reported that 175,459 people were injured by firearms and treated in emergency departments in 2020.²⁵ This estimate may be unreliable, as the CDC uses only a small number of hospitals to create its nonfatal injury estimates and uncertainty around these estimates has grown in recent years.²⁶ Survivors of firearm-related injuries face unique problems in the aftermath, including significant increases in medical spending, pain diagnoses, and substance use and other psychiatric disorders.²⁷

20. Erin Grinshteyn & David Hemenway, *Violent Death Rates: The U.S. Compared with Other High-Income OECD Countries*, 129 AM. J. MED. 266, 269 (2016).

21. *Id.*

22. *Id.*

23. *WISQARS Fatal and Nonfatal Injury Reports: All Intents Firearm Deaths and Rates per 100,000* (2020), CTRS. FOR DISEASE CONTROL & PREVENTION, <https://wisqars.cdc.gov/reports/?o=MORT&y1=2020&y2=2020&t=0&i=0&m=20890&g=00&me=0&s=0&r=0&ry=0&e=0&yp=65&a=ALL&g1=0&g2=199&a1=0&a2=199&r1=INTENT&r2=NONE&r3=NONE&r4=NONE> [https://perma.cc/9SCZ-2GSP] (last visited Sept. 26, 2023).

24. *WISQARS Fatal and Nonfatal Injury Reports: All Intents Firearm Deaths and Rates per 100,000* (2021), CTRS. FOR DISEASE CONTROL & PREVENTION, <https://wisqars.cdc.gov/reports/?o=MORT&y1=2021&y2=2021&t=0&d=&i=0&m=20890&g=00&me=0&s=0&r=0&ry=0&e=0&yp=65&a=ALL&g1=0&g2=199&a1=0&a2=199&r1=INTENT&r2=NONE&r3=NONE&r4=NONE> [https://perma.cc/8WBN-F8ZF] (last visited Sept. 26, 2023).

25. *WISQARS Fatal and Nonfatal Injury Reports: All Intents Firearm Nonfatal Emergency Department Visits and Rates per 100,000* (2020), CTRS. FOR DISEASE CONTROL & PREVENTION, <https://wisqars.cdc.gov/reports/?o=NFI&y1=2020&y2=2020&d=0&i=0&m=3180&g=00&me=&s=0&r=&e=&a=ALL&g1=0&g2=199&a1=0&a2=199&r1=INTENT&r2=NONE&r3=NONE&r4=NONE&adv=true> [https://perma.cc/S9T3-58JZ] (last visited Sept. 11, 2023).

26. Sean Campbell & Daniel Nass, *The CDC's Gun Injury Data Is Becoming Even More Unreliable*, TRACE, (Mar. 11, 2019), <https://www.thetrace.org/2019/03/cdc-nonfatal-gun-injuries-update/> [https://perma.cc/LG7V-LM4G] (describing the limitations of the CDC's injury and death data).

27. Zirui Song et al., *Changes in Health Care Spending, Use, and Clinical Outcomes after Nonfatal Firearm Injuries among Survivors and Family Members: A Cohort Study*, 175 ANNALS INTERNAL MED. 795, 800–02 (2022).

In addition to the human life costs, the financial costs of America's gun violence problem are tremendous.²⁸ Based on a conservative estimate accounting for only immediate and long-term medical costs, gun violence costs the U.S. approximately \$2.8 billion each year.²⁹ Expanding this estimate to include work-loss costs due to victim death and disability, police and criminal justice costs, employer costs from lost revenue and productivity, and cost estimates of quality of life lost by the victims and their families brings the estimate to nearly \$557 billion each year, or \$1,698 per year for every resident in the country.³⁰ States with stronger gun laws report significantly lower economic costs related to gun violence compared to states with more lenient or fewer laws.³¹

A. Burden of Gun Violence Among Young Americans

American youth are not immune to firearm injury and death. In fact, firearms are the leading cause of death for children and teens ages 1 to 19 in the U.S., accounting for 20% of all deaths among this age group in 2021.³² America's 15-to-24-year-olds experience a 49-times higher gun homicide rate than youth of the same age in other high-income countries.³³ From 2019 to 2021, firearm-related homicides increased by 45% and firearm suicides increased by 28% among those between the ages of 15 and 24.³⁴ The increased gun violence reported during the pandemic was seen among younger age groups as well, with an estimated seven children ages 17 and younger dying per day in 2021.³⁵ These deaths translate to substantial societal costs. According to the CDC's injury database, 4,368 children aged 19 and younger died by firearm-related deaths in 2020, resulting in a total

28. See generally Patrick Boyle, *The Cost of Surviving Gun Violence: Who Pays?*, ASS'N OF AM. MED. COLLS. NEWS (Oct. 18 2022), <https://www.aamc.org/news/cost-surviving-gun-violence-who-pays> [https://perma.cc/2AGT-QFHZ].

29. *The Economic Cost of Gun Violence*, EVERYTOWN RSCH. & POL'Y (July 19, 2022), <https://everytownresearch.org/report/the-economic-cost-of-gun-violence/> [https://perma.cc/C29Y-UR4U].

30. *Id.* at para. 4.

31. See *id.* at para. 11.

32. DAVIS ET AL., *supra* note 7, at 6.

33. Grinshteyn & Hemenway, *supra* note 20, at 268–69.

34. *WISQARS Fatal and Nonfatal Injury Reports: Homicide Firearm Deaths and Rates per 100,000*, CTRS. FOR DISEASE CONTROL & PREVENTION (2019–21), <https://wisqars.cdc.gov/reports/?o=MORT&y1=2019&y2=2021&t=0&d=&i=3&m=20890&g=00&me=0&s=0&r=0&ry=0&e=0&yp=65&a=ALL&g1=0&g2=199&a1=0&a2=199&r1=YEAR&r2=NONE&r3=NONE&r4=NONE> [https://perma.cc/SR74-KS5K] (last visited Sept. 11, 2023); Grinshteyn & Hemenway, *supra* note 20, at 268–69.

35. See Nirmita Panchal, *The Impact of Gun Violence on Children and Adolescents*, KAISER FAMILY FOUND., at para. 3 (Oct. 14, 2022), <https://www.kff.org/other/issue-brief/the-impact-of-gun-violence-on-children-and-adolescents/> [https://perma.cc/P5JT-BJW6].

medical cost over \$44 million.³⁶ When adding in the value of statistical life costs, this total cost in 2020 reaches \$64.89 billion.³⁷

Nonfatal firearm-related injuries also impose significant burden on this age group. While there are limitations in the data, there were an estimated 12,008 nonfatal firearm-related hospitalizations among those ages 19 and under in 2020.³⁸ The costs of these injuries are significant, reaching \$1.30 billion in medical costs, \$111.09 million in work loss costs, and \$1.01 billion in quality of life loss costs, or a total of \$2.42 billion in combined costs associated with nonfatal firearm-related hospitalizations in 2020.³⁹ Survivors of firearm injury often struggle with physical and mental health issues, and developmental impairments.⁴⁰ Approximately 50% of pediatric firearm injuries treated in the hospital result in disabilities.⁴¹ In addition to direct injuries, youth also report psychological impacts of indirect exposure to firearm violence. According to self-reports from children ages 10 to 17 and caregiver reports from children ages 2 to 9 in the Youth Firearm Risk and Safety Study, 41% of youth ages 2 to 17 had ever seen or heard gun violence, 58% of whom reported being very or extremely afraid, sad, or upset following this indirect exposure to gun violence.⁴²

While no one is immune, the problem does not impact everyone equally. Socioeconomic disadvantage, community distress, and neighborhood poverty have been associated with higher rates of adolescent gun violence, youth firearm homicide and assault, and hospitalization for firearm-related injuries.⁴³ Race, gender, geography, and sexuality also impact risk, with

36. *WISQARS Fatal and Nonfatal Injury Reports: Number of Injuries and Associated Costs (2020)* (Age Range <1 to 19), CTRS. FOR DISEASE CONTROL & PREVENTION, <https://wisqars.cdc.gov/cost/?y=2020&o=MORT&i=0&m=20890&g=00&s=0&u=TOTAL&t=COMBO&t=MED&t=VPSL&a=custom&g1=0&g2=199&a1=0&a2=19&r1=MECH&r2=INTENT&r3=NONE&r4=NONE&c1=NONE&c2=NONE> [https://perma.cc/NA5P-QYE5] (last visited Sept. 11, 2023).

37. *See id.*

38. *Id.*

39. *Id.*

40. *See* Sonali Rajan et al., *Youth Exposure to Violence Involving a Gun: Evidence for Adverse Childhood Experience Classification*, 42 *J. BEHAV. MED.* 646, 648 (2019).

41. Kavita Parikh et al., *Pediatric Firearm-Related Injuries in the United States*, 7 *HOSP. PEDIATRICS* 303, 304 (2017).

42. Kimberly J. Mitchell et al., *Understanding the Impact of Seeing Gun Violence and Hearing Gunshots in Public Places: Findings from the Youth Firearm Risk and Safety Study*, 36 *J. INTERPERSONAL VIOLENCE* 8835, 8842, 8844 (2021).

43. *See* Jacob B. Avraham, Spiros G. Frangos, & Charles J. DiMaggio, *The Epidemiology of Firearm Injuries Managed in U.S. Emergency Departments*, 5 *INJ. EPIDEMIOLOGY* 1, 3 (2018); Brett M. Tracy et al., *Community Distress Predicts Youth Gun Violence*, 54 *J. PEDIATRIC SURGERY* 2375, 2378 (2019); Jordan Beardslee et al., *The Direct and Indirect Associations between Childhood Socioeconomic Disadvantage and Adolescent Gun Violence*, 50 *J. CLINICAL CHILD & ADOLESCENT PSYCH.* 326, 331 (2021).

sexual minorities facing elevated risk of violence victimization, Black boys and young men ages 15 to 24 facing elevated risk of firearm homicide, and Indigenous and white boys and young men in rural settings facing the greatest risk of firearm suicide.⁴⁴ Firearm homicide rates among Black children and adolescents are over 10 times greater than white children and adolescents.⁴⁵ This disparity has been largely attributed to structural racism and historically racist policies like redlining that have created racialized spaces and concentrated disadvantage.⁴⁶

The significant burden of firearm injury and violence on American youth is particularly concerning when examining the problem from a life-course perspective given their vulnerable stage of development.⁴⁷ While gun violence exposure is not explicitly listed as an adverse childhood experience (ACE), many other ACEs, such as domestic violence, may encompass such violence.⁴⁸ Regardless of whether gun violence exposure specifically falls into an ACE category, it has been shown to have similar negative impacts on youth development, including social, emotional, and cognitive impairment, engagement in risky behaviors, and short- and long-term risk of morbidity and mortality.⁴⁹ Both direct and indirect exposure to violence during childhood is associated with an increased risk of externalizing and internalizing disorders, poor academic performance, impaired social skills, substance use and other mental health problems, and physical illnesses.⁵⁰ Even just carrying a gun increases the risk of violence and premature death among youth.⁵¹

44. See Avraham et al., *supra* note 43; Beardslee et al., *supra* note 43; Jessika H. Bottiani et al., *Annual Research Review: Youth Firearm Violence Disparities in the United States and Implications for Prevention*, 62 J. CHILD PSYCH. & PSYCHIATRY 563, 564–68 (2021); Michelle M. Johns et al., *Trends in Violence Victimization and Suicide Risk by Sexual Identity among High School Students — Youth Risk Behavior Survey, United States, 2015–2019*, 69 MORBIDITY AND MORTALITY WKLY. REP. 19, 19 (Supp. 2020) (defining sexual minority as “students who identify as [lesbian, gay, or bisexual] or those who have sexual contact with persons of the same or both sexes”).

45. Katherine A. Fowler et al., *Childhood Firearm Injuries in the United States*, 140 PEDIATRICS 1, 4 (2017).

46. See Bottiani et al., *supra* note 44, at 565, 570.

47. See Rajan et al., *supra* note 40, at 648; see also Megan Ranney et al., *What Are the Long-Term Consequences of Youth Exposure to Firearm Injury, and How Do We Prevent Them? A Scoping Review*, 42 J. BEHAV. MED. 724, 725 (2019).

48. Rajan et al., *supra* note 40, at 646.

49. See *id.* at 647.

50. See Mitchell et al., *supra* note 42, at 8836; see also Ranney et al., *supra* note 47, at 725; Erin C. Dunn et al., *Is Developmental Timing of Trauma Exposure Associated with Depressive and Post-Traumatic Stress Disorder Symptoms in Adulthood?*, 84 J. PSYCHIATRIC RES. 119, 199 (2017).

51. See generally John F. Gunn & Paul Boxer, *Gun Laws and Youth Gun Carrying: Results from the Youth Risk Behavior Surveillance System, 2005-2017*, 50 J. YOUTH & ADOLESCENCE 446 (2021).

B. Exposure to Firearms

Despite the levels of firearm injury and death among youth, 6 million minors (7% of U.S. children) in the U.S. live in homes with at least one loaded, unlocked firearm.⁵² While gun owners are more likely to use safe storage practices if children are in the home, a growing number of gun owners do not.⁵³ Primary reasons reported by gun owners with children for not locking up firearms include believing that their children do not know where the gun is or cannot access the gun, that their children would be more interested in the gun if it was locked away and became taboo, not perceiving firearm access as dangerous, and prioritizing easy access for protection over safe storage.⁵⁴ Research on child behaviors around guns has shown that parents who believe their children do not know where the gun is or would not touch a gun are often mistaken. Approximately 40% of parents incorrectly reported that their children did not know where their guns were stored and 22% incorrectly reported their children had never handled the guns.⁵⁵ Observational studies have contradicted parents' beliefs, indicating that the majority of school-age boys would handle a gun they encounter and approximately 50% would even pull the trigger.⁵⁶

This easy access to firearms for many children has led to tragic outcomes. In approximately 70% to 90% of youth suicides, unintentional shootings among children, and school shootings perpetrated by youth, the firearms were obtained from the home of the child or their family or friends.⁵⁷ Easy access in the home is a significant risk factor for unintentional shootings and suicides in particular. The majority of firearm injuries treated in emergency departments and clinics in the U.S. occur in the home and the majority of youth unintentional firearm deaths are caused by someone playing with a gun.⁵⁸ Access to guns in the home increases the risk and lethality of suicide

52. Deborah Azrael et al., *Firearm Storage in Gun-Ownning Households with Children: Results of a 2015 National Survey*, 95 J. URB. HEALTH 295, 298 (2018).

53. *See id.*; *see also* Mary E. Aitken et al., *Parents' Perspectives on Safe Storage of Firearms*, 45 J. COMM. HEALTH 469, 475 (2020).

54. *See* Azrael et al., *supra* note 52, at 298–301; *see also* Aitken et al., *supra* note 53, at 473–74.

55. Parikh et al., *supra* note 41, at 305.

56. *Id.*

57. *Child Access Prevention & Safe Storage*, GIFFORDS L. CTR. TO PREVENT GUN VIOLENCE, <https://giffords.org/lawcenter/gun-laws/policy-areas/child-consumer-safety/child-access-prevention-and-safe-storage/#:~:text=There%20are%20no%20federal%20child,gun%20storage%20or%20safety%20device.%E2%80%9D> [https://perma.cc/QTR7-DNNP] (last visited Sept. 10, 2023).

58. *See* Fowler et al., *supra* note 45, at 6–8; *see also* Saranya Srinivasan et al., *Epidemiology of Paediatric Firearm Injuries in the USA, 2001–2010*, 99 ARCHIVES DISEASE CHILDHOOD 331, 333 (2014).

attempts, with approximately 90% of firearm suicide attempts being lethal.⁵⁹ Based on one meta-analysis, firearm access in the home is associated with a three-fold increase in the odds of suicide.⁶⁰ While some argue that those who wish to attempt suicide or self-harm will find a way regardless of firearm access, this myth of means substitution has been repeatedly discredited given the impulsive nature of most suicide attempts — with many acting on a decision to attempt suicide within 10 minutes of making that decision — and the fact that the majority of survivors of suicide attempts do not later die by suicide.⁶¹ Additionally, those who do substitute means are more likely to choose less lethal means than suicide by firearm, as studies have determined that those who use a firearm in suicide attempts are at the highest risk of dying relative to alternative methods.⁶² Given the increase in both gun ownership and youth suicide rates observed during the pandemic and the increase in the use of firearms in youth suicides in recent years, the problem of youth firearm suicide has become increasingly urgent to address.⁶³

In addition to the home, certain public locations are particularly risky for firearm carrying and access. Although the Supreme Court has not heard a case directly on the topic of laws prohibiting carry in sensitive places, the justices have indicated that such laws may survive judicial scrutiny. In

59. See Bottiani et al., *supra* note 44, at 568, 571; Adelyn Allchin, Vicka Chaplin, & Joshua Horwitz, *Limiting Access to Lethal Means: Applying the Social Ecological Model for Firearm Suicide Prevention*, 25 INJ. PREVENTION i44, i44 (2019); Alexander D. McCourt, *Firearm Access and Suicide: Lethal Means Counseling and Safe Storage Education in a Comprehensive Prevention Strategy*, 111 AM. J. PUB. HEALTH 185, 186 (2021); Deborah Azrael & Matthew J. Miller, *Reducing Suicide without Affecting Underlying Mental Health: Theoretical Underpinnings and a Review of the Evidence Base Linking the Availability of Lethal Means and Suicide*, in INT'L HANDBOOK OF SUICIDE PREVENTION 637, 640 (Rory C. O'Connor & Jane Pirkis eds., 1st ed. 2016).

60. Andrew Anglemeyer, Tara Horvath, & George Rutherford, *The Accessibility of Firearms and Risk for Suicide and Homicide Victimization among Household Members: A Systematic Review and Meta-Analysis*, 160 ANNALS INTERNAL MED. 101, 105 (2014).

61. See Matthew Miller, Deborah Azrael, & David Hemenway, *Belief in the Inevitability of Suicide: Results from a National Survey*, 36 SUICIDE AND LIFE-THREATENING BEHAVIOR 1, 5 (2006); see also Nicole M. Thomas, Catherine Barber, & Matthew Miller, *A Cohort Study of Initial Self-Harm Events: Method-Specific Case Fatality of Index Events, Predictors of Fatal and Nonfatal Repetition, and Frequency of Method-Switching*, 33 INT'L REV. PSYCHIATRY 598, 599 (2021); Catherine W. Barber & Matthew J. Miller, *Reducing a Suicidal Person's Access to Lethal Means of Suicide: A Research Agenda*, 47 AM. J. PREVENTATIVE MED. S264, S264–65 (2014).

62. See Barber & Miller, *supra* note 61, at S265; see also Thomas et al., *supra* note 61, at 602; see also Mark Olfson et al., *Suicide after Deliberate Self-Harm in Adolescents and Young Adults*, 141 PEDIATRICS 1 (2018).

63. See Panchal, *supra* note 35, at para. 3; see also Jeffrey A. Bridge et al., *Youth Suicide during the First Year of the COVID-19 Pandemic*, 151 PEDIATRICS 1, 2 (2023); Julia P. Schleimer et al., *Firearm Purchasing and Firearm Violence during the Coronavirus Pandemic in the United States: A Cross Sectional Study*, 8 INJ. EPIDEMIOLOGY 1, 4 (2021).

striking down Washington, D.C.’s handgun ban in *District of Columbia v. Heller*, the Court again noted that regulations on firearm carrying in certain locations are likely constitutional, stating that “nothing in [their] opinion should be taken to cast doubt on . . . laws forbidding the carrying of firearms in sensitive places such as schools and government buildings[.]”⁶⁴ The *Heller* opinion did not articulate a method for determining that a place is sensitive, but lower courts have tried to do so. The most notable analysis of “sensitive places” by a federal appellate court occurred in *United States v. Class*. In that case, the United States Court of Appeals for the D.C. Circuit stated that a place is “sensitive” under a Second Amendment analysis “because of ‘the people found there’ or ‘the activities that take place there.’”⁶⁵ Fourteen years after *Heller*, in *New York State Rifle & Pistol Association Inc. v. Bruen*, the Court dealt with a law governing public carry, and again suggested that restrictions on “sensitive places” may be Constitutionally permissible.⁶⁶ The majority opinion did not elaborate on what places legislatures can designate as sensitive beyond restating the inclusion of schools and government buildings and recommending that “courts can use analogies to these historical regulations of ‘sensitive places’ to determine that modern regulations prohibiting the carry of firearms in new and analogous sensitive places are constitutionally permissible.”⁶⁷ This lack of clarity has left lower courts and scholars to debate which places meet the criteria to be classified as sensitive and whether a place can only be designated as sensitive to protect physical safety, or if other factors like civic life can be considered as well.⁶⁸ Some scholars have extended versions of the *Class* theory of sensitive places in recent analyses of post-*Bruen* jurisprudence, arguing that the “sensitive places doctrine” is underdeveloped, but as it develops, it should “focus[] more on the justifications for locational restrictions than on the superficial features of specific locations themselves.”⁶⁹

Despite a lack of clarity among legal scholars, researchers, policymakers, and advocates about what specific locations qualify as sensitive places,

64. *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008).

65. *United States v. Class*, 930 F.3d 460, 465 (D.C. Cir. 2019) (quoting *GeorgiaCarry.Org, Inc. v. Georgia*, 764 F. Supp. 2d 1306, 1319 (M.D. Ga. 2011)).

66. 597 U.S. ___, 142 S. Ct. 2111, 2133, (2022).

67. *Id.* (emphasis omitted).

68. See Darrell A.H. Miller, *The Next Front in the Fight over Guns*, WASH. POST (July 1, 2022), <https://www.washingtonpost.com/outlook/2022/07/01/bruen-guns-rights-carry-sensitive-places/> [<https://perma.cc/SV94-2EXM>].

69. Joseph Blocher, Jacob D. Charles & Darrell A.H. Miller, “A Map Is Not the Territory”: *The Theory and Future of Sensitive Places Doctrine*, N.Y.U. L. REV. ONLINE (forthcoming 2023), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4325454 [<https://perma.cc/7XU8-6MC4>].

schools have been explicitly named by the Court as a location in which firearm regulations are allowed.⁷⁰ In general, schools are relatively safe. Less than 2% of homicides among those ages 5–18 occur on school grounds, during travel to and from school, or at school-sponsored events, and 90% of school homicides that do occur only involve one victim.⁷¹ As of 2019, approximately 7% of high school students reported being threatened or injured on school property with a weapon and only 3% reported carrying a weapon on school property in the past year.⁷² Still, given the increase in the rate of multiple-victim school-based homicides in the last decade and the negative impacts of school gun violence on students' academic performance, behavioral development, and mental health, it is imperative that schools remain safe places for children to learn.⁷³ Millions of dollars have been spent across the U.S. in an effort to increase school safety by funding active shooter trainings, school resource officers, security systems, and other interventions.⁷⁴ Other efforts have involved pushes to arm teachers or increase the number of armed resource officers in schools, despite the lack of evidence for the efficacy of these solutions and the nearly 100 cases of mishandled guns legally allowed in schools from 2015 to 2021.⁷⁵

Such debates over sensitive places extend to college campuses as well. Colleges and universities were historically included as sensitive places where firearm restrictions were allowed, but this trend has changed in recent years.⁷⁶ By 2012, approximately 200 public campuses legally allowed gun

70. See *District of Columbia v. Heller*, 554 U.S. 570, 626–27 (2008).

71. See *School-Associated Violent Death Study*, CTRS. FOR DISEASE CONTROL & PREVENTION (Sept. 2, 2021), <https://www.cdc.gov/violenceprevention/youthviolence/schoolviolence/SAVD.html> [<https://perma.cc/UX3X-VJLJ>].

72. See CTRS. FOR DISEASE CONTROL & PREVENTION, *YOUTH RISK BEHAVIOR SURVEY DATA SUMMARY & TRENDS REPORT, 2011–2021* 43 (2023), https://www.cdc.gov/healthyyouth/data/yrbs/pdf/YRBS_Data-Summary-Trends_Report2023_508.pdf [<https://perma.cc/2PQ6-VU4W>]; see also Christopher R. Harper et al., *Witnessing Community Violence, Gun Carrying, and Associations with Substance Use and Suicide Risk among High School Students — Youth Risk Behavior Survey, United States, 2021*, 72 *MORBIDITY AND MORTALITY WKLY. REP.* 22, 25 (Supp. 2023).

73. See *School-Associated Violent Death Study*, *supra* note 71; see also Lloyd J. Kolbe, *School Gun Violence in the United States*, 90 *J. SCH. HEALTH* 245, 246 (2020).

74. Kolbe, *supra* note 73, at 247–48.

75. See Kelly Drane, *Every Incident of Mishandled Guns in Schools*, GIFFORDS L. CTR. TO PREVENT GUN VIOLENCE (Apr. 7, 2023), <https://giffords.org/lawcenter/report/every-incident-of-mishandled-guns-in-schools/> [<https://perma.cc/FV36-8DD4>]; see also Melvin D. Livingston, Matthew E. Rossheim, & Kelli Stidham Hall, *A Descriptive Analysis of School and School Shooter Characteristics and the Severity of School Shootings in the United States, 1999–2018*, 64 *J. ADOLESCENT HEALTH* 797, 798 (2019).

76. See DANIEL W. WEBSTER ET AL., *FIREARMS ON COLLEGE CAMPUSES: RESEARCH EVIDENCE AND POLICY IMPLICATIONS* 2 (2016).

carrying.⁷⁷ The debate over allowing carrying on college campuses often mirrors that around kindergarten through 12th grade schools, with some believing that designating these areas as “gun-free zones” makes them targets for mass shootings.⁷⁸ Analysis of past mass shootings does not support this argument, nor does it support the idea that armed citizens will effectively intervene to prevent mass shootings.⁷⁹

II. OVERVIEW OF LAWS RELATED TO AGE

The immense harms of firearm-related morbidity and mortality among American youth call for policy action. Evidence-based gun laws such as strengthening background checks and child access protection laws are supported by various professional organizations including the American Public Health Association and the American Pediatric Surgical Association.⁸⁰ Generally strengthening gun laws keeps children safer. At the state level, stricter gun laws have been associated with lower rates of youth gun and weapon carrying, firearm-related emergency department visits, and overall firearm homicide, and firearm purchase and access restrictions specifically have been shown to reduce child and youth firearm mortality.⁸¹

In addition to generally strengthening gun laws, policy options exist to help reduce the burden of firearm injury and mortality among children and young adults specifically. Such policies include prohibited persons policies targeting juvenile offenders and those under age 21, policies restricting gun carrying on school and university grounds, and safe storage policies. There are other policies that do not directly address age but may be impactful among young people, including strengthening background checks and temporary firearm removal policies. The following section will review existing legislation at the federal and state level for some of these policies and explore the evidence of the efficacy of such policies.

77. See Robert Birnbaum, *Ready, Fire, Aim: The College Campus Gun Fight*, 45 CHANGE: THE MAG. OF HIGHER LEARNING 6, 7 (Sept.–Oct. 2013).

78. See WEBSTER ET AL., *supra* note 76, at 9–10.

79. See *id.* at 9–11.

80. See *Gun Violence Is a Public Health Crisis*, AM. PUB. HEALTH ASS’N, https://www.apha.org/-/media/Files/PDF/advocacy/SPEAK/220617_Gun_Violence_Prevention_fact_sheet.ashx [<https://perma.cc/WRF2-KEZJ>] (last visited Sept. 19, 2023); see also John K. Petty et al., *Firearm Injuries and Children: Position Statement of the American Pediatric Surgical Association*, 144 PEDIATRICS 1, 6 (2019).

81. See Gunn & Boxer, *supra* note 51, at 447; see also Shilpa J. Patel et al., *Regional Differences in Pediatric Firearm-Related Emergency Department Visits and the Association with Firearm Legislation*, 37 PEDIATRIC EMERGENCY CARE e692, e694 (2021); see also Lois K. Lee et al., *Firearm Laws and Firearm Homicides: A Systematic Review*, 177 J. AM. MED. ASS’N INTERNAL MED. 106, 118 (2017).

A. Prohibiting a Person Convicted of a Serious Crime as a Juvenile from Having a Gun for Ten Years

The federal Gun Control Act of 1968 outlined individuals prohibited from purchasing and possessing firearms, including those convicted of a felony or a “crime punishable by imprisonment for a term exceeding one year[.]”⁸² Many states have expanded such felony prohibitions to include those convicted of violent misdemeanors and serious crimes as a juvenile, with variations on these laws in terms of how long such access is restricted and which crimes apply.⁸³ While many states include juvenile offenses in these restrictions, these can be harder to track given the fact that juvenile records are often confidential.⁸⁴ Federal law was expanded to include firearm prohibitions for juvenile offenses through the passage of the 2022 Bipartisan Safer Communities Act, which “amend[ed] the Gun Control Act of 1968 (GCA) to prohibit the transfer of firearms to persons who have potentially disqualifying records as a juvenile.”⁸⁵

Such extension to juvenile records may help curb gun violence and use among juvenile offenders. According to one study of youth involved in the juvenile justice system, access to, use of, and victimization by firearms in adolescence was associated with firearm ownership and violence in adulthood.⁸⁶ This suggests the importance of curbing firearm use and violence at a young age through age-related restrictions on ownership.

B. Prohibiting a Person Under the Age of 21 from Having a Handgun

Federal law prohibits licensed dealers from selling handguns to those under the age of 21 but sets the minimum age for possession of handguns and for sales by unlicensed dealers to only 18 years of age.⁸⁷ Various states have passed additional age-related restrictions. Eighteen states and the

82. 18 U.S.C. § 922(d)(1).

83. See JEFFREY BUTTS ET AL., *YOUTH, GUNS, AND THE JUVENILE JUSTICE SYSTEM: RESEARCH REPORT 15* (2002); see also *Firearm Prohibitions*, GIFFORDS L. CTR. TO PREVENT GUN VIOLENCE (2023), <https://giffords.org/lawcenter/gun-laws/policy-areas/who-can-have-a-gun/firearm-prohibitions/> [<https://perma.cc/E2VW-7NGG>].

84. See NAT’L CRIM. JUST. ASS’N FOR THE U.S. DEP’T OF JUSTICE & OFF. OF JUVENILE JUST. AND DELINQUENCY PREVENTION, *A PROJECT TO DEVELOP A MODEL JUVENILE HANDGUN CODE FOR THE STATES* 86 (1995).

85. CONG. RSCH. SERV., R47310, *BIPARTISAN SAFER COMMUNITIES ACT (P.L. 117-159): SECTION-BY-SECTION SUMMARY* 12 (2022), <https://crsreports.congress.gov/product/pdf/R/R47310> [<https://perma.cc/UQ65-TFMN>].

86. See generally Linda A. Teplin et al., *Association of Firearm Access, Use, and Victimization during Adolescence with Firearm Perpetration during Adulthood in a 16-Year Longitudinal Study of Youth Involved in the Juvenile Justice System*, 4 J. AM. MED. ASS’N NETWORK OPEN e2034208 (2021).

87. See 18 U.S.C. § 922(b)(1).

District of Columbia set a minimum age of 21 for handgun sales by both licensed and unlicensed sellers and ten states and the District of Columbia have set a minimum age of 21 for handgun possession.⁸⁸

Raising the minimum age to 21 is supported by research on the risks of youth gun ownership. Despite comprising 4% of the U.S. population, 18-to-20-year-olds commit 17% of known homicide offenses.⁸⁹ One study of those convicted of gun crimes in the 13 states with the most lenient gun laws estimated that 17% of currently incarcerated offenders would have been prevented from accessing firearms if the states raised the minimum age for handgun ownership to 21.⁹⁰ Additionally, this younger age group faces increased risk of suicide, a risk that is increased by access to a firearm.⁹¹ Other research has focused more specifically on the efficacy of existing minimum age laws. Research on the efficacy of the 18-year-old minimum age for handgun purchases set by the Federal Crime Control and Law Enforcement Act of 1994 reports reductions in youth suicides and unintentional deaths.⁹² State laws raising this minimum age to 21 have been associated with up to 9% declines in firearm suicide rates among 18-to-20-year-olds.⁹³

C. Prohibiting a Person Under the Age of 21 from Having a Semi-Automatic Rifle

Semi-automatic rifles are those that eject and rechamber a new round after each shot, allowing a person to fire the rifle as quickly as the trigger can be pulled. Federal law does not set a specific minimum age for possession of these types of firearms. However, it does set a minimum age of 18 for the purchase of long guns, a broader category which includes semi-automatic rifles.⁹⁴ While the law prohibits licensed dealers from selling long guns to

88. See *Minimum Age to Purchase & Possess*, GIFFORDS L. CTR TO PREVENT GUN VIOLENCE (2023), <https://giffords.org/lawcenter/gun-laws/policy-areas/who-can-have-a-gun/minimum-age/> [<https://perma.cc/X973-8MVN>].

89. See *id.*

90. See Katherine A. Vittes, Jon S. Vernick, & Daniel W. Webster, *Legal Status and Source of Offenders' Firearms in States with the Least Stringent Criteria for Gun Ownership*, 19 *INJ. PREVENTION* 26, 29 (2013).

91. See Johanna Birckmayer & David Hemenway, *Suicide and Firearm Prevalence: Are Youth Disproportionately Affected?*, 31 *SUICIDE & LIFE-THREATENING BEHAV.* 303, 309 (2001); see also Matthew Miller & David Hemenway, *The Relationship between Firearms and Suicide: A Review of the Literature*, 4 *AGGRESSION & VIOLENT BEHAV.* 59, 79 (1999); *Minimum Age to Purchase & Possess*, *supra* note 88.

92. Mark Gius, *The Impact of Minimum Age and Child Access Prevention Laws on Firearm-Related Youth Suicides and Unintentional Deaths*, 52 *SOC. SCI. J.* 168, 173 (2015).

93. Daniel W. Webster et al., *Association between Youth-Focused Firearm Laws and Youth Suicides*, 292 *J. AM. MED. ASS'N* 594, 598 (2004).

94. 18 U.S.C. § 922(b)(1).

those under 18, it does not set any minimum age restrictions for possession of long guns or sale by unlicensed persons.⁹⁵ Many states have supplemented these federal regulations, with 23 states and the District of Columbia setting a minimum age of 18 for both licensed and unlicensed long gun sales and 18 states setting a minimum age of 18 for the possession of long guns.⁹⁶ Other states have increased the minimum age requirements to 21, including nine states⁹⁷ that set a minimum age of 21 to purchase long guns and two states⁹⁸ that set a minimum age of 21 to purchase semi-automatic rifles specifically.⁹⁹ Six states and the District of Columbia have set a minimum age requirement of 21 to possess long guns, often naming specific long guns that this applies to, like semi-automatic rifles or assault weapons as opposed to being a blanket restriction.¹⁰⁰

In addition to these age restrictions on semi-automatic rifles and other long guns, assault weapons bans are popular topics of debate. The federal assault weapons ban passed in 1994, which banned the manufacture, transfer, and possession of certain models of assault weapons based on their appearance and use, expired in 2004 and has not been replaced.¹⁰¹ Ten states

95. *Minimum Age to Purchase & Possess*, *supra* note 88.

96. *See id.*

97. CAL. PENAL CODE §§ 27505(a), 27510(a) (2022) (including some exceptions for people over 18 with hunting permits, as well as military and law enforcement); COLO. REV. STAT. §§ 18-12-112(2)(e), (f), 18-12-112.5(1)(a.3) (2021); DEL. CODE ANN. tit. 11, § 1445(a)(4) (2022); FLA. STAT. § 790.065(13) (2022); HAW. REV. STAT. ANN. § 134-2(d)(1) (effective Jan. 1, 2024); 430 ILL. COMP. STAT. 65/4(a)(2)(i) (2023); N.Y. PENAL LAW § 400.00(1)(a) (2023); 1956 R.I. GEN. LAWS § 11-47-35.2(a) (2022); VT. STAT. ANN. tit. 13, § 4020 (a)-(b) (2018) (including exceptions for those with hunting permits).

98. CONN. GEN. STAT. § 29-37a(b)(2) (2013) (applies to semi-automatic centerfire rifles that have or accept a magazine with a capacity exceeding five rounds); WASH. REV. CODE ANN. § 9.41.240(1) (2019) (sets minimum age of 21 for purchasing semi-automatic rifles).

99. *See Minimum Age to Purchase & Possess*, *supra* note 88; *Has the State Raised the Minimum Age for Purchasing Firearms?*, EVERYTOWN RSCH. & POL'Y, <https://everytownresearch.org/rankings/law/minimum-age-to-purchase/> [<https://perma.cc/98KZ-XBQH>] (last visited Oct. 4, 2023).

100. *See generally Minimum Age to Purchase & Possess*, *supra* note 88; DEL. CODE ANN. tit. 11, §§ 1445(a)(4), 1448(a)(5) (2022) (excluding shotguns and including exceptions for those with concealed carry permits and recreational and hunting use); D.C. CODE ANN. §§ 7-2502.03 (2023) (setting minimum age to 21, but allowing possession at age 18 with parental consent); D.C. MUN. REGS. tit. 24, § 2301.1 (1964); HAW. REV. STAT. ANN. § 134-2(a), (d) (effective Jan. 1, 2024) (including some exceptions regarding possession of long guns by licensed hunters, etc.); 430 ILL. COMP. STAT. 65/2(a)(1), 65/4(a)(2)(i) (2023); MD. CODE ANN., PUB. SAFETY §§ 5-133(d) (2018) (regulating “regulated firearms,” which are defined as handguns and assault weapons); N.Y. PENAL LAW § 400.00(1)(a)-(2), 265.10 (2023); WASH. REV. CODE ANN. § 9.41.240 (2019) (setting a minimum age of 18 generally for possession of long guns, but 21 for possession of semiautomatic rifles outside private property).

101. CHRISTOPHER S. KOPER, DANIEL J. WOODS, & JEFFREY A. ROTH, AN UPDATED ASSESSMENT OF THE FEDERAL ASSAULT WEAPONS BAN: IMPACTS ON GUN MARKETS AND GUN VIOLENCE, 1994-2003 4 (2004); *Assault Weapons*, GIFFORDS L. CTR. TO PREVENT GUN

and the District of Columbia ban and two states regulate or restrict assault weapons.¹⁰²

As with age-related restrictions on handgun ownership, much of the support for a minimum age of 21 for semi-automatic rifle ownership comes from research on the risks of youth gun ownership that is outlined above. Further support for age restrictions on semi-automatic rifles specifically comes from the dangerous nature of these weapons, given their ability to rapidly fire many rounds, their use in many recent deadly mass shootings, and their capacity to maximize the death toll of an active shooting incident.¹⁰³ The efficacy of general bans on assault weapons can be leveraged to support a more modest age restriction. For example, the federal assault weapons ban was associated with reductions in mass shootings, fewer fatalities and injuries from mass shootings, fewer deaths per shooting incident, and fewer assault weapons recovered from crime scenes.¹⁰⁴ Following the expiration of the ban in 2004, the U.S. saw increases up to 347% in mass shooting-related fatalities.¹⁰⁵ While not an all-out ban, age-related restrictions on semi-automatic rifle ownership can reduce the compounding risk of young age and dangerous weapons.

VIOLENCE, <https://giffords.org/lawcenter/gun-laws/policy-areas/hardware-ammunition/assault-weapons/> [<https://perma.cc/8KPV-X65Q>] (last visited Oct. 4, 2023).

102. *Assault Weapons*, *supra* note 101; CAL. PENAL CODE §§ 16350, 16790, 16890, 30500–31115 (2012); CONN. GEN. STAT. §§ 53-202a–53-202c (2011); DEL. CODE ANN. tit. 11, § 1466(a) (2022); D.C. CODE ANN. §§ 7-2501.01(3A), 7-2502.02(a)(6), 7-2505.01, 7-2505.02(a), 7-2505.02(c) (2023) (exempting all pre-ban assault weapons); HAW. REV. STAT. ANN. §§ 134-1, 134-4, 134-8 (2023); ILL. PUB. ACT 102-1116 § 24-1 (2023); MD. CODE ANN., CRIM. LAW §§ 4-301–4-306 (2018); MD. CODE ANN., PUB. SAFETY § 5-101(r) (2022) (expanding the ban on assault pistols to include assault long guns); MASS. GEN. LAWS ch. 140, §§ 121–23 (2021), 131M (2014); N.J. STAT. ANN. §§ 2C:39-1w, 2C:39-5, 2C:58-5, 2C:58-12–13 (2022); N.Y. PENAL LAW §§ 265.00(22), 265.02(7), 265.10, 400.00(16-a) (2023); WASH. REV. CODE § 9.41.280 (West 2023) (as amended by 2023 HB 1240).

103. *Assault Weapons*, *supra* note 101. *See generally* Elzerie De Jager et al., *Lethality of Civilian Active Shooter Incidents with and without Semiautomatic Rifles in the United States*, 320 J. AM. MED. ASS'N 1034 (2018).

104. *See generally* KOPER ET AL., *supra* note 101; Mark Gius, *The Impact of State and Federal Assault Weapons Bans on Public Mass Shootings*, 22 APPLIED ECON. LETTERS 281, 283 (2015); Charles DiMaggio et al., *Changes in US Mass Shooting Deaths Associated with the 1994-2004 Federal Assault Weapons Ban: Analysis of Open-Source Data*, 86 J. TRAUMA & ACUTE CARE SURGERY 11, 15 (2019); John J. Donohue III & Theodora Boulouta, *The Assault Weapon Ban Saved Lives*, STAN. L. SCH. AGGREGATE BLOG (Oct. 15, 2019), <https://law.stanford.edu/2019/10/15/the-assault-weapon-ban-saved-lives/> [<https://perma.cc/4Q2V-PPJF>] [hereinafter Donohue, *Assault Weapon Ban*]; John J. Donohue III & Theodora Boulouta, *That Assault Weapon Ban? It Really Did Work*, N.Y. TIMES, (Sept. 4, 2019), <https://www.nytimes.com/2019/09/04/opinion/assault-weapon-ban.html> [<https://perma.cc/PQ7F-QES9>] [hereinafter Donohue, *It Really Did Work*].

105. Donohue, *It Really Did Work*, *supra* note 104; John J. Donohue III, *The Swerve to 'Guns Everywhere': A Legal and Empirical Evaluation*, 83 L. & CONTEMP. PROBS. 117, 117 (2020) [hereinafter Donohue, *The Swerve to 'Guns Everywhere'*].

D. Allowing a Person Who Can Legally Carry a Concealed Gun to Bring that Gun onto a College or University Campus

The federal government does not regulate the carrying of firearms on college or university campuses, but the majority of state legislatures and college or university boards have passed restrictions or all-out bans on firearm possession on campus.¹⁰⁶ Most colleges and universities only allow firearms inside of locked vehicles, if they are allowed at all.¹⁰⁷ These restrictions have led to very low rates of firearm access on college campuses.¹⁰⁸ Still, some states and colleges have been moving in the opposite direction, increasing accessibility of firearms on campus.¹⁰⁹

Evidence supports restricting firearm carrying on college campuses for personal and public safety reasons. Given the high rates of mental illness and suicidal ideation among college-aged young adults, access to lethal means for a suicide attempt poses an elevated risk.¹¹⁰ Suicide rates on college campuses are significantly lower than the general population and firearms are the only mechanism used at lower rates than expected, providing support that firearm bans on college campuses have contributed to lower suicide rates.¹¹¹ Additionally, gun ownership among college-aged students has been associated with increases in risky behaviors like binge drinking and drunk driving.¹¹² Outside of the individual level, firearms on college campuses harm the overall environment and impede effective learning and discourse.¹¹³ States that have permitted concealed carry on college campuses have experienced increases in crimes on or around campus

106. *Guns in Public: Guns in Schools*, GIFFORDS L. CTR. TO PREVENT GUN VIOLENCE, <https://giffords.org/lawcenter/gun-laws/policy-areas/guns-in-public/guns-in-schools/> [<https://perma.cc/LB4N-T46W>] (last visited Aug. 14, 2023); Amy Rock, *An Updated List of States That Allow Campus Carry*, CAMPUS SAFETY (Apr. 7, 2023), <https://www.campussafetymagazine.com/university/list-of-states-that-allow-concealed-carry-guns-on-campus/> [<https://perma.cc/9GSF-97LT>].

107. *Guns in Public: Guns in Schools*, *supra* note 106.

108. *See id.*

109. *See* Birnbaum, *supra* note 77.

110. *See* Philippe P. Mortier et al., *The Prevalence of Suicidal Thoughts and Behaviours among College Students: A Meta-Analysis*, 48 PSYCH. MED. 554, 562 (2018); *see also* Jameson K. Hirsch, Jon R. Webb, & Elizabeth L. Jeglic, *Forgiveness, Depression, and Suicidal Behavior among a Diverse Sample of College Students*, 67 J. CLINICAL PSYCH. 896, 896 (2011).

111. *See* Allan J. Schwartz, *Four Eras of Study of College Student Suicide in the United States: 1920-2004*, 54 J. AM. COLL. HEALTH 353, 356–58 (2006).

112. *See* Matthew Miller, David Hemenway, & Henry Wechsler, *Guns and Gun Threats at College*, 51 J. AM. COLL. HEALTH 57, 59 (2002).

113. *See* Bruce A. Arrigo & Austin Acheson, *Concealed Carry Bans and the American College Campus: A Law, Social Sciences, and Policy Perspective*, 19 CONTEMP. JUST. REV. 1, 10 (2016).

following the laws' implementation and various incidents of firearm misuse, violence, and theft have been recorded in these states.¹¹⁴

E. Allowing a Person Who Can Legally Carry a Concealed Gun to Bring that Gun Onto School Grounds for Kindergarten Through 12th Grade

Unlike college and university campuses, the federal government has a history of regulating firearms on school grounds for kindergarten through 12th grade. The Gun-Free School Zones Act of 1990 prohibits the possession or discharge of a firearm in a school zone, with the exception of those “licensed to [carry a firearm] by the State in which the school zone is located[.]”¹¹⁵ While the Supreme Court ruled that Congress overstepped its powers under the Commerce Clause and deemed the original law unconstitutional in *United States v. Lopez*, an amended version of the law applying only to “firearm[s] that ha[ve] moved in or otherwise affect[] interstate or foreign commerce” – which applies to nearly all firearms – has withstood legal challenges and sets the same federal prohibition on firearms in schools.¹¹⁶ In the Gun-Free Schools Act of 1994, Congress furthered this regulation by mandating expulsion for a minimum of one year for any student who brings a firearm or weapon to school.¹¹⁷ The majority of states have extended these prohibitions by further restricting concealed carry that would be allowed under the Gun-Free School Zones Act, but exceptions are still abundant.¹¹⁸ Only eight states¹¹⁹ expressly allow concealed carry by

114. See generally THE CAMPAIGN TO KEEP GUNS OFF CAMPUS, FIREARM INCIDENTS ON CAMPUSES IN STATES WHERE CONCEALED CARRY IS PERMITTED (AS OF 2.21.19) (2019), <https://www.keepgunsoffcampus.org/blog/2019/05/15/incidents-campus-states-allow-campus-carry-2-21-19/> [<https://perma.cc/NLE4-ZX43>] (describing the known incidents as of February 21, 2019 that involved firearms on campuses allowing firearms); Devin Hughes & Evan DeFilippis, *The Numbers on Arming College Students Show Risks Outweigh Benefits*, TRACE (Nov. 9, 2015), <https://www.thetrace.org/2015/11/campus-carry-risk/> [<https://perma.cc/7TRX-8JXA>]; *Guns in Public: Guns in Schools*, *supra* note 106.

115. Gun-Free School Zones Act of 1990, 18 U.S.C. § 922(q)(2)(A)–(q)(3)(A).

116. See *United States v. Lopez*, 514 U.S. 549, 552 (1995); Omnibus Consolidated Appropriations Act, Pub. L. No. 104-208, 110 Stat. 3009 (1997).

117. Gun-Free Schools Act of 1994, 20 U.S.C. § 7961(b)(1).

118. See generally *Guns in Public: Guns in Schools*, *supra* note 106.

119. See DEL. CODE ANN. tit. 11, §§ 1457(a)–(c); KAN. STAT. ANN. §§ 21-6301(a)(11), (j)(4); MICH. COMP. LAWS SERV. § 750.237a(5)(c) (prohibiting concealed carry but allowing open carry); MISS. CODE ANN. §§ 97-37-17(2); 45-9-101; MISS. CODE ANN. § 97-37-7(2) (“A person licensed under Section 45-9-101 to carry a concealed pistol, who [] has voluntarily completed an instructional course in the safe handling and use of firearms offered by an instructor certified by a nationally recognized organization that customarily offers firearms training, or by any other organization approved by the Department of Public Safety . . . shall also be authorized to carry weapons in . . . any location listed in subsection (13) of Section 45-9-101[.]”) (permitting private schools to prohibit concealed carry); N.H. REV. STAT. ANN.

civilians on kindergarten through 12th grade school grounds, 26 states¹²⁰ allow some schools to grant individuals permission to carry on campus, and 27 states¹²¹ allow individuals with concealed carry permits to keep loaded, unlocked guns in their vehicles on campus.¹²² 39 states allow non-law-enforcement school security guards to carry firearms on school campuses, sometimes requiring them to have certain security training or designations, and over half of all states allow teachers and other school employees to carry firearms, often with additional requirements like permission of the school or school district.¹²³

While the full impact of these laws is unclear, there has been a marked decline in weapon carrying by high school students since the passing of the

§§ 193-D:3 (1994), 193-D:1 (2018); OHIO REV. CODE ANN. § 2923.122(D)(1)(d) (2022); OR. REV. STAT. §§ 166.370(1), (3)(g) (2021); S. 554, 81st Leg. Assemb., Reg. Sess. (Or. 2021); UTAH CODE ANN. § 76-10-505.5(4)(a) (2021).

120. See ALASKA STAT. § 11.61.210(a)(7) (2013); ARK. CODE ANN. § 5-73-119(e)(11) (2023); CONN. GEN. STAT. § 53a-217b(b) (2019); GA. CODE ANN. § 16-11-127.1(c)(6) (2022); IDAHO CODE § 18-3302D(4)(g) (2018); IND. CODE ANN. § 35-47-9-1(3) (2023); IOWA CODE ANN. § 724.4B(2)(a) (2021); KAN. STAT. ANN. § 21-6301(j)(2) (2021); KY. REV. STAT. ANN. §§ 237.110(16)(f) (2017), 527.070(3)(f) (2019); LA. STAT. ANN. § 14:95.2(A), (C)(3) (2018); MASS. GEN. LAWS ch. 269, § 10(j) (2021); MICH. COMP. LAWS SERV. § 750.237a(5)(e) (2017); MINN. STAT. § 609.66 Subd. 1d(f)(8) (2021); MO. REV. STAT. §§ 571.030.1(10), 571.030.4 (2023), 571.017.1(10) (1982); MONT. CODE ANN. § 45-8-361(3) (2021); NEV. REV. STAT. §§ 202.265(3) (2015), 202.3673(3) (2007); N.J. REV. STAT. § 2C:39-5(e) (2022); OHIO REV. CODE ANN. § 2923.122(D)(1)(d) (2022); OKLA. STAT. ANN. tit. 21, § 1280.1(4) (2015); OR. REV. STAT. ANN. §§ 166.370(1), (3)(h) (2021); S.C. CODE ANN. § 16-23-420(A) (2009); TENN. CODE ANN. §§ 49-50-803(a) (2016); TEX. PENAL CODE ANN. § 46.03(a)(1)(A) (2021); UTAH CODE ANN. § 76-10-505.5(4)(b) (2021); VT. STAT. ANN. tit. 13, § 4004(c) (2018); W. VA. CODE § 61-7-11a(b)(1)(B) (2022).

121. See ARK. CODE ANN. § 5-73-119(12) (2023); COLO. REV. STAT. ANN. § 18-12-105.5(3)(d) (2023); DEL. CODE ANN. tit. 11 § 1457(b) (2023); FLA. STAT. ANN. § 790.115(2) (2023); FLA. STAT. ANN. § 790.25(4)(b)(2) (2023); GA. CODE ANN. §§ 16-11-127.1(c)(7), (8) (2022); IDAHO CODE ANN. §§ 18-3302D(4)(e), (f) (2018); 720 ILL. COMP. STAT. ANN. 5/24-1(a)(4), (c)(1.5) (2023); IND. CODE ANN. §§ 35-47-9-1(7)(b) (2023), 35-47-9-2(c) (2015); KAN. STAT. ANN. §§ 21-6301(j)(5) (2021); KY. REV. STAT. ANN. § 527.070(3)(a) (2019); LA. REV. STAT. ANN. §§ 14:95.2(A), (C)(5) (2018); MINN. STAT. § 609.66 Subd. 1d(f)(3) (2021); MISS. CODE ANN. §§ 97-37-17(6), (7)(g) (2011); MO. REV. STAT. §§ 571.030.1(10), 571.030.4 (2023), 571.017.1(10) (1982); NEB. REV. STAT. ANN. § 28-1204.04(1) (2018); N.H. REV. STAT. ANN. §§ 193-D:3 (1994), 193-D:1 (2018); N.M. STAT. ANN. § 30-7-2.1(A)(5) (2023); N.D. CENT. CODE ANN. § 62.1-02-05(2)(g) (2021); OHIO REV. CODE ANN. § 2923.122(D)(1)(d) (2022); OKLA. STAT. ANN. tit. 21 § 1280.1 (2015); OR. REV. STAT. ANN. §§ 166.370(1), (3)(j) (2021); TENN. CODE ANN. §§ 39-17-1309(c)(1)(A-B) (2023), 39-17-1310 (1991); UTAH CODE ANN. § 76-10-505.5(4)(d) (2021); VA. CODE ANN. § 18.2-308.1(E) (2020); WASH. REV. CODE ANN. §§ 9.41.280(3)(e)-(g) (2023); W. VA. CODE § 61-7-11a(b)(2)(G) (2022).

122. See *Guns in Public: Guns in Schools*, *supra* note 106.

123. See *id.*

federal regulations in the 1990s.¹²⁴ Compared to 1993, 8.9% fewer high school students reported carrying a weapon (13.2%) and 9% fewer reported carrying a weapon on school property (2.8%) in 2019.¹²⁵ One study comparing gun-free school zones to gun-allowing zones in St. Louis, Missouri, reported fewer firearm crimes and lower odds of an active shooting in gun-free zones compared to gun-allowing establishments.¹²⁶ Additionally, generally strengthening gun laws is associated with lower rates of weapons-related injuries and threats at schools and fewer absences due to safety concerns.¹²⁷

F. Safe Storage Policies

Safe storage policies, or policies that require a person lock up the guns in their home when not in use to prevent handling by children or teenagers without adult supervision, do not exist clearly on the federal level.¹²⁸ Laws intended to encourage safe storage exist, and the Department of Justice amended the regulations of the Bureau of Alcohol, Tobacco, Firearms, and Explosives in 2022 to meet the statutory requirement set by the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 requiring federally licensed firearms dealers to sell secure gun storage or safety devices.¹²⁹ The 2022 regulation requires that these devices be “compatible with the firearms offered for sale by the licensee.”¹³⁰ Thus, under federal law, it is illegal for licensed federal firearms dealers to “sell or transfer any handgun unless the transferee is provided with a ‘secure gun storage or safety device,’” but actual use of these safety devices is not regulated.¹³¹ Some states fill in the gaps of this regulation through safe storage laws and child access prevention (CAP) laws, which penalize gun owners for storing their guns in a way that is accessible to an unsupervised

124. See *Offending by Juveniles*, OFF. OF JUV. JUST. & DELINQUENCY PREVENTION <https://www.ojjdp.gov/ojstatbb/offenders/qa03505.asp?qaDate=2019&text=yes&print=yes&maplink=link2> [https://perma.cc/E22A-PCS] (last visited Sept. 14, 2023).

125. *Id.*

126. See Paul Michael Reeping, *The Effect of Gun-Free Zones on Crimes Committed with a Firearm and Active Shootings in the United States* (2022) (Ph.D. dissertation, Columbia University).

127. See Marco Ghiani et al., *Gun Laws and School Safety*, 73 J. EPIDEMIOLOGY & CMTY. HEALTH 509, 514 (2019).

128. See Parikh et al., *supra* note 41, at 309; *Child Access Prevention & Safe Storage*, *supra* note 57.

129. See Omnibus Consolidated and Emergency Supplemental Appropriations Act, Pub. L. No. 105-277, 112 Stat. 2681 (1999); Secure Gun Storage and Definition of “Antique Firearm”, 87 Fed. Reg. 182, 193 (Jan. 4, 2022) (to be codified at 27 C.F.R. pt. 478).

130. Secure Gun Storage and Definition of “Antique Firearm”, 87 Fed. Reg. 182, 183 (Jan. 4, 2022) (to be codified at 27 C.F.R. pt. 478).

131. 18 U.S.C. § 922(z)(1).

minor.¹³² 28 states and the District of Columbia have some form of CAP law and 12 states have safe storage or gun lock requirements.¹³³ State safe storage laws vary in terms of criminal versus civil liability, when safe storage is required, and whether the firearm must be unloaded.¹³⁴

Safe storage policies, CAP laws, and other child safety laws have been shown to be effective in reducing youth access to firearms and youth unintentional firearm injury and suicide deaths, especially when such laws classify unsafe storage and child access as a felony.¹³⁵ One modeling study reported that over 72 youth firearm deaths and over 235 youth firearm shootings could have been prevented in 2015 if safe storage laws had motivated just 20% of households with currently unlocked firearms to change to safe storage practices for all firearms.¹³⁶ These laws additionally increase safety for adults, as adults were also found to be less likely to die

132. See *Child Access Prevention & Safe Storage*, *supra* note 57.

133. See *States with Firearm Laws Designed to Protect Children*, KAISER FAM. FOUND. (2023), <https://www.kff.org/other/state-indicator/firearms-and-children-legislation/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D> [https://perma.cc/7L4K-KUWR].

134. See *Child Access Prevention & Safe Storage*, *supra* note 57.

135. See Webster et al., *supra* note 93, at 594 (“There is evidence that CAP laws are associated with a modest reduction in suicide rates among youth aged 14 to 17 years.”); Peter Cummings et al., *State Gun Safe Storage Laws and Child Mortality Due to Firearms*, 278 J. AM. MED. ASS’N 1084, 1084 (1997) (“Laws that make gun owners responsible for storing firearms in a manner that makes them inaccessible to children were in effect for at least 1 year in 12 states from 1990 through 1994. Among children younger than 15 years, unintentional shooting deaths were reduced by 23% (95% confidence interval, 6%–37%) during the years covered by these laws.”); Lisa Hepburn et al., *The Effect of Child Access Prevention Laws on Unintentional Child Firearm Fatalities, 1979-2000*, 61 J. TRAUMA & ACUTE CARE SURGERY 423, 423 (2006) (“States that allowed felony prosecution of offenders experienced a greater effect of CAP laws than states that did not.”); Aaron J. Kivisto et al., *Adolescent Suicide, Household Firearm Ownership, and the Effects of Child Access Prevention Laws*, 60 J. AM. ACAD. OF CHILD & ADOLESCENT PSYCHIATRY 1096, 1101–02 (2021) (“[T]hose laws aimed at enforcing safe storage — namely, through provisions requiring that safety locks be provided for all handgun sales and that these locks meet quality standards — were associated with decreases in adolescent firearm suicide.”); April M. Zeoli et al., *The Association of Firearm Laws with Firearm Outcomes among Children and Adolescents: A Scoping Review*, 42 J. BEHAV. MED. 741, 751 (2019) (“[S]tudy results that suggest CAP laws reduce child and adolescent unintentional firearm deaths and firearm suicides have been regarded as some of the strongest results in the field of firearm policy analysis.” (citation omitted)); Jeffrey DeSimone, Sara Markowitz, & Jing Xu, *Child Access Prevention Laws and Nonfatal Gun Injuries*, 80 S. ECON. J. 5, 7 (2013) (describing an association between CAP laws and reductions in nonfatal gun injuries among children under the age of 18).

136. Michael C. Monuteaux, Deborah Azrael, & Matthew Miller, *Association of Increased Safe Household Firearm Storage with Firearm Suicide and Unintentional Death among U.S. Youths*, 173 J. AM. MED. ASS’N PEDIATRICS 657, 661 (2019).

by firearm suicide, and gun thefts became less common when safe storage laws were in place.¹³⁷

G. Other Relevant Policies

In addition to these policies focusing specifically on age and protecting youth, other, more general, firearm policies impact the efficacy of the above policies and regulate access for minors. Age-related restrictions on firearm ownership and restrictions based on juvenile criminal records require comprehensive background checks for firearm sales. Universal background check laws requiring all firearms sellers, licensed and unlicensed, to conduct a background check exist in 20 states and the District of Columbia.¹³⁸ Universal background checks can be highly effective, especially when used as part of a permit-to-purchase policy (sometimes referred to as a firearm purchaser licensing law).¹³⁹ Permit-to-purchase laws require individuals seeking to purchase firearms to first obtain a purchasing license from state or local police, a process typically involving direct police contact, fingerprinting, a comprehensive background check, and additional training.¹⁴⁰ These laws exist in ten states and are more effective at lowering

137. See David Hemenway, Azrael Deborah & Matthew Miller, *Whose Guns Are Stolen? The Epidemiology of Gun Theft Victims*, 4(1) INJ. EPIDEMIOLOGY 1, 4 (2017) (“We find that . . . storing guns unsafely [is] associated with having guns stolen.”); see also 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. EPIDEMIOLOGY & CMTY. HEALTH 841, 846 (2004) (“[F]irearm owners who keep their firearms locked or unloaded were at least 60% less likely to die from firearm related suicide than those who store their firearms unlocked and/or loaded.”); see also Michael D. Anestis & Joyce C. Anestis, *Suicide Rates and State Laws Regulating Access and Exposure to Handguns*, 105 AM. J. PUB. HEALTH 2049, 2051 (2015) (“[S]tates with a law in place that required handguns be locked at least in certain circumstances exhibited a lower overall suicide rate . . . , a lower firearms suicide rate . . . , and a lower proportion of suicide deaths resulting from firearms[.]”).

138. See *Universal Background Checks*, GIFFORDS L. CTR. TO PREVENT GUN VIOLENCE, <https://giffords.org/lawcenter/gun-laws/policy-areas/background-checks/universal-background-checks/> [<https://perma.cc/G83N-YSVT>] (last visited Sept. 11, 2023); see also Chip Brownlee, *Which States Have Universal Gun Background Checks?*, TRACE (June 15, 2023), <https://www.thetrace.org/2023/06/background-check-buy-a-gun-america-map/> [<https://perma.cc/CS3V-RHCP>].

139. See Parikh et al., *supra* note 41, at 309; see also Lee et al., *supra* note 81, at 107; Bindu Kalesan et al., *Firearm Legislation and Firearm Mortality in the USA: A Cross-Sectional, State-Level Study*, 387 LANCET 1847, 1854 (2016) (“Strengthening the Brady Law by universal background checks for firearms and ammunition was shown to be the most effective legislation along with firearm identification, a firearm owner regulation.”); Cassandra K. Crifasi, Alexander D. McCourt & Daniel W. Webster, *The Impact of Handgun Purchaser Licensing on Gun Violence*, POL’Y COMMONS (Feb. 15, 2022), <https://policycommons.net/artifacts/3675755/untitled/4481553/> [<https://perma.cc/L79P-CBTX>].

140. See *Solutions: Firearm Purchaser Licensing*, JOHNS HOPKINS CTR. FOR GUN VIOLENCE SOLUTIONS, <https://publichealth.jhu.edu/departments/health-policy-and->

rates of firearm homicides, mass shootings, and suicides than universal background checks alone, likely due to the deterrence of straw purchasing, impulsive purchasing, and the direct contact with law enforcement.¹⁴¹ Research specific to youth has reported lower rates of pediatric firearm mortality and of firearm carrying among youth in states with universal background checks for all purchases compared to youth from states that do not require background checks for unlicensed sellers.¹⁴²

The safe storage policies discussed above also need additional regulations to increase their impact because household storage practices are difficult to observe. Many safe storage laws are often only enforced after a tragic unintentional firearm-related injury or shooting that reveals the unsafe storage practices.¹⁴³ Given this limitation to the efficacy of safe storage laws, scholars recommend additional measures such as firearm safety training and safe storage counseling.¹⁴⁴ Extreme risk protection orders (ERPOs) can also help to intervene before a tragedy occurs by temporarily removing firearms, through a civil court order, from the homes of individuals who may be a danger to themselves or others.¹⁴⁵ If a court issues an ERPO, law enforcement can remove firearms from individuals subject to the ERPO for a temporary length of time, typically about one year.¹⁴⁶ As of 2023, ERPO laws exist in 21 states and the District of Columbia, all of which include law enforcement officers as petitioners, 17 of which include family members as petitioners, and seven of which include certain medical professionals as petitioners.¹⁴⁷ ERPO laws have been shown to reduce firearm suicides.¹⁴⁸ After examining ERPO petitions filed in Oregon,

management/research-and-practice/center-for-gun-violence-solutions/solutions/permit-to-purchase-laws [<https://perma.cc/H2F2-EHCY>] (last visited Sept. 14, 2023).

141. See Crifasi et al., *supra* note 139.

142. See Lava R. Timsina et al., *National Instant Criminal Background Check and Youth Gun Carrying*, 145 PEDIATRICS 1, 4 (2020); see also Monika K. Goyal et al., *State Gun Laws and Pediatric Firearm-Related Mortality*, 144 PEDIATRICS 1, 6 (2019).

143. See Cassandra K. Crifasi et al., *Storage Practices of U.S. Gun Owners in 2016*, 108 AM. J. PUB. HEALTH 532, 536 (2018).

144. See *id.*

145. See *Extreme Risk Protection Orders*, JOHNS HOPKINS CTR. FOR GUN VIOLENCE SOLUTIONS, <https://publichealth.jhu.edu/2021/policies-that-reduce-gun-violence> [<https://perma.cc/U4ZU-9PWR>] (last visited Sept. 14, 2023).

146. See *id.*

147. See *Which States Have Extreme Risk Laws?*, EVERYTOWN RSCH. & POL'Y (2023), <https://everytownresearch.org/rankings/law/extreme-risk-law/> [<https://perma.cc/3JSX-XFV5>].

148. See Aaron J. Kivisto & Peter Lee Phalen, *Effects of Risk-Based Firearm Seizure Laws in Connecticut and Indiana on Suicide Rates, 1981–2015*, 69 PSYCHIATRIC SERVS. 855, 861 (2018); see also Jeffrey W. Swanson et al., *Implementation and Effectiveness of Connecticut's Risk-Based Gun Removal Law: Does It Prevent Suicides?*, 80 L. & CONTEMP. PROBS. 179,

researchers found that common reasons for petitions included suicide risk (73%) and interpersonal violence (75%).¹⁴⁹ Analyses of petitions filed in six states with ERPO laws have found that approximately 10% of petitions mentioned concerns of mass violence, most commonly mass violence at a kindergarten through 12th grade school, suggesting ERPO laws' potential to reduce interpersonal violence, mass shootings, and school-based violence as well.¹⁵⁰

III. UNDERSTANDING PUBLIC OPINION

While it is essential to understand the efficacy of existing policy options, research and data alone do not drive policy change. Public opinion can set the policy agenda, impacting how policy issues are framed and what laws and regulations are proposed, considered, and passed.¹⁵¹ In addition to this important impact on the legislative and executive branches, some scholars have outlined connections between public opinion and judicial decisions, highlighting how dissonance between public opinion and court decisions can impact the Supreme Court's sociological legitimacy.¹⁵² The 2023 National Survey of Gun Policy sought to measure levels of support for policies intended to reduce firearm injury and mortality among children and young adults.

A. Methods

The 2023 National Survey of Gun Policy was fielded from January 4 to February 6, 2023, using NORC at the University of Chicago's AmeriSpeak panel (n=3,096). The AmeriSpeak Panel was drawn from the NORC National Frame, a nationally representative, probability-based panel of

208 (2017); Rachel Dalafave, *An Empirical Assessment of Homicide and Suicide Outcomes with Red Flag Laws*, 52 LOY. U. CHI. L. J. 867, 900 (2020).

149. April M. Zeoli et al., *Use of Extreme Risk Protection Orders to Reduce Gun Violence in Oregon*, 20 CRIMINOLOGY & PUB. POL'Y 243, 252, 256 (2021).

150. April M. Zeoli et al., *Extreme Risk Protection Orders in Response to Threats of Multiple Victim/Mass Shooting in Six U.S. States: A Descriptive Study*, 165 PREVENTIVE MED. 1, 3 (2022).

151. See Paul Burstein, *The Impact of Public Opinion on Public Policy: A Review and an Agenda*, 56 POL. RES. Q. 29, 29 (2003).

152. See generally Casillas et al., *supra* note 13 (finding that the effect of public opinion on Supreme Court decisions is legitimate and most pronounced in nonsalient cases); see also Giles et al., *supra* note 13 (finding that even in absence of membership change, public opinion can align the Court with society); Epstein & Martin, *supra* note 13 (finding Supreme Court Justices do not respond to public opinion directly, but rather the events or forces that shape public opinion); Fallon, *supra* note 15 (concluding constitutional legitimacy is more uncertain and contingent than many assume); Grove, *supra* note 15 (suggesting the Supreme Court's legitimacy may be protected if moderation and good faith in Congress and the presidency is restored).

adults age 18 and older that used address-based sampling to cover 97% of U.S. households.¹⁵³ Participants were recruited into the AmeriSpeak panel and were encouraged to participate in a small number of surveys each month, including the National Survey of Gun Policy, via cash awards and other incentives. The panel provided sample coverage for households with listed and unlisted phone numbers and only cell phones, and interviews were administered online and by phone in both English and Spanish.

The survey completion rate was 76.5%. We oversampled for gun owners, Black Americans, Hispanic Americans, and Asian Americans. We conducted analyses using survey weights based on data extracted from the Census Bureau's Current Population Survey to adjust for known sampling deviations and survey nonresponse, and to ensure the sample was representative of the U.S. population.

Gun ownership was determined through two questions: "Do you happen to have in your home or garage any guns or revolvers?" and "Do any of these guns personally belong to you?" A gun owner was defined as a respondent who was the personal owner of at least one firearm. We collected detailed demographic information about respondents, including political party affiliation, and examined their support for various gun-related policies, including policies implementing age restrictions and safe storage policies. Support was measured using a 5-point Likert scale ranging from strongly favor to strongly oppose. We created a dichotomous support measure comparing 'somewhat favor' and 'strongly favor' to the other options to indicate the proportion in favor of each policy.

Logistic regression and predictive probabilities were used to compare differences in policy support by gun ownership and political party affiliation. All analyses were conducted using the *svy* command in Stata version 17.0. This study was reviewed and approved by the Johns Hopkins Bloomberg School of Public Health Institutional Review Board.

B. Results

TABLE 1 displays the overall and group-specific proportions of respondents who supported various age-related policies. The majority of

153. *AmeriSpeak Overview*, NORC AT THE UNIV. OF CHI., <https://amerispeak.norc.org/us/en/amerispeak/about-amerispeak/overview.html> [https://perma.cc/GF7R-AHCY] (last visited Sept. 14, 2023); *Panel Design*, NORC AT THE UNIV. OF CHI., <https://amerispeak.norc.org/us/en/amerispeak/about-amerispeak/panel-design.html> [https://perma.cc/6RTT-TSSE] (last visited Sept. 14, 2023); *Technical Overview of the AmeriSpeak Panel, NORC's Probability-Based Household Panel*, NORC AT THE UNIV. OF CHI. 1–2 (Feb. 8, 2022), <https://amerispeak.norc.org/content/dam/amerispeak/research/pdf/AmeriSpeak%20Technical%20Overview%202019%2002%2018.pdf> [https://perma.cc/6Y3H-KL7S].

respondents supported safe storage policies (72%) and policies that increase age-related limitations on gun ownership, such as prohibiting a person convicted of a serious crime as a juvenile from having a gun for 10 years (77%), prohibiting a person under the age of 21 from having a handgun (67%), and requiring an owner of a semi-automatic rifle to be at least 21 years of age (73%).

Gun owners and Republicans were significantly less likely to support restrictive policies and significantly more likely to support permissive policies than non-gun owners and Democrats. Differences in support by political party affiliation were larger than differences by gun ownership, as shown in FIGURE 1 and FIGURE 2. For example, levels of support for prohibiting a person under the age of 21 from having a handgun differed by 14% between gun owners (58%) and non-gun owners (71%) and by 30% between Democrats (83%) and Republicans (53%). Similarly, levels of support for prohibiting a person under the age of 21 from owning a semi-automatic rifle differed by 10% between gun owners (66%) and non-gun owners (76%) and by 18% between Republicans (65%) and Democrats (83%). Support among Independents tended to fall in between the levels of support reported by Democrats and Republicans but was often closer to the levels of support reported by Republicans. For example, 87% of Democrats, 70% of Independents, and 59% of Republicans supported a safe storage policy that would require that a person lock up the guns in their home when not in use to prevent handling by children or teenagers without adult supervision.

Overall support was low for allowing a person who can legally carry a concealed gun to bring that gun onto a college or university campus (27%) or onto school grounds for kindergarten through 12th grade (25%). Larger proportions of gun owners, Republicans, and Independents supported allowing concealed carry in these locations than non-gun owners and Democrats, respectively. Gun owners were 1.5 times and Republicans were 3.1 times more likely to support concealed carry of firearms on school grounds for kindergarten through 12th grade compared to non-gun owners and Democrats ($p < 0.001$ and $p < 0.001$, respectively). Similarly, gun owners were 1.7 times and Republicans were 2.9 times more likely to support concealed carry of firearms on college and university campuses compared to non-gun owners and Democrats ($p < 0.001$ and $p < 0.001$, respectively). Despite higher levels of support among gun owners and Republicans, less than half of respondents in each group expressed support for allowing concealed carry on college or university campuses (42% and 43%, respectively) and on kindergarten to 12th grade school grounds (36% and 43%, respectively).

IV. DISCUSSION WITH IMPLICATIONS

In general, our results demonstrate broad public support for policies that seek to limit youth access to firearms. Although there were some differences by political party and gun ownership, respondents generally favored policies that restricted purchase and possession by those under 21 and other age-related policies. Public support for these policies is unsurprising, as rates of youth violence have recently increased.¹⁵⁴ Given the significant harm of firearm violence faced by children, there is a need to push for gun policies that keep children and young adults safe. High overall support for these policies may help catalyze their successful passing, but for certain policies, appealing to gun owners and Republicans is necessary to increase support among these groups. Furthermore, the *Bruen* approach can potentially limit the ability of states to implement these important measures.

In *Bruen*, the Supreme Court held that “New York’s proper-cause requirement violates the Fourteenth Amendment . . . [by] prevent[ing] law-abiding citizens with ordinary self-defense needs from exercising their right to keep and bear arms.”¹⁵⁵ The Court further stated that “the government must affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms.”¹⁵⁶

And yet, the Second Amendment’s reach has only expanded in the past two decades.¹⁵⁷ In *District of Columbia v. Heller* in 2008, relying on the Court’s analysis of the plain language of the Second Amendment, the intent of the framers, and historical regulations at the time of the Second Amendment’s passing, the Supreme Court held that individuals have a constitutional right to keep handguns in the home for self-defense.¹⁵⁸ In the majority opinion, Justice Antonin Scalia emphasized that “[a] constitutional guarantee subject to future judges’ assessments of its usefulness is no constitutional guarantee at all. Constitutional rights are enshrined with the scope they were understood to have when the people adopted them, whether or not future legislatures or (yes) even future judges think that scope too broad.”¹⁵⁹ Still, in this opinion Justice Scalia recognized that “the right secured by the Second Amendment is not unlimited,” maintaining the constitutionality of certain regulations such as prohibited persons and sensitive places policies.¹⁶⁰ In 2010, in *McDonald v. City of Chicago*, the

154. See Bottiani et al., *supra* note 44, at 563.

155. *N.Y. State Rifle & Pistol Ass’n Inc. v. Bruen*, 597 U.S. ___, 142 S. Ct. 2111, 2156 (2022).

156. *Id.* at 2127.

157. See Bottiani et al., *supra* note 44, at 573.

158. *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008).

159. *Id.* at 634–35.

160. See *id.* at 626.

Supreme Court held that the “Second Amendment right is fully applicable to the States,” thus limiting the restrictions allowed by cities and states.¹⁶¹ Again, the Court reiterated that its ruling “does not imperil every law regulating firearms.”¹⁶²

Still, the Court in *Heller* and *McDonald* did not provide guidance on what type of firearm regulations are constitutional nor how lower courts should make this determination. Lower courts have since upheld various regulations including safe storage requirements, waiting periods, and extreme risk protection order laws.¹⁶³ Appellate courts have applied a two-step test to determine the constitutionality of firearms restrictions, asking first whether the regulation falls within the scope of the Second Amendment and, if it does, then applying means-end scrutiny.¹⁶⁴ The Supreme Court moved away from the use of this two-step test in *Bruen*, saying it was “one step too many” and instead insisting that only step one, the determination of whether the law is rooted in the Second Amendment and historical tradition, should be applied:

[W]hen the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation’s historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation’s historical tradition may a court conclude that the individual’s conduct falls outside the Second Amendment’s “unqualified command.”¹⁶⁵

The *Bruen* decision concerns gun violence researchers for multiple reasons. For one, *Bruen* struck down proper cause requirements,¹⁶⁶ pushing states with “may issue” concealed carry permit laws to move closer to “shall issue” laws. Shall issue laws that make it easier to carry a concealed handgun have been associated with increased firearm violence.¹⁶⁷ In addition, relying on historical and legal precedent as a test for all firearm regulations raises complex debate and concerns among various judges and scholars. Lower court judges have voiced concerns regarding the *Bruen* test, asserting that

161. *McDonald v. City of Chicago*, 561 U.S. 742, 750 (2010).

162. *Id.* at 786.

163. *The Supreme Court & the Second Amendment*, GIFFORDS L. CTR. TO PREVENT GUN VIOLENCE, <https://giffords.org/lawcenter/gun-laws/second-amendment/the-supreme-court-the-second-amendment> [https://perma.cc/GG9D-FQ3U] (last visited Sept. 26, 2023).

164. Jacob D. Charles, *Defensible Second Amendment Rights: Conceptualizing Gun Laws That Dispossess Prohibited Persons*, 83 LAW & CONTEMP. PROBS. 53, 54 (2020).

165. *N.Y. State Rifle & Pistol Ass’n Inc. v. Bruen*, 597 U.S. ___, 142 S. Ct. 2111, 2126 (2022).

166. *Id.* at 2133–34.

167. See Donohue, *The Swerve to ‘Guns Everywhere’*, *supra* note 105.

litigants and courts lack the historical background, resources, and time to conduct in-depth historical analyses, that the test is unclear and yields inconsistent results, and that the historical context was a time of discrimination, exclusion, and slavery.¹⁶⁸ Furthermore, as one Federal judge in Tennessee noted:

[A] list of the laws that happened to exist in the founding era is, as a matter of basic logic, not the same thing as an exhaustive account of what laws would have been theoretically believed to be permissible by an individual sharing the original public understanding of the Constitution. No reasonable person would, for example, think that the legislatures of today have adopted every single hypothetical law capable of comporting with our understanding of the Constitution, such that any law that has not yet been passed simply must be unconstitutional. Accordingly, the court must, based on the available historical evidence, not just consider what earlier legislatures did, but imagine what they could have imagined.¹⁶⁹

Federal judges have stated that *Bruen* has caused “disarray among the lower courts” when applying the new framework, as judges and scholars examining the same history seem to reach different conclusions.¹⁷⁰

An examination of the history of firearm regulations in the U.S. highlights the challenge faced by judges, as they attempt to “determine what types of historical regulations may be ‘relevantly similar.’”¹⁷¹ As stated in *Heller* and reiterated in *Bruen*, the Supreme Court Justices acknowledge that the Second Amendment is not without limits: “From Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever and for whatever purpose.”¹⁷² Historical precedent exists for many regulations and scholars have compiled extensive lists of the over 800 firearm-related laws passed during America’s formative years, from colonial times and its founding to the passing of the National Firearm Act, the first significant federal gun law, in 1934.¹⁷³

168. Clara Fong, Kelly Percival & Thomas Wolf, *Judges Find Supreme Court’s Bruen Test Unworkable*, BRENNAN CTR. FOR JUST. (June 26, 2023), <https://www.brennancenter.org/our-work/research-reports/judges-find-supreme-courts-bruen-test-unworkable> [<https://perma.cc/MP77-JRT7>].

169. *United States v. Kelly*, No. 3:22-CR-00037, 2022 WL 17336578, at *2 (M.D. Tenn. Nov. 16, 2022) (emphasis omitted).

170. Fong et al., *supra* note 168. *See generally* *United States v. Perez-Gallan*, No. 4:22-CR-0042, 2022 WL 16858516 (W.D. Tex. Nov. 10, 2022).

171. Fong et al., *supra* note 168.

172. *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008); *N.Y. State Rifle & Pistol Ass’n Inc. v. Bruen*, 597 U.S. ___, 142 S. Ct. 2111, 2128 (2022).

173. *See generally* Mark Frassetto, *Firearms and Weapons Legislation up to the Early 20th Century*, SSRN, (July 26, 2023), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2200991 [<https://perma.cc/VY4F->

America's rich history of regulating guns includes over 40 policies prohibiting certain groups of individuals from accessing firearms, some of which were "discriminatory and overbroad — but . . . were intended to prevent danger."¹⁷⁴ Historical firearm prohibitions reflect a desire to balance firearm protections and public safety. The Supreme Court upheld this history of regulation in *District of Columbia v. Heller*, stating that "longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings" and other gun restrictions are "presumptively lawful."¹⁷⁵

Age-related restrictions on firearm ownership also have historical roots. An estimated 38 laws enacted from 1791 to 1934 enforced some kind of minimum ownership age ranging from 12 to 21.¹⁷⁶ In addition to these age-specific laws, the aforementioned prohibited persons policies may also provide historical justification for age-related restrictions given the added risks posed by firearm ownership among minors.

Concealed carry restrictions were formerly commonplace.¹⁷⁷ The *Bruen* decision's prohibition on "may issue" concealed carry licensing laws reflects the culmination of a recent shift to constitutional or permitless carry and "shall issue" concealed carry laws. In 1981, "shall issue" carry laws existed in two states and only one state had permitless carry.¹⁷⁸ Over half of the states had "may issue" concealed carry license laws, and 19 states prohibited concealed carrying altogether.¹⁷⁹ While this may be more recent history, similar laws date as far back as the 17th century, when various states prohibited publicly wearing weapons (including firearms) due to concerns that this practice incited fear and encouraged fighting.¹⁸⁰ Some state laws explicitly referred to the dangers and intents of the practice of concealed carry, such as Georgia's law passed in 1837, which declared itself "[a]n act to guard and protect the citizens of this State, against the unwarrantable and

B2C2]; Robert J. Spitzer, *Gun Law History in the United States and Second Amendment Rights*, 80 LAW & CONTEMP. PROBS. 55, 58, 61 (2017).

174. Joseph G.S. Greenlee, *The Historical Justification for Prohibiting Dangerous Persons from Possessing Arms*, 20 WYO. L. REV. 249, 262 (2020). See generally Spitzer, *supra* note 173.

175. 554 U.S. 570, 626–27 n.26 (2008).

176. Spitzer, *supra* note 173, at 60, 76.

177. See generally Saul Cornell, *The Right to Keep and Carry Arms in Anglo-American Law: Preserving Liberty and Keeping the Peace*, 80 LAW & CONTEMP. PROBS. 11 (2017).

178. Spitzer, *supra* note 173, at 62–67.

179. *Id.*

180. *Id.* at 63.

too prevalent use of deadly weapons”¹⁸¹ and Alabama’s 1839 “[a]ct to suppress the evil practice of carrying weapons secretly.”¹⁸²

Nearly 100 firearm restrictions passed from 1607 to 1934 referred more specifically to sensitive or dangerous areas or times, including schools and churches, around public transportation, and on election days.¹⁸³ Concealed carry laws in Texas and Missouri in the late 1800s explicitly prohibited concealed carry in schools and places where people “assembled for educational [or] literary . . . purposes.”¹⁸⁴ Additionally, some colleges and universities report a long history of regulating firearm access on their campuses. For example, guns have been prohibited on Harvard University’s campus since 1655 and at some public universities like the University of Virginia and the University of North Carolina since the 1800s.¹⁸⁵

Safe storage requirements also date back to the 1700s.¹⁸⁶ Boston prohibited the storage of a loaded firearm in the home in 1783, even allowing such weapons to be seized if found to be stored improperly, and various other cities and states set restrictions on the quantity of gun powder that could be stored in the home around this time.¹⁸⁷

Historical precedent for other firearm regulations, particularly those regulating more modern weapons like assault rifles, is less clear. Many view assault rifle bans as having no historical precedent given the newer origin of these weapons.¹⁸⁸ Still, legal precedent exists for regulating various types of dangerous weapons such as pistols and “gun traps,” or weapons rigged with a string to fire without a finger on the trigger, and the rationale for regulating these weapons may be extended to modern dangerous weapons like assault rifles.¹⁸⁹ The early 1900s, in particular, saw a wave of regulations on

181. *Id.* at 64; Act of Dec. 25, 1837, 1837 Ga. Laws 90.

182. Spitzer, *supra* note 173, at 64; Act of Feb. 1, 1839, no. 77, 1839 Ala. Laws 67.

183. Spitzer, *supra* note 173, at 59, 79.

184. 1870 Tex. Gen. Laws 63, An Act Regulating The Right To Keep and Bear Arms, Chap. 46, § 1; An Act to Amend Section 1274, Article 2, Chapter 24 of the Revised Statutes of Missouri, Entitled “of Crimes and Criminal Procedure,” § 1, 1883 Mo. Laws 76 § 1274.

185. Miller, *supra* note 68, at para. 6.

186. Spitzer, *supra* note 173, at 80–81.

187. *See* An Act in Addition to the Several Acts Already Made for the Prudent Storage of Gun-Powder Within the Town of Boston, §§ 1-2, 1783 Mass. Acts 218. *See generally* *The Repository of Historical Gun Laws*, DUKE CTR. FOR FIREARMS L., <https://firearmslaw.duke.edu/repository/search-the-repository/#> [<https://perma.cc/N5KR-HPGY>].

188. Daniel W. Webster & Lawrence O. Gostin, *The Supreme Court Expands Second Amendment Rights as the Nation Experiences Historic Levels of Firearm Violence*, 328 J. AM. MED. ASS’N 1188, 1188 (2022). *See generally* Mark W. Smith, *Assault Weapon Bans: Unconstitutional Laws for Made-Up Category of Firearms*, 43 HARV. J. L. & PUB. POL’Y 357 (2020).

189. Spitzer, *supra* note 173, at 67–69.

firearms and weapons considered especially dangerous, such as machine guns and silencers. West Virginia enacted the first machine gun regulation in 1925, banning possession of machine guns unless given a permit by the department of public safety.¹⁹⁰ The Supreme Court has further recognized America's "historical tradition of prohibiting the carrying of 'dangerous and unusual weapons'" that were not in common use.¹⁹¹

As this brief historical analysis shows, gun regulations have existed since before the founding of the U.S. Prior to recent decades, legal challenges were infrequent and primarily targeted concealed or open gun carrying laws.¹⁹² With the exception of an 1822 case in Kentucky, *Bliss v. Commonwealth*, nearly all of these legal challenges upheld the gun regulations.¹⁹³

Only more recently have firearm regulations begun to face more frequent and varied legal challenges, accompanied by a shift to courts ruling against firearm restrictions.¹⁹⁴ These rulings limiting states' abilities to regulate gun ownership and curb gun violence may come with deadly consequences. According to one modeling estimate, nearly 152 additional firearm-related deaths may occur each year due to *Bruen*'s elimination of handgun carrying restrictions.¹⁹⁵

In the first year post-*Bruen*, courts have ruled on over 450 Second Amendment cases and have upheld the gun laws in approximately 88% of these cases.¹⁹⁶ Legislators should be encouraged by the high rate of rulings favoring gun laws when applying the *Bruen* test and states may look to analogous regulations from America's history to justify firearm regulations.¹⁹⁷ Continued legal challenges to new and existing firearm regulations may reduce the ambiguity of the *Bruen* test as judges set precedent for what regulations are acceptable.

190. An Act to Amend and Re-Enact Section Seven . . . Relating to Offenses Against the Peace; Providing for the Granting and Revoking of Licenses and Permits Respecting the Use, Transportation and Possession of Weapons and Fire Arms . . . , ch. 3, § 7, pt. b, 1925 W. Va. Acts ch. 3, § 7(b) (1st Extraordinary Sess.).

191. *District of Columbia v. Heller*, 554 U.S. 570, 627 (2008).

192. *See Spitzer, supra* note 173, at 61–62.

193. *Id.* at 61 (citing *Bliss v. Commonwealth*, 12 Ky. (2 Litt.) 90, 13 Am. Dec. 251 (1822)).

194. *See Spitzer, supra* note 173, at 61–62.

195. Adam Gaffney et al., *Projected Health Outcomes Associated with 3 U.S. Supreme Court Decisions in 2022 on COVID-19 Workplace Protections, Handgun-Carry Restrictions, and Abortion Rights*, J. AM. MED. ASS'N NETWORK OPEN 1, 5 (2023).

196. Billy Clark, *Second Amendment Challenges Following the Supreme Court's Bruen Decision*, GIFFORDS L. CTR. TO PREVENT GUN VIOLENCE (June 21, 2023), <https://giffords.org/lawcenter/memo/second-amendment-challenges-following-the-supreme-courts-bruen-decision> [https://perma.cc/4R5E-FKUK].

197. Darrell A. H. Miller, Andrew R. Morral, & Rosanna Smart, *State Firearm Laws after Bruen*, RAND CORP., <https://www.rand.org/pubs/perspectives/PEA243-1.html> [https://perma.cc/5TBZ-7ZUA] (last visited Sept. 27, 2023).

Some cases have already begun to explore age-related restrictions in the context of *Bruen*. For example, a challenge to Tennessee’s permitless carry law, which only allowed permitless carry for those ages 21 and older, resulted in a settlement declaring the law’s exclusion of 18-to-20-year-olds unconstitutional and lowering the law’s minimum age to 18.¹⁹⁸ Similarly, in Texas, a district court judge ruled that the state’s law “prohibit[ing] law-abiding 18-to-20-year-olds from carrying handguns for self-defense outside the home based solely on their age . . . violates the Second Amendment”¹⁹⁹ Meanwhile, the Eleventh Circuit upheld Florida’s minimum age of 21 to purchase firearms, citing the high rates of gun violence perpetrated by 18-to-20-year-olds and the historical precedent for regulating firearm purchasing by this age group from laws in the Reconstruction Era.²⁰⁰ A federal judge in Virginia distinguished this holding in declaring the federal law prohibiting handgun sales to those under 21 unconstitutional.²⁰¹

While legal challenges to firearm regulations have spiked since *Bruen*, so has the enactment of firearm regulations.²⁰² Republican-led states have primarily moved to deregulate firearms and states with Democratic majorities have passed new regulations and restrictions, mirroring the differences in policy support by political party seen in our nationwide survey.²⁰³ As a result, the gap between firearm regulations in red and blue states has continued to grow.²⁰⁴ Such trends reinforce the importance of public opinion on legislative decisions.

CONCLUSION

As young people in the United States continue to fall victim to gun violence at staggering rates, legislators and other government officials are desperately seeking solutions. Some of these solutions focus on age-related gun restrictions intended to keep people under a certain age from accessing firearms. This Article described the key age-related policies that have been introduced or enacted by state legislatures. Survey results demonstrate that

198. Andy Sher, *Tennessee Settles Lawsuit over 18-to-20-Year-Olds and Guns*, CHATTANOOGA TIMES FREE PRESS, (Jan. 24, 2023, 7:47 PM), <https://www.timesfreepress.com/news/2023/jan/24/18-20-year-olds-included-tennessee-gun-carry-law-tfp/#/questions> [<https://perma.cc/3WP4-T3KP>].

199. *Firearms Pol’y Coal., Inc. v. McCraw*, 623 F. Supp. 3d 740, 758 (N.D. Tex. 2022).

200. *Nat’l Rifle Ass’n v. Bondi*, 61 F.4th 1317, 1331–32 (11th Cir. 2023).

201. *Fraser v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, No. 3:22-CV-00410, 2023 WL 3355339, at *21 (E.D. Va. May 10, 2023).

202. Andrew Willinger, *How Have State Gun Laws Changed since Bruen?*, DUKE CTR. FOR FIREARMS L. (Apr. 28, 2023), <https://firearmslaw.duke.edu/2023/04/how-have-state-gun-laws-changed-since-bruen/> [<https://perma.cc/S9V4-FKUS>].

203. *Id.*

204. *Id.*

these laws are popular. States have actively drafted and voted on gun legislation since *Bruen* was decided, and public opinion surely has a relationship with introduction and adoption of policies like those considered herein. The outstanding question, as with all extant gun laws, is how courts will apply the *Bruen* standard.

In *Bruen*, the Supreme Court instructed lower courts to evaluate gun laws considering the country's historical tradition of regulating firearms. If a law is, to the Court, inconsistent with this history, it should be struck down. Nevertheless, the Court's approach to history in *Bruen* has drawn sharp criticism from scholars.²⁰⁵ Among other issues, it is not clear, from the *Bruen* opinion, what history should be used, how new historical discoveries should be incorporated, or how to account for new firearm technology and corresponding changes in violence. Further, the role of public opinion — either modern or historical — is unclear. Laws enacted around the time of the founding or during Reconstruction, for example, were not enacted in a vacuum. Like today, the past surely saw legislation that was informed by public opinion, legislation that was generally popular or unpopular, and legislation that was perceived very differently by different population groups.

For gun policy, the relationship between public opinion, history, and tradition remains unclear. It is possible that the Court thinks public opinion is irrelevant to the *Bruen* historical analysis. As we show in this Article, policies that seek to limit firearm access for young people are popular. If, under the *Bruen* standard, such age-related policies are inconsistent with history and tradition, the Court will move further out-of-step with the public's views on gun policy and gun violence prevention.²⁰⁶

205. See Saul Cornell, *Cherry-Picked History and Ideology-Driven Outcomes: Bruen's Originalist Distortions*, SCOTUSBLOG (June 27, 2022), <https://www.scotusblog.com/2022/06/cherry-picked-history-and-ideology-driven-outcomes-bruens-originalist-distortions/> [https://perma.cc/RU7T-RHAP] (criticizing the Court's distortion of history and dismissal of facts that do not support a pro-gun narrative); Jake Charles, *Bruen, Analogies, and the Quest for Goldilocks History*, DUKE CTR. FOR FIREARMS L.: SECOND THOUGHTS BLOG, (June 28, 2022), <https://firearmslaw.duke.edu/2022/06/bruens-analogies-and-the-quest-for-goldilocks-history/> [https://perma.cc/WEZ4-KBBA] (“*Bruen* calls for historical method, but truncates it and chops it apart.”); Scott Burris, *One Year On, Bruen Really Is as Bad as It Reads*, REGUL. REV. (Aug. 2, 2023), <https://www.theregreview.org/2023/08/02/burris-one-year-on-bruen-really-is-as-bad-as-it-reads/> [https://perma.cc/443Z-9ZSJ] (criticizing the Court's analysis as a distortion and oversimplification of historical gun regulation).

206. See Stephen Jasee, Neil Malhotra, & Maya Sen, *A Decade-Long Longitudinal Survey Shows That the Supreme Court Is Now Much More Conservative than the Public*, 119 PNAS (Apr. 12, 2022), <https://doi.org/10.1073/pnas.2120284119> [https://perma.cc/48J7-JHYT].

TABLE 1: SUPPORT FOR AGE-RELATED POLICIES BY GUN OWNERSHIP AND POLITICAL PARTY (2023)²⁰⁷

	Overall (N=3,096)	Gun Ownership		Political Party		
		Gun owner (N=1,002)	Non-gun owner (N=2,094)	D (N=1,199)	I (N=1,163)	R (N=730)
Prohibited Persons Policies						
Prohibiting a person convicted of a serious crime as a juvenile from having a gun for 10 years	77.4	77.8	77.2	84.1	73.0***	75.8***
Prohibiting a person under the age of 21 from having a handgun	67.0	57.7	71.4***	83.2	63.6***	53.0*** ^^^
Assault Weapon and Ammunition Policies						
Requiring an owner of a semi-automatic rifle to be at least 21 years of age	72.5	65.9	75.6***	82.9	69.4***	64.9***
Policies on Carrying Guns in Public						
Allowing a person who can legally carry a concealed gun to bring that gun onto a	27.3	41.8	20.3***	12.7	28.1***	43.1*** ^^^

207. * $p \leq 0.05$; ** $p \leq 0.01$; *** $p \leq 0.001$; ^ $p \leq 0.05$; ^^ $p \leq 0.01$; ^^ $p \leq 0.001$ (for comparing Republican to Independent).

	Overall (N=3,096)	Gun Ownership		Political Party		
		Gun owner (N=1,002)	Non-gun owner (N=2,094)	D (N=1,199)	I (N=1,163)	R (N=730)
college or university campus						
Allowing a person who can legally carry a concealed gun to bring that gun onto school grounds for kindergarten through 12th grade	25.2	36.3	20.0***	11.0	24.7***	42.6*** ^^^
Safe Storage Policies						
Requiring by law that a person lock up the guns in their home when not in use to prevent handling by children or teenagers without adult supervision	72.2	58.0	78.9***	86.5	70.2***	58.5*** ^^^

FIGURE 1: SUPPORT FOR AGE-RELATED POLICIES BY GUN OWNERSHIP (2023)

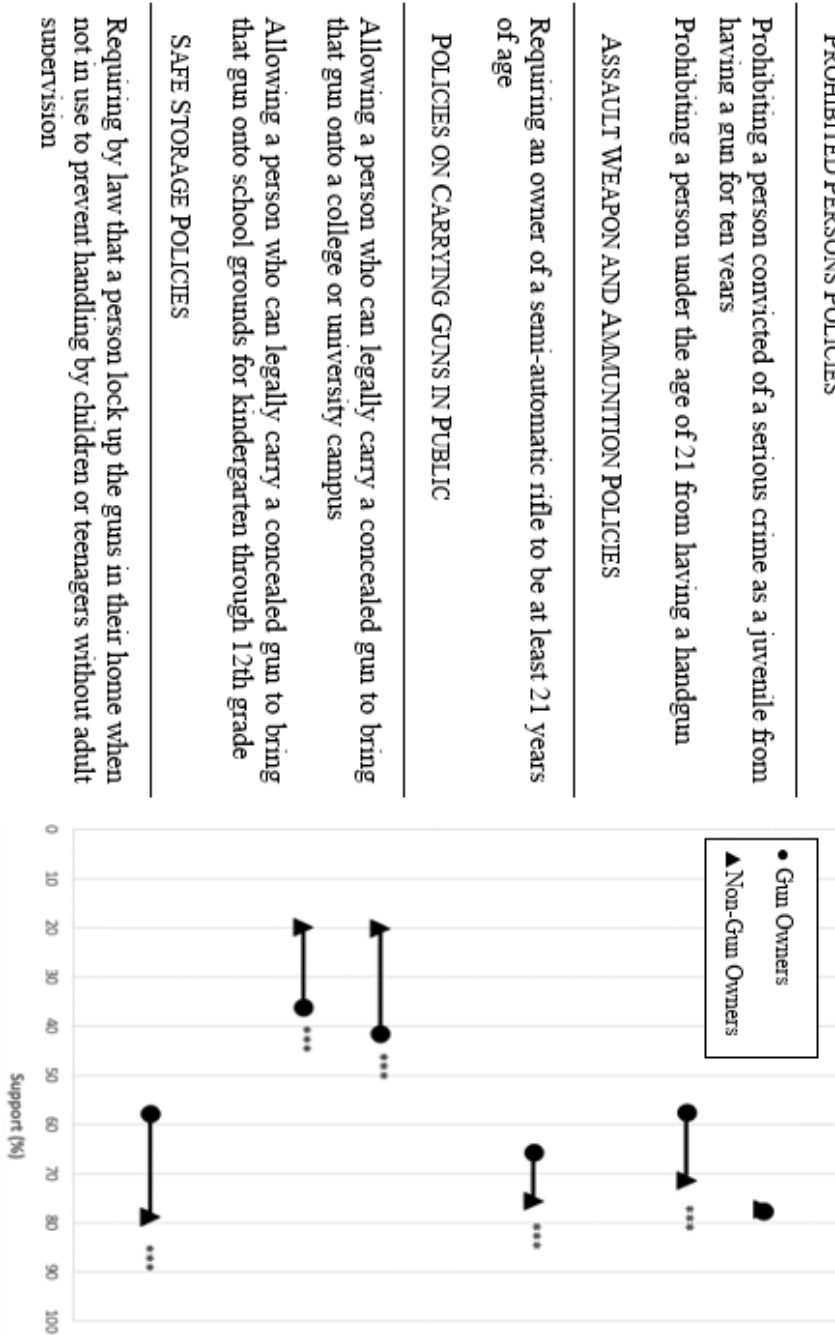


FIGURE 2: SUPPORT FOR AGE-RELATED POLICIES BY POLITICAL PARTY (2023)

