

Commonsense Solutions:

State Gun Laws to Protect Kids from Unintended Shootings

THE **COMMONSENSE**
GUN LAWS PARTNERSHIP

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EXECUTIVE SUMMARY

When three-year old Alexis Mercer’s mother brought her and her two younger siblings home on February 9, 2015, the children’s father had recently finished cleaning his guns and left for work. Alexis came across one of these guns in the living room of their Louisiana home, picked it up and pulled the trigger. She died from the gunshot wound shortly thereafter.¹

Every year, nearly 100 American children die from unintended gunshot wounds. In most of these incidents, the victim shoots him- or herself or is shot by another child. These horrible events demonstrate a devastating fact: many children are at risk from improperly secured guns. In fact, almost 1.7 million children and youth under age 18 are living in homes with loaded and unlocked firearms in the U.S. As a consequence, children in the U.S. are at least 16 times more likely to be killed in unintentional shootings than in other high-income countries.

Many of these deaths could be prevented if guns were properly stored. Commonsense requirements for gun storage and handling and efforts to ensure that gun owners understand these requirements can make a difference.

This report provides a series of proposals that state legislators should enact in their states to help protect children from improperly stored firearms. These proposals include:

- Requiring adults to keep guns properly locked up or under their immediate control, whenever they have a reason to know a child is present or might have access to the area;
- Requiring gun dealers to ensure that all gun buyers, including buyers of rifles or shotguns, are provided with a gun lock or other safety device;
- Ensuring that appropriate safety information accompanies the sale or transfer of every gun by a licensed gun dealer;
- Prohibiting adults from allowing children to handle machine guns, even if they are supervised, due to the unusually dangerous nature of these weapons.

This report provides arguments in support of these proposals, along with the legal and factual background for each proposal. It also provides a list of the features that make up a strong law on each topic.

Too many families have needlessly suffered the horrific loss of a child due to an unsecured gun. It is our hope that this report will provide a “toolkit” for legislators and advocates who want to move forward to help prevent unintended gun deaths of children.

(ENDNOTES)

1. Michael Cooper, *3-year-old who died in accidental shooting identified*, KPLC 7 News, Feb. 11, 2015, at <http://www.kplctv.com/story/28081761/lebleu-settlement-child-dies-in-accidental-shooting>.

INTRODUCTION

Twenty-six year old Alexis Wiederholt had no idea that her father, William Porter, kept a loaded pistol in his Missouri home when she brought her young children for a visit. Then one Monday morning, after putting her 9-month old baby down for a nap and turning on the TV for her older children, she heard a noise. When she turned around, her 5-year old son said to her, "I'm sorry, Mom. I shot Corbin." The boy had opened a cabinet, which his grandfather said could be opened with a screwdriver or any random key, and reached in to obtain the pistol. The boy then pulled the trigger, shooting and killing his 9-month old brother Corbin, who had been lying in a Pack-n-Play.²

When children have unsupervised access to firearms, tragedies result. A total of 999 children under the age of 18 died from unintentional gunshot wounds between 2004 and 2013 in the U.S., according to the records of the Centers for Disease Control and Prevention. Among these victims were 630 children ages 14 and under.³

The exact number may be higher, however. An investigation by the New York Times in 2013 found that unintentional shootings "occurred roughly twice as often as the records indicate, because of idiosyncrasies in how such deaths are classified by the authorities."⁴ One analysis found that 84 children ages 12 and under died in publicly reported unintentional shootings in the year following the Newtown tragedy.⁵ A separate analysis found 100 such incidents involving children under ages 14 in roughly the same time period.⁶

Even the lower CDC statistic noted above demonstrates that children are at least 16 times more likely to be killed in unintentional shootings in the U.S. than in other high-income countries.⁷ In addition, an estimated 19,314 children under the age of 18 were hospitalized for nonfatal, unintentional gun injuries from 2004 to 2013, according to the CDC.⁸

In three-quarters of the post-Newtown shootings mentioned above, the child either shot him- or herself or was shot by another child.⁹ Yet children themselves are not the only people put in danger when children have access to firearms. Children who have obtained access to firearms sometimes unintentionally shoot their parents or other adults. The most well-known of these incidents involved Veronica J. Rutledge, the 29-year old Idaho mother who was killed by her toddler after he found her gun in her purse in a Walmart in December 2014.¹⁰ Because of incidents like this one, statistics that focus solely on the deaths of children paint an incomplete picture.

Yet all these incidents demonstrate a devastating fact: many children in the U.S. are at risk from improperly stored firearms. The risk for children is often greatest at home:

- Approximately one in three handguns in a home is kept loaded and unlocked.¹¹

- Almost 1.7 million children and youth under age 18 are living in homes with loaded and unlocked firearms.¹²
- A 2000 study found that 43% of homes with children and firearms contain an unlocked firearm.¹³
- More than 75% of the guns used in youth suicide attempts and unintentional injuries were stored in the residence of the victim, a relative, or a friend.¹⁴
- Most children know where their parents keep their guns.¹⁵ In one 2006 study of children under age 10 living in homes with guns:
 - 73% of these children reported knowing the location of their parents' firearms;
 - 36% of these children admitted they had handled the weapons;
 - 39% of parents who reported that their children did not know the storage location of household guns were contradicted by their children's reports; and
 - 22% of parents who reported that their children had never handled a household gun were contradicted by their children's reports.¹⁶
- Many young children, including children as young as two- or three-years old, are strong enough to fire handguns.¹⁷ For example, on February 22, 2013, in Fayette County, Pennsylvania, a 2-year-old boy named Owen Harris shot himself in the head with a handgun he found in his mother's purse.¹⁸

The presence of unlocked guns in the home increases the risk not only of unintentional gun injuries but of intentional shootings as well. In July 2004, the U.S. Secret Service and U.S. Department of Education published a study examining 37 school shootings from 1974-2000. That study found that in more than 65% of the cases, the attacker got the gun from his or her own home or that of a relative.¹⁹

The danger to children presented by guns in the home can be reduced. Many unintentional child gun deaths could be prevented if guns were properly stored unloaded and locked with gun safety devices. One analysis found that 70% of unintentional child deaths from firearms could have been prevented if the firearm had been stored locked or unloaded.²⁰

Devices for locking firearms are widely available and generally come in two forms: gun locks and locking containers, such as gun safes. Both forms of gun safety device usually require a key or a combination to open, meaning that only the owner or an authorized user has direct access to the gun.

In addition, gun manufacturers have recently begun developing the technology for "personalized guns," also known as "smart" or "owner-authorized" firearms. These guns use biometric or token-based technology to prevent firing by anyone other than an authorized user. Personalized guns have the potential to significantly reduce unintentional child gun deaths in the near future. However, the gun industry has significantly resisted the introduction of personalized guns into the market.²¹

Storing guns properly is the responsibility of adults, rather than children. Consequently, this report focuses on laws designed to encourage adults to properly store their firearms using the technology described above to prevent unsupervised access by children. Pediatricians and other medical professionals also routinely encourage parents to store their firearms in this manner.

This kind of counseling makes a difference. A study published in the *Journal of the American Board of Family Practice* found that 64% of patients improved their household's firearm storage practices after receiving a brief verbal counseling about safe firearm storage from their family physician.²² Patients who received this counseling were more than twice as likely to afterward store their firearms unloaded, locked, and inaccessible to children.²³ The success of this counseling demonstrates that gun storage practices can be improved.

A NOTE ON THE SECOND AMENDMENT

In 2008, in *District of Columbia v. Heller*, the Supreme Court held for the first time that the Second Amendment protects the individual right of “law-abiding, responsible citizens” to possess an operable handgun in the home for self-defense.²⁴ However, the Supreme Court cautioned that this right is “not unlimited,” and should not be understood as conferring a “right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.”²⁵

One of the laws at issue in *Heller* was a District of Columbia law that required handguns in the home to be inoperable at all times. The Court held that this requirement violated the Second Amendment because it made “it impossible for citizens to use [handguns] for the core lawful purpose of self-defense.” Nevertheless, the Court emphasized that its analysis was not intended to “suggest the invalidity of laws regulating the storage of firearms to prevent accidents.”²⁶

Since *Heller*, courts across the country have been faced with challenges to a variety of gun regulations. Courts have responded by overwhelmingly upholding strong gun laws, including laws regarding the storage of firearms to prevent accidents. In *Commonwealth v. Runyan*, for example, the Massachusetts Supreme Court rejected a Second Amendment challenge to a state law that requires guns in a residence to be kept locked or rendered inoperable except when being carried or under the person’s control.²⁷ Similarly, in *Jackson v. City & County of San Francisco*, the Ninth Circuit Court of Appeals rejected a Second Amendment challenge to a San Francisco ordinance that requires handguns in residences to be locked or disabled except when carried on the person.²⁸ In June 2015, the U.S. Supreme Court decided not to review the Ninth Circuit’s decision in *Jackson*. These cases demonstrate that states can enact strong laws to protect children from unlocked guns.

(ENDNOTES)

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3. Nat’l Ctr. for Injury Prevention & Control, U.S. Centers for Disease Control and Prevention, *Web-Based Injury Statistics Query & Reporting System (WISQARS) Injury Mortality Reports, 1999-2013, for National, Regional, and States* (Jan. 2015), http://webappa.cdc.gov/sasweb/ncipc/dataRestriction_inj.html.
4. Michael Luo & Mike McIntire, *Children and Guns: The Hidden Toll*, N.Y. Times, Sept. 28, 2013, at http://www.nytimes.com/2013/09/29/us/children-and-guns-the-hidden-toll.html?ref=michaelluo&_r=0. More specifically, situations in which one child shot and killed another were often labeled “homicides,” as opposed to “unintentional deaths,” despite the age and intent of the shooter.
5. Mark Follman, *At Least 194 Children Have Been Shot to Death Since Newtown*, Mother Jones, Dec. 10, 2013, at <http://motherjones.com/politics/2013/12/children-killed-guns-newtown-anniversary>.
6. Everytown for Gun Safety and Moms Demand Action for Gun Sense in America, *Innocents Lost: A Year of Unintentional Child Gun Deaths (June 2014)*, at <http://everytown.org/documents/2014/10/innocents-lost.pdf> (hereafter *Innocents Lost*).
7. Children’s Defense Fund, *Protect Children Not Guns 2013*, at 34 July 24, 2013, <http://www.childrensdefense.org/library/protect-children-not-guns/protect-children-not-guns-2013.html>.
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9. *Innocents Lost, supra*, note 6; Follman, *supra*, note 5.
10. Terrence McCoy, *The inside story of how an Idaho toddler shot his mom at Wal-Mart*, Wash. Post, Dec. 31, 2014, at <http://www.washingtonpost.com/news/morning-mix/wp/2014/12/31/the-inside-story-of-how-an-idaho-toddler-shot-his-mom-at-wal-mart/>.
11. Philip J. Cook & Jens Ludwig, *U.S. Dep’t of Justice, Nat’l Inst. of Justice, Guns in America: National Survey on Private Ownership and Use of Firearms*, at 7 (1997), at <https://www.ncjrs.gov/pdffiles/165476.pdf>.
12. Catherine A. Okoro et al., *Prevalence of Household Firearms and Firearm-Storage Practices in the 50 States and the District of Columbia: Findings from the Behavioral Risk Factor Surveillance System*, 2002, 116 *Pediatrics* e370, e371-e372 (Sept. 2005), at <http://pediatrics.aappublications.org/content/116/3/e370.full.pdf+html>.
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17. Naureckas, S.M. et al, *Children's and Women's Ability to Fire Handguns*, 149 Archives of Pediatric and Adolescent Medicine, 1318 (Dec. 1995).
18. *Grandmother: Luzerne Township boy, 2, shoots self by accident*, WTAE.com, Feb. 22, 2013, at: http://www.wtae.com/news/local/fayette/Grandmother-Luzerne-Township-boy-2-shoots-self-by-accident/-/10931844/19033290/-/format/rss_2.0/-/nukho2z/-/index.html.
19. U.S. Secret Service & U.S. Dep't of Education, *The Final Report & Findings of the Safe School Initiative – Implications for the Prevention of School Attacks in the United States 27 (July 2004)*, at <http://www2.ed.gov/admins/lead/safety/preventingattacks-report.pdf>.
20. *Innocents Lost, supra*, note 6.
21. See Law Center to Prevent Gun Violence, *Personalized & Owner-Authorized "Smart Guns" Policy Summary*, at <http://smartgunlaws.org/personalized-owner-authorized-firearms-policy-summary/>.
22. Teresa L. Albright & Sandra K. Burge, *Improving Firearm Storage Habits: Impact of Brief Office Counseling by Family Physicians*, 16 J. OF THE AM. BD. OF FAMILY PRACTICE 40, 40 (2003).
23. *Id.* Despite this evidence-based consensus in favor of asking and educating patients about firearm safety, the gun lobby vigorously opposes such counseling, and is even supporting proposals to limit doctors' authority to talk to their patients about gun storage. Florida enacted a limited version of one of these proposals in 2011. See Fla. Stat. § 790.338.
24. *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008).
25. *Id.* at 626-627.
26. *Id.* at 632.
27. 922 N.E.2d 794 (Mass. 2010).
28. 746 F.3d 953 (9th Cir. 2014) cert. denied (No. 14-704, June 8, 2015). See also *Matter of Tessler v City of New York*, 952 N.Y.S.2d 703 (N.Y. Sup. Ct. 2012) (upholding New York City's safe storage ordinance).

CHILD ACCESS PREVENTION LAWS

Children should not have unsupervised access to guns. Yet adults often carelessly allow children to handle guns without supervision, and tragedies result. A straightforward requirement that guns be stored when not in use so that children cannot access them would prevent these tragedies. Many jurisdictions have laws that can serve as models for this requirement.

THE PROBLEM

On November 24, 2014, 26-year old Christa Engles of Tulsa, Oklahoma was changing her one-year old daughter's diaper when her three-year old son pulled a loaded semiautomatic handgun out from under a couch. The gun was one of several firearms in the house. The boy pulled the trigger, shooting Christa in the head. Christa's mother soon found her daughter and the two children covered in blood. Christa died about an hour after being shot. As the little boy was taken from the home to be interviewed by police, he repeated over and over again, "Mommy shot."²⁹

The data provided in the Introduction section of this report demonstrates that these incidents occur with shocking frequency, yet are so easily preventable. A simple requirement that guns be kept properly stored will save the lives of children and other family members.

THE LOOPHOLE IN FEDERAL LAW AND HOW STATES HAVE RESPONDED

Federal law, namely the Protection of Lawful Commerce in Arms Act of 2005, requires any licensed gun dealer to provide a secure gun storage or safety device to any person purchasing a handgun.³⁰ The law does not apply to rifles and shotguns, however, and most importantly, does not require transferees to use the device to store their guns.³¹

Sometimes, when a child is killed or injured as a result of an unsecured firearm, the gun owner is prosecuted under state laws criminalizing "reckless endangerment," "child neglect," "involuntary manslaughter," or "negligent homicide." These laws fail to provide an explicit standard for these cases, however.

28 states have taken action to fill this gap, by enacting so-called "safe storage" or "child access prevention" laws. Safe storage laws explicitly require guns to be kept stored when not in use. Massachusetts is the only state with a safe storage law. This law generally prohibits anyone from storing or keeping any firearm in any place unless the gun is secured in a locked container or equipped with a tamper-resistant mechanical lock or other safety device. The law allows the owner or other lawfully authorized user of a firearm to carry it or keep it under his or her control

without locking it, but at all other times, the firearm must be locked.³² New York City and San Francisco have enacted ordinances similar to this Massachusetts law.³³ These laws stand out because they apply regardless of whether the adult knows or has a reason to know a child might have access to the gun.

State child access prevention or “CAP” laws make it a crime to provide a child with unsupervised access to a firearm in at least some circumstances. These laws vary significantly, however.

Besides Massachusetts, 14 states have enacted strong CAP laws. These states impose a “negligence” standard. This means they make it a crime for a person to store or leave an unlocked gun in at least some circumstances where the person “knew or reasonably should know” that a child has access to it, thereby requiring gun owners to make reasonable efforts to prevent child access. Other states have weaker CAP laws. These laws only make it a crime if the adult was acting knowingly or “recklessly,” i.e., in conscious disregard of a known risk that a child might gain access to an unlocked firearm.

As described in the chart below, these state CAP laws vary in certain other features as well. Some of these laws only impose criminal liability on the adult if the child actually gained access to a gun and serious injury or death resulted. Some of these laws only impose criminal liability on the adult if the gun was loaded, even though many children know how to load a gun. Some state CAP laws apply only to parents or guardians of the child; other CAP laws apply a weaker standard to parents or guardians of the child. State CAP laws also vary regarding the age of the child involved, so that some of these laws do not protect older children and teenagers.

The following chart details only the 15 strongest safe storage and CAP laws, i.e., those that require adults in at least some circumstances to keep guns locked or make other reasonable efforts to prevent a child from gaining access to an unlocked gun.

State Laws to Prevent Negligent Gun Storage

	Definition of Child	Applies to Unloaded Guns	Applies if a Child Could Gain Access (Even if No Child Has Yet Handled the Gun)	Applies Whenever a Child Gains Access (Even Without Injury or Death) ³⁴	Imposes a Felony Penalty if a Child is Seriously Injured or Killed
CA ³⁵	<18	Only if the child carries a handgun off-premises, or a long gun to school	Only if the firearm is loaded and the person should know a child is “likely to gain access.”	Only if the child brings a handgun off-premises or a long gun to school, or if the firearm was loaded	Only if the firearm was loaded when the child accessed it
CT ³⁶	<16	No	No	No	Only if the firearm was loaded when the child accessed it
DE ³⁷	<18	Only if the adult is a parent or otherwise legally charged with care or custody of the child, ³⁸ and acted “with criminal negligence” and the child gains access ³⁹	No	Only if the adult is a parent or otherwise legally charged with care or custody of the child, and acted “with criminal negligence”	No
FL ⁴⁰	<16	No	No	Only if the firearm was loaded and the child displays the firearm in a public place or in a rude, careless, angry, or threatening manner	Only if the firearm was loaded and the adult acted with “culpable negligence”
HI ⁴¹	<16	Only if the child gains access	No	Yes	No

State Laws to Prevent Negligent Gun Storage (continued)

	Definition of Child	Applies to Unloaded Guns	Applies if a Child Could Gain Access (Even if No Child Has Yet Handled the Gun)	Applies Whenever a Child Gains Access (Even Without Injury or Death)³⁴	Imposes a Felony Penalty if a Child is Seriously Injured or Killed
IL⁴²	<14	Only if the child causes death or great bodily harm	No	No	No
IA⁴³	<14	No	No	Only if the firearm is loaded and the child exhibits the firearm in a public place in an unlawful manner	No
MD⁴⁴	<16	No	No	Only if the firearm is loaded	No
MA⁴⁵	<18	Yes, the law applies whenever a firearm is not locked and not under the control of an authorized user			
MN⁴⁶	<18	No	Only if the firearm is loaded and the person should know a child is "likely to gain access"	Only if the firearm is loaded	No
NH⁴⁷	<16	No	No	Only if the firearm is loaded and used in a reckless or threatening manner, used during the commission of a crime, or negligently or recklessly discharged	No
NJ⁴⁸	<16	No	No	Only if the firearm is loaded	No
NC⁴⁹	<18	No	No	Only if the firearm is loaded, the adult lives with the child and the child possesses the firearm at school, exhibits it in a public place in a careless, angry, or threatening manner or uses it to commit a crime	No
RI⁵⁰	<16	No	No	No	No
TX⁵¹	<17	No	No	Only if the firearm was loaded and the person acted "with criminal negligence" ⁵²	No

CAP laws have been shown to be effective at reducing unintentional firearm deaths among children.

- One study found that in twelve states where such laws had been in effect for at least one year, unintentional firearm deaths fell by 23% from 1990-94 among children under 15 years of age.⁵³
- A 2004 study found state CAP laws were associated with an 8.3 percent reduction in suicide rates among 14-17 year olds. According to the authors of the study, these laws likely prevented 333 such suicides from 1989 through 2001.⁵⁴
- CAP laws have also been associated with a 32% decline in nonfatal gun injuries among children 18 years of age and under, and a 64% reduction in self-inflicted injuries.⁵⁵
- While unintentional child gun deaths declined across the country between 1979 and 2000, states that enacted child access prevention laws experienced statistically greater declines, and states that allow felony prosecution of offenders experienced the greatest declines.⁵⁶
- Florida's CAP law, which allows felony prosecution and was accompanied by a major public education campaign regarding the law, was associated with a 51% decrease in unintentional shooting deaths of children between 1989 and 1997.⁵⁷

The negligence standard imposed by the strongest CAP laws provides a deterrent to irresponsible gun storage by holding adults accountable in a variety of situations:

- The uncle who left his loaded gun on the bed while his nephew was visiting.
- The father who gave his ten-year old son the keys to the gun safe.
- The babysitter who left children unattended with her gun in the unlocked glove compartment of her car.
- The mother who left her gun in her purse with her toddler.

Whether the adult in each of these situations should be held criminally accountable depends on a careful evaluation of the particular circumstances. A CAP law that requires safe storage by any adult who "reasonably should know" that a child has access to a gun allows for this kind of evaluation, and saves lives by deterring adults from negligently providing children with access.

Americans strongly support laws requiring the safe storage of firearms. A national survey conducted in January 2013 found that 67.2% of respondents support laws requiring gun owners to lock up any guns in the home when not in use to prevent handling by children or teenagers without adult supervision.⁵⁸

FEATURES OF A STRONG CHILD ACCESS PREVENTION LAW

A strong state law that requires guns to be properly stored to prevent children from accessing them would include the following features:

- ***Negligence Standard for Gun Storage:*** The law makes it a crime for an adult to store or leave a gun in a manner that the adult knows or reasonably should know a child might have access to it. This provision would apply whenever the adult knows or reasonably should know a child is present on the premises or has lawful access to the area, and either:
 - The gun is not locked; or
 - The gun is locked but the adult has a reason to know the child can unlock it. For example, an adult would be guilty of the crime, even if the gun is locked up, if the adult has shown the child how to unlock it, or has a reason to believe the child can find the key, or the adult knows that sometimes the lock doesn't work.
- ***Proper Locking Devices:*** A gun is not considered to be locked under the law unless it has been secured in a locked container, such as a safe, or properly disabled with a tamper-resistant gun lock. So for example, an adult should not leave a child in a vehicle with a gun in the glove compartment if the glove compartment can be opened with the simple press of a button or a key that is easily accessible.

- **Definition of Minor:** The law should specify at what age a child or teenager can be allowed unsupervised access to guns. The strongest CAP laws prohibit adults from providing unsupervised firearm access to anyone under age 18.
- **Authorized Adults May Carry Firearms:** An exception allows the adult owner of a gun to keep it unlocked while he or she is carrying it on his or her person, or while it is in such close proximity that the person can retrieve the gun as if he or she were carrying it on the person. For example, if a child is present, an adult may carry a gun in a purse only while he or she has the purse on her person; if she puts the purse down and steps away, she must remove the gun.
- **Adults Must Directly Supervise All Handling of Guns by Minors:** An exception covers the situation where an adult is directly supervising a child who is handling the gun with the permission of his or her parent or guardian. This provision allows for family hunting trips and supervised target shooting.
- **The Law Applies to Unloaded and Loaded Firearms:** Many teenagers and even younger children know how to load firearms. The law should require all guns, even those that are unloaded, to be kept locked when not in use in order to prevent children from obtaining access to them. Ideally, ammunition should be stored separately from firearms.⁵⁹
- **The Law Covers All Locations:** The law applies in any place, not just a residence. Although guns in the home are the greatest danger to children, a number of tragic incidents involving children and guns have occurred in vehicles and places other than residences.
- **The Law Does Not Criminalize Minors:** Proper storage of guns is the responsibility of adults, not children or teenagers. Charges may be brought under this law only against people ages 18 or older.
- **A Violation Is a Felony If a Death or Injury Results:** Any failure to properly store a firearm that endangers a child should be chargeable as a misdemeanor, but the law makes it a felony to fail to safely store a gun if a child gains access to it and a death or injury results.
- **Allowance for Grieving Parents:** An allowance is made for parents whose child has been injured or killed in a shooting. These parents are given time to care for their family members before being subject to prosecution. Under Texas law, for example, a member of a child's family may not be arrested for improper storage of a firearm before the seventh day after a shooting if the child was killed or seriously injured when the child discharged the firearm.⁶⁰
- **Defendant Loses Gun Eligibility:** A person convicted of failing to store a gun properly should lose his or her eligibility to purchase or possess guns for the near future. For example, Minnesota prohibits possession of a firearm for three years by a person who has been convicted of "child endangerment" at the gross misdemeanor level, which is defined to specifically include recklessly providing a child with access to a loaded firearm.⁶¹
- **Public Education:** The law alerts gun owners to the requirements of the law through public education, which may include a requirement for gun dealers to provide safety information to gun buyers as suggested later in this report.

CONCLUSION

Laws should require adults to properly store firearms, to avoid endangering children and others. Safe storage and child access prevention laws help ensure that gun owners take enough care before tragedy strikes. States should enact these commonsense laws.

(ENDNOTES)

29. Sasha Goldstein, *Toddler accidentally shoots Army veteran mom dead as she changes baby's diaper: police*, N.Y. Daily News, November 25, 2014, at <http://www.nydailynews.com/news/national/toddler-shoots-mom-dead-baby-diaper-cops-article-1.2023300>.
30. 18 U.S.C. § 922(z)(1). A "secure gun storage or safety device" is defined under 18 U.S.C. § 921(a)(34) as: (A) a device that, when installed on a firearm, is designed to prevent the firearm from being operated without first deactivating the device; (B) a device incorporated into the design of the firearm that is designed to prevent the operation of the firearm by anyone not having access to the device; or (C) a safe, gun safe, gun case, lock box, or other device that is designed to be or can be used to store a firearm and that is designed to be unlocked only by means of a key, a combination, or other similar means.
31. The law also immunizes any person who is in lawful possession and control of a handgun and who uses a secure gun storage or safety device with the handgun, from a "qualified civil liability action." 18 U.S.C. § 922(z)(3)(A). "Qualified civil liability action" is defined as a civil action for damages resulting from the criminal or unlawful misuse of a handgun by a third party if: 1) the handgun was accessed by another person who did not have the authorization of the lawful possessor; and 2) the handgun had been made inoperable by the use of a secure gun storage or safety device at the time it was accessed. 18 U.S.C. § 922(z)(3)(C).
32. Mass. Gen. Laws ch. 140, § 131L. The penalty under the law for failing to lock a firearm under this law is greater if the unlocked gun was a rifle or shotgun in a place where a child (person younger than 18 years of age) might have access to it.

(ENDNOTES CONTINUED)

33. New York, N.Y., Admin. Code §§ 10-311, 10-312(a); San Francisco, Cal., Police Code art. 45, § 4512.
34. Most of these statutes exempt situations where the minor obtained the firearm through an “unlawful entry” onto the premises, e.g., through a burglary.
35. Cal. Penal Code §§ 25000-25225.
36. Conn. Gen. Stat §§ 29-37i, 53a-217a.
37. Del. Code tit. 11, § 603.
38. Delaware only allows charges to be brought against other adults if they acted recklessly, the firearm was loaded, and serious injury or death results. Del. Code tit. 11, §§ 603, 1456.
39. See Del. Code tit. 11 § 231 (defining “criminal negligence”).
40. Fla. Stat. §§ 784.05, 790.174.
41. Haw. Rev. Stat. §§ 134-10.5, 707-714.5.
42. 720 Ill. Comp. Stat. 5/24-9(a).
43. Iowa Code § 724.22(7).
44. Md. Code, Crim. Law § 4-104.
45. Mass. Gen. Laws ch. 140, § 131L.
46. Minn. Stat. § 609.666.
47. N.H. Rev. Stat. § 650-C:1.
48. N.J. Stat. § 2C:58-15.
49. N.C. Gen. Stat. § 14-315.1.
50. R.I. Gen. Laws § 11-47-60.1.
51. Tex. Penal Code § 46.13.
52. See Tex. Penal Code § 6.03 (defining “criminal negligence”).
53. Peter Cummings et al., *State Gun Safe Storage Laws and Child Mortality Due to Firearms*, 278 JAMA 1084, 1084 (Oct. 1997).
54. Daniel W. Webster et al., *Association Between Youth-Focused Firearm Laws & Youth Suicides*, 292 JAMA 594, 596-98 (Aug. 2004).
55. Jeff DeSimone & Sara Markowitz, *The Effect of Child Access Prevention Laws on Nonfatal Gun Injuries*, NBER Working Paper, (Sept. 2005), at <http://www.nber.org/papers/w11613.pdf>.
56. Lisa Hepburn et al., *The Effect of Child Access Prevention Laws on Unintentional Child Firearm Fatalities, 1979-2000*, 61 J. Trauma 423, 425-426 (2006).
57. Daniel Webster & Marc Starnes, *Reexamining the association between child access prevention gun laws and unintentional shooting deaths of children*, 106 Pediatrics 1466 (Dec. 2000).
58. Colleen L. Barry et al., *Perspective: After Newtown — Public Opinion on Gun Policy and Mental Illness*, 368 New Eng. J. Med. 1077-1081 (March 21, 2013) at http://www.nejm.org/doi/full/10.1056/NEJMp1300512?query=featured_home&&.
59. Laws in several states require ammunition to be stored separately from firearms in certain child care or community residential facilities. See, e.g., Ariz. Rev. Stat. § 41-1967.01(I)(child care home providers must store firearms and ammunition separately); Minn. Stat. § 245D.26 subd. 5 (requiring community residential settings to store ammunition and firearms separately); Tex. Hum. Res. Code § 42.042(e-1)(authorizing the Texas Department of Family and Protective Services to set standards that specifically include this requirement).
60. See, e.g., Cal. Penal Code §§ 25115, 25120.
61. Minn. Stat. § 624.713 subd. 1(11), 609.378 subd. 1(c).

GUN LOCKING DEVICES

Gun safety devices, including trigger locks and gun safes, can mean the difference between life and death for a child. While federal law requires gun dealers to ensure that handgun buyers have a gun safety device, this requirement does not apply when a rifle or shotgun is sold. A significant number of unintentional shootings of children occur with these kinds of firearms, and would not have happened if the gun had been properly stored. Gun dealers should be required to ensure that all gun buyers, including buyers of rifles and shotguns, have a gun safety device.

THE PROBLEM

On April 29, 2013, two-year old Caroline Sparks was shot and killed by her five-year-old brother Kristian in rural Kentucky. The mother of the two children had left a loaded rifle sitting in a corner of the house. She only left the room for a moment when she heard the gun go off, killing her daughter.⁶²

While most children killed with firearms are shot with handguns, significant numbers of children are injured or killed with long guns (rifles or shotguns) as well. A report analyzing unintended child gun deaths in the year following the Newtown tragedy found that at least 24% of these incidents involved long guns.⁶³ The incidents described in that report include at least 12 child gun deaths in that one year period that could have been prevented if the rifle or shotgun was stored with a gun safety device.⁶⁴ For more information and statistics about the dangers to children of improperly stored firearms, please see the Introduction above.

Gun safety devices appropriate for use with rifles and shotguns, such as some trigger locks and gun safes, are widely available. Yet federal law, which requires gun dealers to ensure that purchasers of handguns obtain a gun safety device, does not apply when the gun dealer is selling a rifle or shotgun.⁶⁵ This means that many owners of these firearms might not own a device for the proper storage of their weapons. In addition, federal law does little to ensure that gun dealers are complying with the requirement when selling handguns.

HOW STATES HAVE RESPONDED TO THE LOOPHOLE IN FEDERAL LAW

Nine state laws mirror the federal law by requiring gun dealers to ensure that handgun purchasers have gun safety devices.⁶⁶ These state laws help enforcement by engaging state and local law enforcement agencies to ensure that this requirement is met. They are therefore beneficial, even though they don't cover long guns.

Massachusetts has extended this requirement to large capacity firearms as well as handguns.⁶⁷ Only California, Michigan, and New York have extended this requirement to ensure that purchasers of rifles or shotguns have safety devices.⁶⁸

In addition, in Massachusetts, any handgun or assault weapon sold without a safety device is considered to be defective. The sale of such a weapon constitutes a breach of warranty and an unfair or deceptive trade act or practice.⁶⁹ Any entity that sells a gun without a gun safety device is “individually and jointly liable to any person who sustains personal injury or property damage resulting from the failure to include or incorporate such a device.”⁷⁰

FEATURES OF A STRONG LAW REGARDING GUN LOCKING DEVICES

A strong state law requiring gun dealers to ensure that gun purchasers have gun safety devices would include the following features:

- **Gun Dealers Must Ensure that Purchasers Have Gun Safety Devices:** The state requires all gun dealers regardless of where they operate to ensure that each gun purchaser has access to a gun safety device. It is illegal for a gun dealer to sell or transfer any firearm without complying with this requirement.
- **The Gun Safety Devices Must Be Compatible with the Firearm Sold:** The gun safety device (trigger lock, gun safe or other safety mechanism) must be compatible with the kind of gun that the purchaser is buying, and must be sufficient to prevent a child or other unauthorized user from accessing the firearm.
- **Purchasers May Show That They Already Own Sufficient Gun Safety Devices:** A gun dealer may allow a consumer to purchase a gun without a gun safety device only if the consumer certifies that he or she is already in possession of a gun safety device compatible for use with that firearm. The consumer must certify that he or she has the appropriate number of safety devices to ensure that all firearms that he or she owns can be secured.
- **Accountability for Gun Dealers:** A gun dealer that sells or transfers guns without ensuring that the purchaser has an appropriate gun safety device may be held civilly liable for any injury or death that results. A gun dealer that repeatedly sells or transfers guns without ensuring that the purchaser has an appropriate gun safety device, despite a reminder from the state that it must do so, is suspended from selling or transferring guns in the state.

CONCLUSION

Gun dealers should ensure that gun purchasers have the safety devices that are necessary to secure all firearms they own, including rifles and shotguns. States should enact laws that make this practice mandatory.

(ENDNOTES)

62. Trip Gabriel, *Girl's Death by Gunshot Is Rejected as Symbol*, N.Y. Times May 5, 2013, at <http://www.nytimes.com/2013/05/06/us/kentucky-town-rejects-girls-gun-death-as-a-symbol.html>.
63. *Innocents Lost*, supra, note 6. at 7
64. *Id.* at 20-39 (describing the deaths of William Parris, Paige McGinnis, Joan Plumb, Brandon Holt, Dalton Wayne Taylor, an incident in Mountain Village, Alaska on April 29, 2013 (name withheld), Caroline Sparks, Jason Haley, Maggie Hollifield, Seth Box, Daniel Wiley, and Tyler Dunn.)
65. 18 U.S.C. § 922(z)(1). A “secure gun storage or safety device” is defined under 18 U.S.C. § 921(a)(34) as: (A) a device that, when installed on a firearm, is designed to prevent the firearm from being operated without first deactivating the device; (B) a device incorporated into the design of the firearm that is designed to prevent the operation of the firearm by anyone not having access to the device; or (C) a safe, gun safe, gun case, lock box, or other device that is designed to be or can be used to store a firearm and that is designed to be unlocked only by means of a key, a combination, or other similar means.
66. Cal. Pen. Code § 23635; Conn. Gen. Stat. §§ 29-33(d), 29-37b; 720 Ill. Comp. Stat. 5/24-9.5; Md. Public Safety Code § 5-132; Mich. Comp. Laws Serv. § 28.435; New York Gen. Bus. Law § 396-ee; N.J. Stat. Ann. § 2C:58-2a(5)(d); 18 Pa. Cons. Stat. §§ 6102, 6142; R.I. Gen. Laws § 11-47-60.3.
67. Mass. Gen. Laws ch. 140, §§ 121, 131K.
68. See Michigan State Police, *Trigger Lock Statement*, at https://www.michigan.gov/documents/ri-059_6448_7.pdf.
69. Mass. Gen. Laws ch. 140, § 131K. Ohio requires firearms dealers to offer safety devices for sale to any firearm purchaser, but does not require these devices to be sold. Ohio Rev. Code Ann. § 2923.25.
70. *Id.*

SAFETY INFORMATION FOR GUN PURCHASERS

Unlike many other consumer products, guns are not generally sold with safety information. As a result, gun owners are often woefully unaware of the dangers of providing children with access to firearms. Currently, 15 states require gun stores to post or provide information for gun buyers about the importance of properly storing firearms to reduce the dangers to children. States should strengthen these laws.

THE PROBLEM

On Christmas morning of 2012, thirty-year old Rondell Smith watched his two-year old son Sincere open presents. The family then visited relatives and ate Christmas dinner. That evening, Sincere's mother left to visit friends. Rondell picked up the phone to call her, turning away from the table where he had left a loaded gun that he had purchased about two weeks before.

Within seconds, the boy had found the gun, pulled the trigger, and collapsed. Sincere died on the way to the hospital. His grandmother pointed out that he never had a chance to ride his new blue Spiderman bike outside. Rondell, who called his son "his best friend," has since considered suicide and pled guilty to involuntary manslaughter for the death of his son.⁷¹

Contrary to popular belief, many young children are strong enough to fire handguns.⁷² Adults also greatly underestimate the chances that their children will find and handle household guns without supervision. In one 2006 study of children under age 10 living in homes with guns:

- 73% of these children reported knowing the location of their parents' firearms;
- 36% of these children admitted they had handled the weapons;
- 39% of parents who reported that their children did not know the storage location of household guns were contradicted by their children's reports; and
- 22% of parents who reported that their children had never handled a household gun were contradicted by their children's reports.⁷³

The result is a constant stream of tragedies. Please see the statistics listed in the Introduction of this report for more information. These statistics demonstrate an ongoing need to educate gun purchasers about the dangers of guns and kids.

THE LOOPHOLE IN FEDERAL LAW

Many consumer products are sold with warning labels or other forms of safety information in order to reduce the risk that consumers will be injured or killed through the use of these products. Warning labels and accompanying safety information have been shown to increase safe behaviors by consumers who are handling the products.⁷⁴ Yet federal law does not require or even encourage the gun industry to include safety information with firearms.

More specifically, firearms and ammunition are some of the only products specifically exempted from the requirements of the federal Consumer Product Safety Act, which imposes health and safety standards on consumer products.⁷⁵ As a result, the Consumer Product Safety Commission lacks the jurisdiction to require firearms and ammunition to be accompanied by safety information.

In addition, federal law immunizes the gun industry from most kinds of civil liability, thereby removing a primary incentive that leads manufacturers and sellers to include warning labels or safety information with many other products. The Protection of Lawful Commerce in Arms Act of 2005 (the "PLCAA"), which was signed into law in 2005, immunizes gun manufacturers and sellers from any civil or administrative proceeding that "results from the criminal or lawful misuse" of firearms or ammunition, with certain narrow exceptions.⁷⁶ This law means that gun manufacturers and sellers generally cannot be sued when guns they have sold end up killing or injuring somebody, even if the incident arose from the lack of safety information accompanying the firearm.

The PLCAA makes an exception, however, for "an action in which a manufacturer or seller of a [firearm] knowingly violated a State or Federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought."⁷⁷ Consequently, while no federal law requires safety information to accompany the sale of a firearm, states have the opportunity to enact this kind of requirement.

HOW STATES HAVE RESPONDED

The 15 states listed in the chart below require at least some firearm dealers to post or provide written information or advice to purchasers regarding the importance of safely and securely storing firearms.⁷⁸ Twelve of the 15 states require advice specifically about keeping firearms inaccessible to children.⁷⁹

Four states (Maine, Minnesota, New Hampshire, and Texas) only require firearm dealers to post signs about safe firearm storage. Nebraska and Wisconsin only require firearm dealers to provide written safety information to purchasers upon the sale of a firearm. Nine states (California, Connecticut, Florida, Massachusetts, Michigan, New Jersey, New York, North Carolina and Ohio) require firearm dealers to post signs about safe firearm storage and present safety information to the consumer upon the retail sale or transfer of a firearm.⁸⁰ In California and New York, this information must be affixed to the firearm or the packaging of the firearm.⁸¹

California has by far the most extensive, detailed, and informative requirement. In addition to requiring licensed firearms dealers to post a lengthy sign, California requires that dealers affix labels advising the purchaser about safe firearm storage around children on the packaging of every firearm sold or transferred by the dealer, and on any descriptive materials that accompany any firearm sold, transferred, or delivered for sale in the state. This additional label must include a yellow triangle containing an exclamation mark immediately before the word 'WARNING', and must state:

Children are attracted to and can operate firearms that can cause severe injuries or death.

Prevent child access by always keeping guns locked away and unloaded when not in use.

If you keep a loaded firearm where a child obtains and improperly uses it, you may be fined or sent to prison.

The entirety of this statement must be displayed on the principal display panel of the firearm’s packaging and on any descriptive materials that accompany the firearm, in both English and in Spanish, and in conspicuous and legible type contrasted from other printed text on the package or descriptive materials by typography, layout, or color.⁸² Gun dealers in California must also offer gun buyers a pamphlet that summarizes California’s gun laws, including a discussion of the safe handling and use of firearms, and various methods for safe storage and “child proofing” of firearms.⁸³

Notably, Michigan’s law requires a gun purchaser to sign a statement that he or she has received that state’s pamphlet that includes safety information on the use and storage of the firearm in a home environment.⁸⁴

State Laws that Inform Gun Purchasers about the Dangers of Kids and Guns

	Dealers Must Post Sign	Buyers Must Be Given a Written Notice	The Notice Must Mention Children	Buyer Must Acknowledge the Notice
CA	Yes	Yes	Yes	
CT	Yes	Yes		
FL	Yes	Yes	Yes	
ME	Yes		Yes	
MA	Yes	Yes		
MI	Yes	Yes	Yes	Yes
MN	Yes		Yes	
NE		Yes	Yes	
NH	Yes			
NJ	Yes	Yes	Yes	
NY	Yes	Yes	Yes	
NC	Yes	Yes	Yes	
OH	Yes	Yes	Yes	
TX	Yes		Yes	
WI		Yes	Yes	

The other 35 states fail to require any sort of safety information for gun purchasers about the dangers of allowing children access to guns.

FEATURES OF A STRONG LAW REQUIRING SAFETY INFORMATION FOR GUN PURCHASERS

Strong state laws requiring gun dealers to provide gun purchasers with information about the dangers of providing children with access to guns may include the following features:

- **Licensed Gun Dealers Must Post Signs:** Licensed gun dealers must post signs at all purchase counters advising purchasers about the danger of providing children access to guns. These signs must also be posted at gun shows.⁸⁵

- **Notice Included in Packaging:** Licensed gun dealers cannot sell firearms unless the packaging contains an explicit notice about the danger of providing children access to guns. Guns that are sold without packaging must contain the same notice in the form of a label.
- **Notice Included in Descriptive Materials:** Any descriptive materials that accompany a firearm when it is sold by a licensed gun dealer must contain a copy of the required notice.
- **The Notice Contains Helpful Content:** The signs that are posted or information provided to gun purchasers must:
 - Mention that about one hundred children are killed each year due to unintentional gunshot wounds, in many cases because of improperly stored firearms, or mention that children can operate firearms, causing severe injuries and death;
 - Counsel gun purchasers to keep guns locked away and unloaded when not in use; and
 - Mention that criminal penalties may result from providing children with unsupervised access to firearms.
- **Notices Are Simple and Straightforward:** In order to positively impact the behavior of gun owners, the signs posted by gun dealers or notices provided at the time a gun is purchased must be clearly understandable to the purchaser. Simple, straightforward language can provide the information above.
- **Notices Include Attention-Grabbing Symbols and the Proper Translations:** The notices posted or provided to gun purchasers must be accompanied by an attention-grabbing symbol, and be provided in English, Spanish, and any other languages commonly spoken in the area.
- **Detailed Information Accompanies the Firearm:** In addition to the simple notice contained on the packaging or label of a firearm, gun purchasers are provided with a pamphlet or other material contained detailed instructions about the proper storage of firearms. The pamphlet may include stories or photos to demonstrate the risks to children. The pamphlet may also provide the statistics noted above regarding children who can access guns unbeknownst to their parents.
- **Purchasers Must Acknowledge Receipt of the Safety Information:** Gun dealers must ensure that gun purchasers read the notices that are provided regarding the danger of providing children access to guns. The Michigan law described above requires gun purchasers to sign an acknowledgement that they have read this notice.
- **Accountability for Gun Dealers:** Gun dealers who fail to post and provide the required safety information may be held civilly liable for any injury or death that results. Gun dealers who repeatedly fail to post or provide the required safety information, despite a reminder from the state that they must do so, are no longer allowed to sell or transfer guns in the state.

CONCLUSION

Safety information should accompany the sale or transfer of any firearm, making gun purchasers aware of the dangers to children of improperly storing guns and how to reduce these dangers. States should set standards for this safety information and require gun manufacturers and dealers to include labels and provide gun purchasers with adequate information about the proper storage of firearms, so that the risk to children will be reduced.

(ENDNOTES)

71. Jason Cherkis, *U.S. Gun Deaths Since Sandy Hook Top 1,280*, Huffington Post (Feb. 1, 2013), at http://www.huffingtonpost.com/2013/02/01/us-gun-deaths-sandy-hook_n_2602074.html; WMBF News Staff, *Father of child killed by self-inflicted gunshot pleads guilty to involuntary manslaughter*, Fox Carolina, (Aug. 29, 2013), at <http://www.foxcarolina.com/story/20426837/child-dies-from-gunshot-on-christmas-day>.
72. Naureckas, S.M. et al, *Children's and Women's Ability to Fire Handguns*, 149 Archives of Pediatric and Adolescent Medicine, 1318 (Dec. 1995).
73. Frances Baxley & Matthew Miller, *Parental Misperceptions About Children and Firearms*, 160 Archives Of Pediatric & Adolescent Med. 542, 544 (2006).
74. Jennifer J. Argo and Kelley J. Main, *Meta-Analyses of the Effectiveness of Warning Labels*, 23 Journal of Public Policy & Marketing 193-208 (Fall 2004).
75. 15 U.S.C. § 2052(a)(5)(E), referencing 26 U.S.C. § 4181.
76. 15 U.S.C. §§ 7901-7903.
77. 15 U.S.C. §§ 7903.
78. Cal. Penal Code §§ 23635(e), 23640, 25225, 26835, 26865, 34205; Conn. Gen. Stat. § 29-37b; Fla. Stat. Ann. § 790.175; 15 Me. Rev. Stat. § 455-A; Mass. Gen. Laws ch. 140, § 123, Fourteenth; Mich. Comp. Laws § 28.435(6); Minn. Stat. § 624.7162; Neb. Rev. Stat. § 69-2426; N.H. Rev. Stat. Ann. § 650-C:1(VII); N.J. Stat. Ann. §§ 2C:58-16, 2C:58-17; N.Y. Gen. Bus. Law § 396-ee; N.C. Gen. Stat. §14-315.2; Ohio Rev. Code Ann. §§ 2923.25, 5502.63(A); Tex. Penal Code § 46.13(g); and Wis. Stat. § 175.37.
79. Those 12 states are: California, Florida, Maine, Michigan, Minnesota, Nebraska, New Jersey, New York, North Carolina, Ohio, Texas, and Wisconsin.
80. In Ohio, gun stores must post a warning and make a safety brochure available, but gun stores are not required to ensure that the purchaser receives the safety brochure. Ohio Rev. Code § 2923.25.
81. Cal. Penal Code §§ 23635(e), 23640; N.Y. Gen. Bus. Law § 396-ee.
82. Cal. Penal Code § 23640.
83. Cal. Penal Code §§ 26865, 34205.
84. Mich. Comp. Laws § 28.435(4).
85. *See, e.g.*, 15 Me. Rev. Stat. § 455-A (requiring the posting of a sign at each purchase counter of a gun dealer and at all entrances of an organized gun show).

PREVENTING CHILDREN FROM HANDLING MACHINE GUNS

In August of 2014, many Americans were horrified to watch the video of a young girl accidentally shooting and killing an instructor at a firing range in Arizona with a machine gun. This incident exposed a significant gap in our nation's gun laws. Most Americans agree that machine guns are simply too dangerous for children to handle, but most states fail to prevent adults from allowing children to handle them. So far only Connecticut has filled this gap. Other states should follow suit.

THE PROBLEM

Thirty-nine-year old Charles Vacca was a professional shooting instructor at a firing range in White Hills, Arizona. In August of 2014, he was showing a nine-year old girl how to fire an Uzi machine gun while the girl was on vacation with her family from New Jersey. A video of the incident shows Vacca standing next to the girl and changing the weapon's setting to automatic mode. Under Vacca's direction, the girl fired the weapon, but its recoil forced the gun over her head. The girl then stopped to complain to her parents that the weapon was "too much" for her to handle and had hurt her shoulder. A few moments later, however, the girl and her family realized that a bullet had already hit Vacca in the head. Vacca was airlifted to a hospital in Las Vegas, where he died.

The Uzi machine gun that killed Charles Vacca was designed by an Israeli Army soldier for use by the Israeli Defense Forces. It is capable of firing ten bullets a second and up to 650 bullets a minute with a single depression of the trigger.⁸⁶ Due to the rapid firing mechanism of a machine gun like an Uzi, the weapon produces a forceful, even violent, recoil when fired.⁸⁷ It is no surprise, therefore, that a nine-year old child would not possess the physical strength necessary to control the weapon's substantial kickback.

Less than four months after the death of Charles Vacca, a Florida mall attraction, Machine Gun America, opened its doors.⁸⁸ The operation boasts that anyone over the age of 13 can fire a machine gun. Unless commonsense state laws are enacted to prevent minors from handling machine guns, tragedies like the one described above are likely to be repeated.

THE LOOPHOLE IN FEDERAL LAW AND HOW STATES HAVE RESPONDED

A machine gun, also known as an automatic weapon, is an unusually dangerous firearm that shoots bullets in rapid succession by a single pull of the trigger.⁸⁹ Federal law has long recognized the serious public safety threat posed by machine guns, by prohibiting the possession and transfer of all machine guns except those manufactured prior to May 19, 1986 and those possessed by or manufactured for governmental entities. Even these machine guns must be registered under federal law when they are transferred from one person to another.⁹⁰

States may impose their own regulations regarding machine guns, or choose to ban them altogether. Only a few states, including Illinois, New York, and Rhode Island, generally ban machine guns.⁹¹ Consequently, there were 488,065 registered machine guns in circulation in the U.S. as of March 2012, according to the Bureau of Alcohol, Tobacco, Firearms & Explosives.⁹²

Because of the limitations in federal law, most private individuals only have access to machine guns at shooting ranges. Many federal and state laws prohibit minors from possessing firearms, and make it illegal for an adult to transfer a firearm to a minor.⁹³ However, these laws almost always contain exceptions allowing children to possess firearms while target shooting, so long as they are supervised or have the permission of a parent or guardian.⁹⁴

Connecticut enacted a law in 2009 in response to the death of an eight-year old boy and Connecticut resident, Christopher Bizilj, who accidentally shot himself in the head with an Uzi while at a Massachusetts gun show with his father in 2008.⁹⁵ The Connecticut law prohibits anyone from giving a machine gun to a person under the age of 16 for any purpose, “including the temporary transfer of a machine gun to such person for use in target shooting or on a firing or shooting range or for any other purpose.”⁹⁶ Other states should enact similar laws.

FEATURES OF A STRONG LAW PROHIBITING HANDLING OF MACHINE GUNS TO CHILDREN

A strong state law that prohibits an adult from allowing a child to handle a machine gun would include the following features:

- ***Allowing a Child to Handle a Machine Gun Is Illegal:*** State law prohibits any adult, including a child’s parent, from allowing a child to handle a machine gun for any purpose, including for the purpose of target shooting or shooting at a firing range.
- ***Definition of Machine Gun:*** The state law definition of machine gun mirrors the federal definition to include any weapon that automatically shoots, is designed to shoot, or can be manipulated to shoot more than one shot without manual reloading by a single depression of the trigger.⁹⁷
- ***Graduated Penalties based on Consequences:*** State law imposes felony penalties for a violation of the statute if a person is injured or killed as a result of the violation.
- ***Accountability for Shooting Ranges:*** The operator of a shooting range loses his or her license to do business in the state if he or she knows or should know that children are handling machine guns on the property of the shooting range.

CONCLUSION

Allowing children to handle machine guns can have deadly consequences. States should prohibit any adult from allowing children access to machine guns under any circumstances.

(ENDNOTES)

86. Mel Robbins, *Why is a 9-year-old firing an Uzi?*, CNN, September 14, 2014, <http://www.cnn.com/2014/08/27/opinion/robbins-why-was-child-firing-uzi/>.
87. *Id.*
88. Lena Vargas, *Machine Gun America opens in Kissimmee*, News13, December 28, 2014, http://www.mynews13.com/content/news/cfnews13/news/article.html/content/news/articles/cfn/2014/12/20/machine_gun_america.html?cid=rss.
89. 26 U.S.C. §5845(b).
90. 18 U.S.C. § 922(o), (x)(3).
91. 720 Ill. Comp. Stat. 5/24-1(a)(7)(i); N.Y. Penal Law §§ 265.02(2) and (3); R.I. Gen. Laws § 11-47-8(a).
92. Bureau of Alcohol, Tobacco, *Firearms & Explosives, Firearms Commerce in the United States: Annual Statistical Update 14 (March 2012)*, at <https://www.atf.gov/files/publications/firearms/050412-firearms-commerce-in-the-us-annual-statistical-update-2012.pdf>.
93. 18 U.S.C. § 922(x)(2), (3) and (5); See also <http://smartgunlaws.org/minimum-age-to-purchase-possess-firearms-policy-summary/> for a discussion of state laws regarding the possession of firearms by minors.
94. 18 U.S.C. § 922(x)(3).
95. The Republican Newsroom, Conn. Senate approves machine gun ban for children in wake of Christopher Bizilj's death at Westfield show, *The Republican*, April 30, 2009, http://www.masslive.com/news/index.ssf/2009/04/conn_senate_approves_machine_g.html. Massachusetts tried unsuccessfully to prosecute three of the event's organizers and gun suppliers for involuntary manslaughter, demonstrating the need for specific legislation in this area. Buffy Spencer, Prosecution drops cases against Carl Giuffre and Domenico Spano in accidental death of Christopher Bizilj, *The Republican*, January 18, 2011, http://www.masslive.com/news/index.ssf/2011/01/prosecution_drops_cases_agains.html.
96. Conn. Gen. Stat. § 53-202(c).
97. 26 U.S.C. § 5845(b).

APPENDIX

STATE LAWS TO PREVENT KIDS FROM UNSUPERVISED ACCESS TO GUNS

	Child Access Prevention	Locking Device When Sold	Safety Information for Gun Buyers
AL			
AK			
AZ	Less strong		
AR			
CA	Strong	Strong	Strong
CO	Less strong		
CT	Strong	Less strong	Strong
DE	Less strong		
FL	Strong		Strong
GA	Less strong		
HI	Strong		
ID			
IL	Strong	Less strong	
IN	Less strong		
IA	Strong		
KS			
KY	Less strong		
LA			
ME			Less strong
MD	Strong	Less strong	
MA	Strong	Less strong	Strong
MI		Strong	Strong
MN	Strong		Less strong
MS	Less strong		

State Laws to Prevent Kids from Unsupervised Access to Guns (continued)

	Child Access Prevention	Locking Device When Sold	Safety Information for Gun Buyers
MO	Less strong		
MT			
NE			Less strong
NV	Less strong		
NH	Strong		Less strong
NJ	Strong	Less strong	Strong
NM			
NY		Strong	Strong
NC	Strong		Strong
ND			
OH			Strong
OK	Less strong		
OR			
PA		Less strong	
RI	Strong	Less strong	
SC			
SD			
TN	Less strong		
TX	Strong		Less strong
UT	Less strong		
VT			
VA	Less strong		
WA			
WV			
WI	Less strong		Less strong
WY			

KEY

- Child Access Prevention:**
Generally speaking, a “strong” child access prevention law prohibits an adult from storing a gun where the adult knows or reasonably should know a child has access to it. A “less strong” child access prevention law prohibits recklessly storing a gun so that a child gains access to it.
- Locking Device When Sold:**
A “strong” locking devices law requires gun dealers to ensure that all gun buyers, including buyers of rifles or shotguns, have an appropriate gun safety device. A “less strong” locking devices law mirrors federal law by requiring gun dealers to ensure that handgun buyers have an appropriate gun safety device, but does not apply when gun dealers sell rifles or shotguns.
- Safety Information for Gun Buyers:**
Generally speaking, a “strong” law regarding safety information for gun buyers requires gun stores to both post a sign and provide a pamphlet or other safety information advising gun buyers about the dangers to children and how guns should be stored. A “less strong” law regarding safety information for gun buyers may only require a gun store to post a sign or provide safety information in one format.
- A blank space means the state has yet to enact a law on this topic.**