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CHILD ACCESS PREVENTION LAWS: KEEPING GUNS OUT OF OUR CHILDREN'S HANDS

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INTRODUCTION

In February 1980, Mrs. Mattie Hogan purchased a new revolver for self-protection.[1] She kept the gun in a "concealed location" at a home she shared with five children under the age of five.[2] During the spring of the following year, her five-year-old nephew found the gun and placed it in the basket of a bicycle in Mrs. Hogan's daughter's room.[3] Her three-year-old niece later discovered the gun in the basket and began exploring it with curiosity.[4] Suddenly, the gun discharged, killing a ten-year-old girl visiting the children.[5]

Every year, children accidentally shoot themselves or others with guns they find at home. Typically, they find a loaded handgun in a drawer or closet and innocently play with it.[6] Their little game, however, often turns fatal.[7] In 1996, an estimated 138 children under the age of fourteen were shot and killed unintentionally — averaging eleven every month or one child every third day of the year.[8] Additionally, researchers have determined that "the firearm

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1. *See* Rhodes v. R.G. Industries, Inc., 325 S.E.2d 465, 466 (Ga. 1984) (holding that a manufacturer was not required by law to sell a safety device with a gun and, therefore, could not be held strictly liable for its accidental discharge by a three-year-old girl).

2. *See id.*

3. *See id.*

4. *See id.*

5. *See id.*

6. *See Guns in the Home* (visited Mar. 8, 2000) <http://www.handguncontrol.org/gunhome.htm>. Except where otherwise specified, this Note generally addresses keeping handguns at home.

7. *See id.*

8. *See* Child Handgun Injury Prevention Act, H.R. 515, 106th Cong. § 2(1) (introduced Feb. 3, 1999). The United States leads the industrialized world in the num-

injury epidemic, due largely to handgun injuries, is ten times larger than the polio epidemic of the first half of this century."[9]

In response to these shootings, members of Congress have proposed numerous bills to protect children and the public. Known as Child Access Prevention ("CAP") laws, or safe storage laws, these proposals limit children's access to guns at home. CAP laws obligate gun owners to use safety devices to prevent unauthorized use of their weapons.[10] If a child uses a gun that was not properly locked up and/or stored to seriously injure and/or kill anyone, CAP laws penalize the gun owners with fines and/or imprisonment.[11] The laws also impose fines and/or imprisonment upon manufacturers, dealers and importers of firearm products that fail to include safety devices with the sale of guns.[12] CAP laws do not require that people use particular locks or methods of storage—just that their guns are made inaccessible to children. Therefore, owners may choose from a variety of options, based on their specific needs and circumstances.[13]

CAP laws have been introduced in both the U.S. Senate and House of Representatives each term for several years, yet they consistently fail to be enacted into law. In May 1999, the Senate approved juvenile crime legislation that includes provisions mandating the sale and use of safety devices on guns.[14] However, the House of Representatives has yet to show support for the bill.[15] Therefore, this bill, like many others, continues to linger on the calendar.

While all types of bills remain dormant every year for numerous reasons, the failure of CAP laws is often blamed on the powerful influence exerted by interest groups. Interest groups represent every conceivable interest and lobby at every level of govern-

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ber of children killed in firearms accidents. *See id.* § 2(2). In 1997, the rate of unintentional deaths for children under the age of 15 was nine times greater in this country, than in 25 other industrialized countries combined. *See id.*

9. *The School Shootings . . . And Beyond - Kids and Guns in America* (visited Mar. 8, 2000) <http://www.handguncontrol.org/chldgns.htm> [hereinafter *The School Shootings*].

10. *See, e.g.*, The Youth Gun Crime Enforcement Act of 1999, H.R. 1768, 106th Cong. § 203 (introduced May 12, 1999).

11. *See id.* § 204.

12. *See, e.g.*, 21st Century Safe and Sound Communities Act, S. 716, 106th Cong. § 201 (introduced Mar. 25, 1999).

13. *See infra* notes 157-164 and accompanying text.

14. *See Senate Approves Juvenile Justice Bill* (visited Mar. 8, 2000) <http://www.senate.gov/~kohl/press/052099.html>.

15. *See Kohl Lauds President's Plan to Push Child Safety Locks for Handguns* (visited Mar. 8, 2000) <http://www.senate.gov/~kohl/press/030200.html>.

ment.[16] "Hot" issues like gun control, however, attract extra attention.[17] Groups like the National Rifle Association (the "NRA") resist essentially any regulation on private ownership of guns.[18] Therefore, any proposal obligating a gun owner to secure his gun in a specific manner, even if it provides a safer environment for children, is likely to face staunch opposition from the NRA. While Americans often agree on the necessity of keeping children safe from the danger guns present,[19] this strong public sentiment is not enough for CAP laws to survive a congressional vote in an environment where the gun lobby exerts such extreme political power.[20]

This Note proposes a model CAP law that should be enacted in the United States. Part I discusses the evolution of CAP laws, and identifies both the federal CAP laws that have been proposed and the state CAP laws that have been enacted. This part also presents an overview of the NRA and its opposition towards CAP laws. Part II diagrams the arguments for and against CAP laws. In addition, this part explains the public opinion on enacting such laws. In Part III, this Note argues that the NRA's powerful influence improperly prevents CAP laws from being enacted by the federal government. Furthermore, it explains the necessity of CAP laws for protecting children against unintentional shootings with guns found at home. Part III also specifies which provisions of the recent proposals a CAP law must contain to most effectively prevent

16. *See* ALAN ROSENTHAL, THE THIRD HOUSE - LOBBYISTS AND LOBBYING IN THE STATES 2-3 (1993).

> There is an association, union, society, league, conference, institute, organization, federation, chamber, foundation, congress, order, brotherhood, company, corporation, bureau, mutual cooperative, committee, council, plan, trusteeship, movement, district, assembly, club, board, service or tribe for every human need, desire, motive, ambition, goal, aim, drive, affiliation, occupation, industry, interest, incentive, fear, anxiety, greed, compulsion, frustration, hate, spirit, reform and cussedness in the United States.

JAMES DEAKIN, THE LOBBYISTS 34 (1966).

17. Other examples of hot "issues" include: abortion, the death penalty, sex education, pornography, home schooling, animal research, and the environment. *See* ROSENTHAL, *supra* note 16, at 63.

18. The NRA was founded in 1871 by former Union National Guardsmen to promote shooting proficiency. *See* Jonathan Simon, *The NRA Under Fire*, PUBLIC CITIZEN, Winter 1998, at 2. For a little over a century, the group's sole focus was on sporting and hunting activities. *See id.* In 1975, however, its members discovered the need to be involved in government and created the Institute for Legislative Action (the "ILA"). *See id.*

19. *See infra* notes 34, 197-215 and accompanying text.

20. "[M]ost Americans [do not] have any idea what a stranglehold the NRA has had on this Congress. . . . The reason they can't act is the heat the NRA has put on them." Marc Lacey & Eric Schmitt, *Clinton Seeks to End an Impasse on Gun Control Legislation*, N.Y. TIMES, Mar. 2, 2000, at A17.

the accidental and unauthorized use of guns by children. This Note concludes that regardless of the reasons people keep guns at home, innocent children will continue to be injured and/or killed by unintentional shootings unless the federal government enacts a CAP law.

I. IDENTIFYING FEDERAL AND STATE CHILD ACCESS PREVENTION LAWS AND RECOGNIZING THE OPPOSITION OF THE NATIONAL RIFLE ASSOCIATION

A. Child Access Prevention Laws

1. *The Evolution of Child Access Prevention Laws*

The Second Amendment to the United States Constitution protects the right to bear arms.[21] In accordance with this right, people privately own over 200 million guns in the United States.[22] This amounts to approximately one gun for every man, woman and child in the country.[23] Many people purchase guns for self-defense or for use in recreational activities, such as hunting and target shooting.[24] Having a gun at home, however, often results in the deaths of innocent people. According to a 1998 study by the New England Journal of Medicine, guns kept in the home for self-protection are twenty-two times more likely to kill a family member or friend than to kill an intruder in self-defense.[25] As a result of careless handling and storage, or improper usage, an average of 1100 fatal firearms accidents occur per year.[26]

Oftentimes, these accidental shootings claim the lives of innocent children. Between 1987 and 1996, nearly 2200 children who were fourteen years old and younger died from unintentional shootings.[27] Broken down by age groups, in 1996, fatal firearms

21. The Second Amendment states, in full: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. CONST. amend. II.

22. *See Guns in the Home*, *supra* note 6.

23. *See id.*

24. *See* ILA Research & Information Division, *Fact Sheet - The War Against Handguns* (visited Mar. 7, 2000) <http://nraila.org/research/19990729-HandGuns-001.html>.

25. *See Guns in the Home*, *supra* note 6.

26. *See id.*

27. *See* Child Handgun Injury Prevention Act, H.R. 515, 106th Cong. § 2(1) (introduced Feb. 3, 1999); Mike Martindale, *County Considers Handing Out Free Gun Locks: Giveaway Patterned After Program Used in Several States*, DET. NEWS, Feb. 18, 2000, at C4.

accidents took the lives of an average of seventeen zero to five year olds; 121 five to fourteen year olds; and 401 fifteen to twenty-four year olds.[28] Firearm accidents also result in an immense number of injuries.[29] Approximately eight times the number of children killed by accidental shootings are treated in hospital emergency rooms for nonfatal gunshot wounds.[30]

Currently, federal law prohibits any licensed firearm dealer from selling or delivering handguns to a person under the age of twenty-one.[31] Persons under the age of eighteen also are prohibited from knowingly possessing a handgun.[32] Therefore, federal law at least forbids children from purchasing their weapons on the open market. However, it does not restrict children from obtaining guns at home.[33] While most parents realize that not locking up and/or storing a gun at home can endanger both their children and the public, few limit the accessibility of their guns.[34]

To solve this problem, the government cannot just take guns away from the entire United States population. First, such an extreme response would be unconstitutional, conflicting directly with

28. *See Guns in the Home*, *supra* note 6.

29. *See* Child Handgun Injury Prevention Act § 2(1).

30. *See id.* § 2(3). Children also use guns found at home to commit crimes. *See infra* notes 140-148 and accompanying text.

31. *See* 1968 Gun Control Act, 18 U.S.C. § 922(b)(1) (1999). The statute makes an exception for certain guns, like rifles, which cannot be sold to anyone under the age of 18. *See id.*

32. *See id.* § 922(x)(2).

33. Children also find other ways of getting guns. For example, in 1999, Dylan Klebold, 17, and Eric Harris, 18, used guns purchased by a friend to kill 15 people, including themselves, in Littleton, Colorado. *See* James Brooke, *Columbine Inquiry to Extend into Summer*, N.Y. TIMES, May 22, 1999, at A8. Eighteen-year-old Robyn Anderson, who bought two shotguns and a semi-automatic rifle for the boys from unlicensed dealers at a gun show near Denver, claimed she did not know Klebold and Harris would use the guns to shoot and kill their classmates at Columbine High School. *See id.* Nevertheless, without Anderson's assistance, the massacre may never have occurred. Helping a minor in this manner is typically illegal and participants are penalized if caught. *See* 18 U.S.C. § 922 (x)(1). Preventing children from attaining guns through illegal actions is a serious, but extensive, subject and therefore, is beyond the scope of this Note.

34. *See The School Shootings*, *supra* note 9. A recent survey of 806 parents, by Peter Hart Research on behalf of the Center to Prevent Handgun Violence, found that 43% of households with children have guns; 23% keep the guns loaded; and 28% keep guns hidden but unlocked. *See Guns in the Home*, *supra* note 6. A separate study of 400 parents in Georgia revealed that of the 113 parents that kept guns at home, 52% did not lock up loaded guns. *See Kids and Guns: Just How Meticulous About Safety are Parents Who Own Guns?*, THE CINCINNATI ENQUIRER, Nov. 10, 1999, at E03. Additionally, 23% believed their children could be trusted with a loaded gun at home and 87% thought their children could distinguish between a toy gun and a real gun. *See id.*

the Second Amendment's right to bear arms.[35] Secondly, taking all guns away would be infeasible because there are "too many guns owned by too many people."[36] There would be no efficient or constitutional way to force people to hand over their guns. Even if the government had the authority to search homes and confiscate any weapons found, the relatively compact size of guns makes them easy to hide.[37]

Instead, legislators recognize that attempts should be made to keep guns away from children. Thus, Americans may still be allowed to own a gun and keep it at home, but they should be required to lock it up and/or store it in a way that would make it inaccessible to children.

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35. The private right to bear arms has raised much controversy among Americans. Gun control advocates insist that the right to bear arms under the Second Amendment applies only to the State so that it may maintain a militia, like the National Guard. *See Fables, Myths & Other Tall Tales About Gun Laws, Crime and Constitutional Rights* (visited Mar. 7, 2000) <http://www.nraila.org/research/19990728-BillofRightsCivilRights-002.html> [hereinafter *Fables, Myths & Other Tall Tales*]. In fact, on numerous occasions, the Supreme Court has ruled that the Second Amendment does not guarantee an individual right to bear arms. *See, e.g.*, United States v. Warin, 530 F.2d 103, 106 (6th Cir. 1976) ("It is clear that the Second Amendment guarantees a collective rather than an individual right."); Stevens v. United States, 440 F.2d 144, 149 (6th Cir. 1971) (explaining that the Second Amendment "applies only to the right of the State to maintain a militia and not to [an] individual's right to bear arms . . . ."); United States v. Miller, 307 U.S. 174, 178 (1939) (concluding that the Second Amendment did not guarantee the individual right to keep and bear arms); United States v. Cruikshank, 92 U.S. 542, 553 (1875) (stating that an individual right to bear arms for a lawful purpose is not granted by the U.S. Constitution). "Instead, the Second Amendment protects only the right of the states to maintain organized military forces, guaranteeing nothing to individuals." John Dwight Ingram & Alison Ann Ray, *The Right(?) to Keep and Bear Arms*, 27 N.M. L. Rev. 491 (1997). Nevertheless, the NRA, contends that the arguments against an individual's right to bear arms are ill-supported. *See* PETER NAVARRO, THE POLICY GAME — HOW SPECIAL INTERESTS AND IDEOLOGUES ARE STEALING AMERICA 49 (1984). The group looks to the creation of the Militia Act of 1792 for support of this position. *See id.* The Militia Act defined the "Militia of the U.S.," as used in the Second Amendment, to include "all able-bodied males of age". *Fables, Myths & Other Tall Tales*, *supra* note 35. Furthermore, opponents of gun control claim that this Act demonstrates the intention of the Framers of the Constitution that the Militia be a third component of the United States Army – America's armed citizenry. *See id.* In keeping with these intentions, the NRA argues that the right to bear arms "should be zealously guarded as the other individual liberties enshrined in the Bill of Rights." *Id.*

36. *Disarming Good People*, WASH. TIMES, June 16, 1999, at A17.

37. *See id.*

2. *Recent Federal Proposals*

CAP laws attempt to protect children against the problems caused by having unlocked guns in the home.[38] The laws suggest ways of locking up and/or storing guns to deny access to children and any other unauthorized users. The gun industry has steadfastly refused to voluntarily include safety devices with their products.[39] Therefore, members of Congress have determined that instead, legislation must be passed to protect children.

Every term, several members of the Senate and the House of Representatives introduce proposals that would require a privately-owned weapon to be safely stored. One example is the *21st Century Safe and Sound Communities Act* (the "21st Century Act"), which was recommended by Senator Herb Kohl of Wisconsin.[40]

In accordance with its purpose of preventing juvenile crime, the 21st Century Act proposes ways to reduce children's access to firearms.[41] More specifically, the bill prohibits the sale or transfer of handguns unless the manufacturer or dealer also provides the purchaser with a locking device.[42] The 21st Century Act defines a "locking device" as any mechanism that:

> [1] if installed on a firearm and secured by means of a key or a mechanically, electronically, or electromechanically operated combination lock, is designed to prevent the firearm from being discharged without first deactivating or removing the device;
> [2] if incorporated into the design of a firearm, is designed to prevent discharge of the firearm by any person who does not have access to the key or other device designed to unlock the mechanism and thereby allow discharge of the firearm;
> [3] is an easily removable device that, if removed, is designed to prevent the discharge of the firearm by any person who does not have access to the device; or

38. *See Guns in the Home*, *supra* note 6 ("Although the primary intention of CAP laws is to help prevent unintentional injury, CAP laws also serve to reduce juvenile suicide and homicide by keeping guns out of the reach of children.").

39. *See* Gun Industry Accountability Act, S. 560, 106th Cong. § 2(4) (introduced Mar. 8, 1999). In March 2000, Smith & Wesson became an exception to this statement, by its agreement to childproof all guns it manufactured. *See infra* notes 207-210 and accompanying text.

40. S. 716, 106th Cong. (introduced Jan. 19, 1999).

41. *See id.* § 201. The Act includes six main topics but only Title II, entitled "Reducing Youth Access to Firearms," discusses safety devices for guns. *Id.*

42. *See id.* § 201(b)(1). The bill would amend 18 U.S.C. § 922 by inserting specific language requiring the inclusion of a locking device with the sale, delivery or transfer of any handgun. *See id.*

> [4] is a safe, gun safe, gun case, lock box, or other device that is designed to store a firearm and that is designed to be unlocked only by means of a key, a combination, or other similar means.[43]

Unless a merchant satisfies one of the enumerated exceptions in the Act,[44] any violation would subject him to a suspension or revocation of his firearms license and/or a civil penalty of not more than $10,000.[45]

Similarly, Representative John Conyers, Jr. of Michigan introduced *The Youth Gun Crime Enforcement Act of 1999* (the "Youth Gun Act") to increase gun safety for children.[46] The Youth Gun Act requires any firearm sold, transferred or delivered to be equipped with a "secure gun storage or safety device."[47] This bill differs from the 21st Century Act, however, in that it also imposes criminal penalties upon the owner of a gun when a child uses his weapon to cause "death or serious bodily injury to the child or any other person."[48] A maximum of three years imprisonment and/or a fine would be inflicted upon any person that "keeps a loaded firearm, or an unloaded firearm and ammunition for the firearm," and "knows, or recklessly disregards the risk, that a child is capable of gaining access to the firearm."[49] The gun owner would escape punishment, however, upon proving that the gun in question was secured by some type of safety device.[50]

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43. *Id.* § 201(a). The bill would amend 18 U.S.C. § 921(a) by adding definitions for a "locking device." *See id.*

44. The bill explains that the prohibition does not apply to:

> (A) the —
>
> (i) manufacture for, transfer to, or possession by, the United States or a State or a department or agency of the United States, or a State or a department, agency, or political subdivision of a State, of a firearm; or
>
> (ii) transfer to, or possession by, a law enforcement officer employed by an entity referred to in clause (i) of a firearm for law enforcement purposes (whether on or off duty); or
>
> (B) the transfer to, or possession by, a rail police officer employed by a rail carrier and certified or commissioned as a police officer under the laws of a State of a firearm for purposes of law enforcement (whether on or off duty).

Id. § 201(b)(1).

45. *See id.* § 201(d)(2). The bill would amend 18 U.S.C. § 924 by adding the suggested penalties for any violations. *See id.*

46. H.R. 1768, 106th Cong. (introduced May 12, 1999). The Act includes seven main topics but only Title II, "Restricting Youth Access to Firearms," is relevant to this Note.

47. *Id.* § 203(a).

48. *Id.* § 204.

49. *Id.*

50. *See id.* Exceptions are also made for firearms obtained during the performance of the official duties of a peace officer, member of the Armed Forces or National Guard; for situations where the child uses the firearm in a lawful act of self-defense;

A third example of a federal gun safety bill is a proposal by Representative Carolyn McCarthy of New York. The *Children's Gun Violence Prevention Act of 1999* aims to provide a safer environment for children by restricting private gun use.[51] There are two sections, in particular, that relate to the safe storage of guns. First, Representative McCarthy has introduced the *Children's Firearm Access Prevention Act of 1999* (the "Children's Firearm Access Act") to impose criminal penalties on the owner of a firearm that is not properly locked up and/or stored at home.[52] Similar to the Youth Gun Act,[53] an owner violates the law when a juvenile uses his weapon to cause "death or bodily injury to the juvenile or any other person."[54] Under the Children's Firearm Access Act, though, the owner is also in violation of the Act when a child gains access to a gun and simply exhibits it in a public place.[55]

Second, McCarthy's *Children's Firearm Safety Act of 1999* (the "Children's Firearm Safety Act") makes it "unlawful for any person to manufacture or import an unsafe handgun."[56] In addition to specifying the meaning of an "unsafe handgun,"[57] the Children's Firearm Safety Act authorizes the Consumer Product Safety Com-

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and for gun owners who have no reasonable expectation that a child would be present on the premises where the firearm was kept. *See id.* Representative Bill McCollum of Florida also has proposed an Act whereby the owner of a gun can be held criminally liable if he reasonably knows or recklessly disregards the possibility that a juvenile can gain access to the gun, and if that juvenile subsequently uses the gun to cause death or serious bodily injury. *See* Child Safety & Youth Violence Prevention Act of 1999, H.R. 2037, 106th Cong. § 305 (introduced June 8, 1999).

51. H.R. 1342, 106th Cong. (introduced Mar. 25, 1999). The bill is a collection of Acts related to protecting children:

Title I – The Children's Firearm Safety Act of 1999;
Title II – The Children's Firearm Age Limit Act of 1999;
Title III – The Children's Firearm Dealer's Responsibility Act of 1999;
Title IV – The Children's Firearm Access Prevention Act of 1999;
Title V – The Children's Firearm Injury Surveillance Act of 1999;
Title VI – The Children's Gun Violence Prevention Act of 1999; and
Title VII – The Children's Firearm Tracking Act of 1999.

Id.

52. *Id.* § 401.

53. *See* The Youth Gun Crime Enforcement Act of 1999, H.R. 1768, 106th Cong. § 204 (introduced May 12, 1999).

54. Children's Firearm Access Prevention Act of 1999, H.R. 1342, 106th Cong. § 401(c). The specified criminal penalties include imprisonment for up to one year and/or a fine of no more than $10,000. *See id.*

55. *See id.*

56. *Id.* § 101(y)(1).

57. *See id.* § 101(y)(2). The term 'unsafe handgun' is defined by the Act as:

> (A) any handgun which the Secretary determines, when new, fires in any of 5 successive trials in which the handgun . . . is dropped onto a steel plate from a height of one meter . . .

mission (the "CPSC") to study handgun safety and determine any methods that would prevent unauthorized or accidental use by children.[58]

There are many similar proposals for CAP laws before Congress this term. However, several bills include additional ideas and requirements. For instance, in the *Children's Gun Violence Prevention Act of 1999* (the "Children's Gun Violence Act") Senator Edward Kennedy of Massachusetts suggested that the Director of the CPSC and the Director of the Bureau of Alcohol, Tobacco and Firearms (the "ATF") "conduct a study to determine the means by which the safety of handguns can be improved in order to prevent the authorized use or discharge of handguns by children."[59] Under this Act, the agencies should conduct a year-long study, whereby they test and evaluate locking devices, storage boxes, safes and other safety devices,[60] and then submit a report to Congress describing the ways in which handgun safety can be improved.[61]

The *Child Handgun Injury Prevention Act* (the "Child Handgun Act"), introduced by Representative Julia Carson of Indiana, also recommends that government agencies be utilized to examine the particular dangers that guns impose on children and determine the proper ways to prevent unnecessary harm.[62] Under the Child Handgun Act, the Secretary of Treasury would be given the au-

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(B) any handgun without a child resistant trigger mechanism reasonably designed to prevent a child who has not attained 5 years of age from operating the weapon when it is ready to fire. Such mechanism may include:
(i) any handgun with a trigger resistant equivalent to a ten pound pull; or
(ii) any handgun, under rules determined by the Secretary, which is designed so that the hand of an average child who has not attained 5 years of age is unable to grip the trigger;
(C) any semiautomatic pistol which does not have a magazine disconnect safety that prevents the pistol from being fired once the magazine or clip is removed from the weapon[;]
(D) a handgun sold without a mechanism or feature reasonably designed, under rules determined by the secretary, to prevent the discharge of the weapon by unauthorized users, including but not limited to[:]
(i) a detachable, key activated or combination lock which prevents the trigger from being pulled or the hammer from striking the primer;
(ii) a solenoid use-limitation device which prevents, by use of a magnetically activated relay, the firing of the handgun unless a magnet of the appropriate strength is placed in proximity to the handle of the handgun; or
(iii) a removable hammer or striker.

Id.

58. *See id.* § 102(a).
59. S. 735, 106th Cong. § 102(b)(1) (introduced Mar. 25, 1999).
60. *See id.* § 102(b)(2).
61. *See id.* § 102(c)(2)(A) & (B).
62. H.R. 515, 106th Cong. § 3 (introduced Feb. 3, 1999).

thority to "prescribe such regulations governing the design, manufacture, and performance of, and commerce in, handgun discharge protection products, as are necessary to reduce or prevent unreasonable risk of injury to children from the unintentional discharge of handguns."[63] These regulations would form a minimum safety standard by which all products would be measured before being sold, transferred or delivered to the public.[64]

If any "handgun discharge protection product"[65] does not comply with the regulations, the Secretary would have the ability to require the manufacturer or dealer to: (1) repair the product so as to make it properly conform; (2) replace the product with an equivalent product that is in compliance; (3) refund the product's purchase price; (4) recall the product from the stream of commerce; or (5) submit to the Secretary an alternative plan for providing safety measures.[66] To ensure compliance with the Child Handgun Act, the Secretary would be able to conduct reasonable inspections of any place of business where "handgun discharge protection products" are manufactured, stored or held.[67]

Additionally, the Child Handgun Act would require all handgun packaging materials to contain a warning label about the dangers of keeping guns at home with children.[68] As a result, purchasers would be notified of the risks involved when a gun is not properly locked up and/or stored at home. A violator of any of the provisions of the Act would face a maximum fine of $10,000, revocation of a federal firearms license, and/or a private cause of action for damages by any person injured by the violation.[69]

On a different level, the *Youth Violence Prevention Act of 1999* (the "Youth Violence Act") provides an incentive for gun owners to use safety devices.[70] In addition to provisions prohibiting the

63. *Id.* § 3(a).

64. *See id.* § 3(b).

65. A "handgun discharge protection product" is defined as "any device (including a handgun) that is designed, manufactured, or represented in commerce, as useful in protecting children from injury from the unintentional discharge of a handgun." *Id.* § 10(1).

66. *See id.* § 4(b)(2)-(7).

67. *See id.* § 4(c).

68. *See id.* § 6(a)(1). The warning label must state: "CHILDREN ARE ATTRACTED TO AND CAN OPERATE HANDGUNS, WHICH CAN CAUSE SEVERE INJURIES OR DEATH. PREVENT CHILD ACCESS BY ALWAYS KEEPING HANDGUNS LOCKED AWAY AND UNLOADED." *Id.* § 6(a)(2)(A).

69. *See id.* § 8(a)-(c).

70. H.R. 1726, 106th Cong. (introduced May 6, 1999).

manufacture of handguns without child safety locks,[71] and requiring that all guns at home be locked up and/or stored safely,[72] Representative Peter A. DeFazio of Oregon has proposed that a tax credit be given annually for any "qualified firearm safe storage device expenses."[73] The Act defines "qualified firearm safe storage device expenses" as "amounts paid for a trigger lock, secure locked cabinet, or other safety device used solely for the storeage [sic] of a firearm."[74] It attempts to combat the conflicts CAP laws typically face by providing an added benefit to owners who comply with the requirements to lock up and/or store their guns.

The 21st Century Act is presently the only proposal to survive a vote by either house in Congress.[75] However, it faces a long battle before being enacted into law. The President has expressed his support for the Act but the House of Representatives continues to disagree with several of its provisions.[76]

3. *State Laws*

Although federal safe storage proposals have not yet become law, seventeen states presently have CAP laws.[77] In 1989, Florida was the first state to enact a CAP law and serves as an example for other states to follow.[78] Florida law forbids the storage of a loaded firearm where the owner "knows or reasonably should know that a minor is likely to gain access to [it] without the lawful permission of the minor's parent."[79] If the owner fails to properly lock up and/or store his gun and as a result of gaining access to that gun, a minor possesses or exhibits it in a public place, or "in a rude, careless, angry or threatening manner," the owner is guilty of a misde-

71. *See id.* § 301(a)(1). Any violation of this Act is punishable by a civil fine of $5000. *See id.* § 301(a)(2).

72. *See id.* § 401(a). If a child gains access to a gun at home and uses it to kill or injure himself or another, or merely exhibits it in a public place, the owner of the gun may be imprisoned and/or fined. *See id.* § 401(b).

73. *Id.* § 201(a). The credit is limited to an amount that does not exceed the excess of $250 over "the aggregate amounts treated as qualified firearm safe storeage [sic] device expenses with respect to such individual for all prior taxable years." *Id.*

74. *Id.*

75. The Senate passed the 21st Century Act by a 73 to 25 vote in May 1999. *See Senate Approves Juvenile Justice Bill*, *supra* note 14.

76. *See Lacey and Schmitt*, *supra* note 20.

77. *See The School Shootings*, *supra* note 9.

78. *See Child Access Prevention Laws - State Summaries* (visited Feb. 10, 2000) <http://www.handguncontrol.org/caplaws.htm> [hereinafter *Child Access Prevention Laws*].

79. FLA. STAT. ANN. § 790.174(1) (West 1999).

meanor.[80] Florida law also states that if a gun left unlocked or unstored is used by a minor to "inflict injury or death upon himself . . . or any other person," the owner of that gun is guilty of a felony.[81] A minor is defined by the law as anyone under the age of sixteen.[82]

Most of the other state laws mirror Florida's CAP law, with minor variations. For instance, the way in which the CAP law is violated differs among the states. Several state laws only hold a gun owner liable if a child gains access to an improperly locked and/or stored gun and uses it to injure and/or kill himself or another person.[83] Comparatively, other states make a finding of liability much

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80. *Id.* § 790.174(2)(a)-(b).

81. FLA. STAT. ANN. § 784.05(3). The statute labels the act of "storing or leaving a loaded firearm within the reach or easy access of a minor" who subsequently uses the weapon to injure and/or kill himself or another as culpable negligence. *Id.*

82. *See id.* § 790.174(3).

83. The Connecticut CAP law states that "a person is guilty of criminally negligent storage of a firearm when he violates the provisions of [C.G.S.A.] § 29-37i and a minor obtains the firearm and causes the injury or death of himself or any other person." CONN. GEN. STAT. ANN. § 53a-217a(a) (West 1999). C.G.S.A. § 29-37i requires anyone that "knows or reasonably should know that a minor is likely to gain access [to a gun] in a securely locked box or other container or in a location which a reasonable person would believe to be secure." CONN. GEN. STAT. ANN. § 29-37i (West 1999). Delaware's law provides:

> A person is guilty of unlawfully permitting a minor access to a firearm when the person intentionally or recklessly stores or leaves a loaded firearm within the reach or easy access of a minor and where the minor obtains the firearm and uses it to inflict serious physical injury or death upon the minor or any other person.

DEL. CODE ANN. tit. 11, § 1456(a) (1999). Illinois state law declares:

> [I]t is unlawful for any person to store or leave, within premises under his or her control, a firearm if the person knows or has reason to believe that a minor . . . is likely to gain access to the firearm without the lawful permission of the minor's parent, guardian, or person having charge of the minor, and the minor causes death or great bodily harm with the firearm . . . .

720 ILL. COMP. STAT. ANN. 5/24-9 (West 1999). Rhode Island's law states:

> A person who stores or leaves on premises under his or her control, a loaded firearm and who knows or reasonably should know that a child is likely to gain access to the firearm without the permission of the child's parent or guardian and the child obtains access to the firearm and thereby causes injury to himself/herself or any other person, is guilty of the crime of "Criminal Storage of a Firearm" . . . .

R.I. GEN. LAWS § 11-47-60.1(B) (1998). Wisconsin state law provides:

> Whoever recklessly stores or leaves a loaded firearm within the reach or easy access of a child is guilty of a Class A misdemeanor if all of the following occur: (a) [a] child obtains the firearm without the lawful permission of his or her parent or guardian or the person having charge of the child[; and] (b) [t]he child . . . discharges the firearm and the discharge causes bodily harm or death to himself, herself or another.

WIS. STAT. ANN. § 948.55 (West 1999).

easier. In North Carolina, for example, an owner violates the state's CAP law if a child gains access to a gun improperly locked up and/or stored and simply "exhibits it in a public place in a careless, angry, or threatening manner."[84] Even more stringent are states like Hawaii, New Jersey and Texas that penalize people for merely allowing a child to gain access to their guns.[85]

The requirements placed on gun manufacturers, dealers and importers also vary among the states. Some laws only focus on the owner of the gun used by a child and do not place any responsibility on gun merchants.[86] On the other hand, several states require gun merchants to provide purchasers with a written warning about the state's CAP law, as well as place warning signs at the counter.[87] These warnings notify purchasers of the dangers inherently in-

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84. N.C. GEN. STAT. § 14-315.1(a)(2) (1999). North Carolina also places liability upon an owner when the child uses a gun found at home to cause personal injury or death to himself or another. Similarly, Iowa's state law provides:

> It shall be unlawful for any person to store or leave a loaded firearm which is not secured by a trigger lock mechanism, placed in a securely locked box or container, or placed in some other location which a reasonable person would believe to be secure . . . if such person knows or has reason to believe that a minor . . . is likely to gain access to the firearm without the lawful permission of the minor's parent, guardian, or person having charge of the minor, the minor lawfully gains access to the firearm without the consent of the minor's parent, guardian, or person having charge of the minor, and the minor exhibits the firearm in a public place in an unlawful manner, or uses the firearm unlawfully to cause injury or death to a person.

IOWA CODE ANN. § 724.22(7) (West 1999). Wisconsin's law states:

> Whoever recklessly stores or leaves a loaded firearm within the reach or easy access of a child is guilty of a Class C misdemeanor if all of the following occur: (a) [a] child obtains the firearm without the lawful permission of his or her parent or guardian or the person having charge of the child[; and] (b) [t]he child under par. (a) possesses or exhibits the firearm in a public place.

WIS. STAT. ANN. § 948.55(3).

85. *See* HAW. REV. STAT. ANN. § 707-714.5(1) (Michie 1999); N.J. STAT. ANN. § 2D:58-15(a) (West 1999); TEX. PENAL CODE ANN. § 46.13(b) (West 1999).

86. *See, e.g.*, IOWA CODE ANN. § 724.22.

87. California's CAP law states:

> The packaging of any firearm and any descriptive materials that accompany any firearm sold or transferred in this state . . . by any licensed manufacturer, or licensed dealer, shall bear a label containing the following warning statement: "WARNING. 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."

CAL. PENAL CODE § 12088.3(a) (West 2000). Minnesota's state law provides: "In each business location where firearms are sold by a firearms dealer, the dealer shall post in a conspicuous location the following warning in block letters not less than one inch in height: 'IT IS UNLAWFUL TO STORE OR LEAVE A LOADED FIRE-

volved in keeping a gun at home with children and of the existence of laws prohibiting a person from improperly locking up and/or storing their guns.

Another significant difference between Florida's law and those of other states is the definition of a minor.[88] For instance, Illinois, Iowa, Virginia and Wisconsin define a minor as anyone under the age of fourteen.[89] On the other hand, California and Texas raise the age of a minor to seventeen,[90] while Delaware, Minnesota and North Carolina use the age of eighteen.[91]

ARM WHERE A CHILD CAN OBTAIN ACCESS.'" MINN. STAT. ANN. § 624.7162(2) (West 1999). New Jersey's CAP law states:

> Upon the retail sale or transfer of any firearm, the retail dealer or his employee shall deliver to the purchaser or transferee the following written warning, printed in block letters not less than one-fourth of an inch in height: "IT IS A CRIMINAL OFFENSE, PUNISHABLE BY A FINE AND IMPRISONMENT, FOR AN ADULT TO LEAVE A LOADED FIREARM WITHIN EASY ACCESS OF A MINOR."

N.J. STAT. ANN. § 2C:58-16(a) (West 1999). New Jersey also requires: "Every wholesale and retail dealer of firearms [to] . . . conspicuously post at each purchase counter the following warning, printed in block letters not less than one inch in height: 'IT IS A CRIMINAL OFFENSE TO LEAVE A LOADED FIREARM WITHIN EASY ACCESS OF A MINOR.'" *Id.* § 2C:58-16(b). North Carolina requires merchants to provide a written copy of the state's CAP law with every purchase of firearms. *See* N.C. GEN. STAT. § 14-315.2(a). Additionally, North Carolina's law states that:

> Any retail or wholesale store, shop or sales outlet that sells firearms shall conspicuously post at each purchase counter the following warning in block letters not less than one inch in eight the phrase: "IT IS UNLAWFUL TO STORE OR LEAVE A FIREARM THAT CAN BE DISCHARGED IN A MANNER THAT A REASONABLE PERSON SHOULD KNOW IS ACCESSIBLE TO A MINOR."

Id. § 14-315.2(b). The Texas law requires:

> A dealer of firearms [to] . . . post in a conspicuous position on the premises where the dealer conducts business a sign that contains the following warning in block letters not less than one inch in height: 'IT IS UNLAWFUL TO STORE, TRANSPORT, OR ABANDON AN UNSECURED FIREARM IN A PLACE WHERE CHILDREN ARE LIKELY TO BE AND CAN OBTAIN ACCESS TO THE FIREARM.'

TEX. PENAL CODE ANN. § 46.13(g).

88. Connecticut, Hawaii and Rhode Island all define a minor in the same way as Florida — as anyone under the age of sixteen. *See* CONN. GEN. STAT. ANN. § 53a-217a(a) (West 1999); HAW. REV. STAT. ANN. § 134-10.5; R.I. GEN. LAWS § 11-47-60.1(B).

89. *See* 720 ILL. COMP. STAT. ANN. 5/24-9(a) (West 1999); IOWA CODE ANN. § 724.22(7); VA. CODE ANN. § 18.2-56.2(A) (Michie 1999); WIS. STAT. ANN. § 948.55(1).

90. *See* CAL. PENAL CODE § 12088.2(a) (West 1999); TEX. PENAL CODE ANN. § 46.13(a)(1).

91. *See* DEL. CODE ANN. tit. 11, § 9002(2) (1999); MINN. STAT. ANN. § 609.666(b); N.C. GEN. STAT. § 14-315.1(d) (1999).

B. The National Rifle Association

The NRA consistently fights against any CAP law proposals and often succeeds in preventing such proposals from becoming law. This strong resistance epitomizes the true nature of interest groups. Since their creation, interest groups have become integral to the decision-making process in government, thus earning the title of the "Third House of the Legislature."[92] They provide the opportunity for Americans who want to lobby or participate in government, but lack the resources and know-how to do it alone.[93] Interest groups also serve legislators by presenting a collective view of individuals' opinions and educating them on various aspects surrounding a particular issue.[94]

Most interest groups can fit into two general categories: public interest groups and single-issue groups.[95] Public interest groups

92. ROSENTHAL, *supra* note 16, at 1.

93. Individual attempts to participate in government may encounter excessive time requirements and money restraints. *See* JONATHAN RAUCH, DEMOSCLEROSIS — THE SILENT KILLER OF AMERICAN GOVERNMENT 25 (1994). These problems are minimized, however, by the combined efforts of the group's participants. *See id.* "A [group] with access to the right mailing lists . . . can send solicitation letters to . . . tens of thousands of Americans and, with the money thus reaped, mold this inchoate group into a force to be reckoned with." *Id.* at 53 (quoting journalist Robert Wright). Additionally, the organization process has become easier over the past few decades. *See id.* at 50. Rather than "print and mail thousands of letters, make hundreds of phone calls at expensive rates, . . . and gather followers one at a time," fax machines and modems allow interest groups to contact individuals around the country with little time and effort. *Id.*

94. The relationship between interest groups and legislators is commonly referred to as the "Contact Game." *See* WILLIAM P. BROWNE, GROUPS, INTERESTS AND U.S. PUBLIC POLICY 64 (1998). Both seek information and assistance from the other in order for each to be prosperous. *See id.* Legislators often look to lobbyists for explanations and advice on certain subjects. *See* DONALD C. BLAISDELL, AMERICAN DEMOCRACY UNDER PRESSURE 68 (1957). Because interest groups generally focus on particular issues, they are better informed on the technical matters of related legislation and could therefore be extremely useful during a legislator's decision-making process. *See id.*

95. *See* NAVARRO, *supra* note 35, at 39. Public interest groups and single-issue groups are two types of noneconomic lobbies. *See id.* at 50-51. Noneconomic lobbies are distinguished "by the goals and values on which their memberships are based," and the fact that they "focus less on their direct material benefit and more on the general welfare of themselves and society." *Id.* at 47. In contrast, economic, or private interest, lobbies share a "single-minded pursuit of economic enrichment through the manipulation of public policy." *Id.* at 40. Private interest lobbies include the "big four": (1) business lobbies, such as the Chamber of Congress and the National Association of Manufacturers, which serve to "promote the broad interests of the business community;" (2) labor lobbies, like the American Federation of Labor-Congress of Industrial Organizations, which unionize almost every American industry; (3) farm lobbies, like the National Grange and the American Farm Bureau Federation, which represent both farmers in general, and specific issues such as prices and productivity;

lobby "for the people," on issues like clean air or nuclear disarmament.[96] Single-issue groups, on the other hand, have a "dogged allegiance to one issue" and a "willingness to support or oppose . . . politicians and government officials solely on the basis of their stance on that particular issue."[97] Participants of these groups consider their actions to be humanitarian, unselfish and necessary to advance policies for the public good.[98] To some, then, they are considered an "ultimate expression of a pluralistic society."[99]

One example of a single-issue group is the NRA and its fight against gun control.[100] The NRA commits itself to preserving its interpretation of the Second Amendment to the U.S. Constitution and has "zealously defended the right to bear arms against almost any perennial legislative effort . . . to impose gun control."[101] Every year the NRA's powerful lobbying efforts prevent numerous gun control proposals, including CAP laws, from being enacted.[102] Even when a bill only mildly or indirectly impedes upon a person's Second Amendment right, the NRA forcefully blocks a congressional vote, rationalizing that any law affecting the right to bear arms starts down a slippery slope towards complete regulation of privately-owned guns.[103] Therefore, even though CAP laws arguably may affect the number of accidental shootings, the NRA considers them too restrictive on the free use of guns at home and uses all its power to block them.

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and (4) professional lobbies, such as the American Medical Association and the American Bar Association, which characterize themselves by their "ability to link professional acceptance and competence to membership in their organizations." *Id.* at 40-44.

96. *See id.* at 48. Some examples of public interest groups include: Common Cause, the Natural Resources Defense Council, the American Civil Liberties Union, and the Friends Peace Committee. *See id.*

97. *Id.* at 49.

98. *See id.*

99. *Id.* Single-issue groups are frequently criticized for hindering democracy by bolstering interests that may not benefit society as a whole. *See id.* Critics accuse them of having "disproportionate influence because of their single-minded readiness" to do anything necessary to defend their beliefs. GRAHAM K. WILSON, INTEREST GROUPS IN THE UNITED STATES 104 (1981).

100. *See* NAVARRO, *supra* note 35, at 49. Other examples of issues advocated by single-issue groups include abortion and school prayer. *See id.*

101. *Id. See also supra* note 18.

102. *See* NAVARRO, *supra* note 35, at 49.

103. Members view any proposed legislation as a move toward denying gun owners their right to own even lawful rifles for hunting or handguns for self-protection. *See id.* Thus, they are convinced that any type of regulation must be stopped. *See id.*

Much of the NRA's success in defeating these proposals comes from the size and dedication of its membership.[104] The NRA boasts 2.8 million members, many of whom have never owned nor shot a gun before.[105] These members respond to any "restrictive 'gun control' legislation" by flooding their elected representatives with endless letters and phone calls.[106]

The NRA's large membership also benefits the organization financially. Members' dues provide approximately $45 million in revenue a year and the organization receives more than $8 million a year from NRA magazine advertising space sold to gun manufacturers.[107] In comparison, Handgun Control Inc. ("HCI") and the National Coalition to Ban Handguns, two groups that favor gun control, have approximate annual budgets of $5 million and $350,000, respectively.[108] This monetary differential becomes significant during conflicts where the NRA is able to fight much harder and longer than other groups.[109]

Additionally, the NRA uses contributions from its political action committee, the Political Victory Fund ("PVF"), to fight against gun control.[110] The PVF was established in 1976 to supplement the lobbying efforts of the ILA,[111] by giving financial support to various political candidates.[112] Contributions are based more on voting records, public statements and responses to NRA-PVF question-

104. Numerous groups support private gun use, but none compare to the resources and efforts exhibited by the NRA. Some other pro-gun groups include: Citizens' Committee for the Right to Keep and Bear Arms, started in 1971 as an independent operation in order to argue that firearms registration will not only fail to solve the problems of crime but it will lead to an eventual confiscation of firearms and the loss of individual freedoms; *See Active National Pro-Firearms Organizations* (visited Feb. 4, 1999) <http://www.nra.org/research/ripro.html>; Gun Owners Incorporated, founded in 1975 as a nonprofit lobbying organization to preserve the rights of gun owners by advocating for harsher punishment for criminals misusing firearms and keeping members informed on gun control legislation; *See* ENCYCLOPEDIA OF ASSOCIATIONS, § 9, vol. 2. (1999); and, Gun Owners Action Committee, founded in 1989 to promote citizen involvement in government and educate the public on responsible firearm ownership. *See id.*

105. *See* NRA-ILA, *Fact Sheet - What is the Gun Lobby?* (visited Mar. 23, 1999) <http://www.nraila.org/research/19990729-SecondAmendment-001.html>.

106. Simon, *supra* note 18, at 2.

107. *See id.* at 5.

108. *See id.* These numbers represent the amount in revenues that these organizations earned in 1989.

109. Commenting on this drawback, one HCI official stated, "It would be wonderful if we could get involved in every fight in the country, but we can't. The NRA can. They can afford to be everywhere at once." *Id.*

110. *See What is the Gun Lobby?*, *supra* note 105.

111. *See supra* note 18.

112. *See What is the Gun Lobby?*, *supra* note 105.

naires than party affiliation.[113] A politician's views on gun control are considered more important than who he represents.[114] The PVF has proven very advantageous in promoting the group's political agenda by helping candidates get elected to various government positions, including U.S. Congressman and State Governor.[115]

Despite the criticism to the contrary, the NRA insists that its fight for free gun use is reasonable.[116] Members do not endorse the availability of guns to anyone at anytime but claim to only oppose laws that prevent innocent people from being able to protect themselves in their own home and laws that disrupt recreational activities, such as hunting and target shooting.[117] They argue that CAP laws not only prevent gun owners from participating in these activities, but also interfere with an Americans' constitutional right to bear arms.[118] Furthermore, the NRA contends that "responsible gun owners store their guns safely" and, therefore, do not need restrictive laws ordering them to do so.[119]

Like any gun control issue, CAP laws have become highly debatable. Every year, members of Congress propose requirements for the safe storage of privately-owned guns, carefully explaining the necessity for such laws in America. In response, the NRA consistently argues why such proposals should not be made into law.

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113. *See id.*

114. *See id.*

115. For example, in 1988, the sum of approximately $13 million from donations by NRA members and any outside contributions enabled the ILA to spend $21 million on various elections across the country. *See Simon*, *supra* note 18, at 6. More recently, in 1992, the NRA spent $28.9 million to aid numerous campaigns for Congress, and then to influence officials once in office. *See* Harold S. Herd, *A Re-Examination of the Firearms Regulation Debate & Its Consequences*, 36 WASHBURN L.J. 196, 230 (Winter 1997). The NRA-PVF endorsed more than 2750 candidates running in state House races in 1998, and achieved an 83% success rate in those elections. *See What is the Gun Lobby?*, *supra* note 105. Also in 1998, the ILA succeeded in helping 22 of its 28 endorsed candidates attain gubernatorial positions. *See id.*

116. In fact, the NRA argues that gun control advocates do not act moderately or reasonably. *See Fables, Myths & Other Tall Tales*, *supra* note 35.

117. *See id.*

118. *See infra* notes 173-184 and accompanying text.

119. *The Hidden Agenda Behind Gun Storage Laws* (visited Feb. 14, 2000) <http://www.nraila.org/research/19991005-InternationalGunControl-002.shtml> [hereinafter *The Hidden Agenda*].

II. WHETHER CHILD ACCESS PREVENTION LAWS SHOULD BE ENACTED AND PUBLIC OPINION

A. Arguments in Favor of Child Access Prevention Laws

1. *Accessibility of Guns at Home*

Theories differ about where young people obtain guns.[120] Federal laws prohibit manufacturers, dealers and importers from selling firearms directly to anyone under the age of twenty-one.[121] These laws, however, do not prevent children from finding guns elsewhere.[122] In fact, many children do not need to look any further than their own homes to find a gun.[123] By owning guns, parents provide their children easy access to a deadly weapon on a daily basis.

In addition to having easy access to a gun at home, children often find ready-use weapons.[124] One in every ten households with children has a loaded gun, and one in every eight has a gun that is left unlocked.[125] Furthermore, an estimated 1.2 million elementary-aged, latchkey children have access to guns in their homes.[126] Parents admit to knowing about the dangers that could result from a gun at home, yet they make little or no effort to protect their children.[127] Senator Richard Durbin of Illinois once remarked,

120. In a study on where students obtained guns brought to school, school security experts and law enforcement officials estimated that 80% of the firearms came from home. *See Guns in Schools* (visited Feb. 10, 2000) <http://www.gunfree.org/csgv/bsc_sch.htm>. Students, on the other hand, estimated that 40% of their peers who brought guns to school bought them on the street. *See id.*

121. *See supra* notes 31-34 and accompanying text.

122. *See supra* note 33.

123. *See Guns in the Home*, *supra* note 6. "[T]here is a gun in 43% of households with children in America." *Id.*

124. *See* 146 Cong. Rec. S1229-01 (daily ed. Mar. 7, 2000) (statement of Sen. Kohl).

125. *See Guns in the Home*, *supra* note 6. Nearly 100 million private owners do not safely store their firearms and 22 million leave these unlocked guns loaded. *See* 145 Cong. Rec. S554-01, S574 (daily ed. Jan. 19, 1999) (statement of Sen. Kohl). A 1995 survey found that 59% of parents who admitted to having a gun in the home did not lock the gun away from their children. *See Unintentional Shootings* (visited Feb. 10, 2000) <http://www.gunfree.org/csgv/bsc_uni.htm>.

126. *See Guns in the Home*, *supra* note 6.

127. *See Unintentional Shootings*, *supra* note 125. Even when a family does not own a gun, parents need to be aware of the potential for accidents at friends' or neighbors' homes. *See Lethal Weapons* (visited Apr. 12, 1999) <http://ctw.org/parents/article>. "Most parents, especially those who would never dream of owning a weapon themselves don't think to ask the parents of their child's playmate if they own a gun." *Id.* "We can't just say that the Constitution gives us the right to have guns when we're not putting into that the responsibility that adults must have if they're going to have weapons in their homes - to have trigger locks and have ways to prevent the kids from

"It's a sad fact of life that some Americans are more concerned about locking up their silverware than their guns."[128]

Once a gun is found at home, almost any child has the capability to use it. Studies have determined that because of the little trigger resistance of most guns, children as young as three years old have the strength to fire the weapons.[129] Therefore, proponents of CAP laws argue that regardless of the age or size, no child is immune to the accidents that could occur when guns are improperly kept at home.[130]

2. *Unintentional and Intentional Shootings Claim the Lives of Many Innocent Children*

The accessibility of guns at home has led to many unintentional shootings of young people across the United States.[131] For instance, in October 1999, an eleven-year-old girl was shot and killed in her home in Pleasant Springs, Wisconsin.[132] The girl and an eleven-year-old friend were playing with the gun when it accidentally discharged, striking her in the chest.[133] The girl's father kept

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using them." C. Ray Hall, *Shootings Muddle the Gun Debate* (visited Mar. 3, 2000) <http://www.courier-journal.com/cjextra/schoolshoot/SCHshootingsmuddle.html>.

128. Cong. Rec. S3120 (1998).

129. *See* Child Handgun Injury Prevention Act, H.R. 515, 106th Cong. § 2(5) (introduced Feb. 3, 1999). A study in the December 1995 issue of the Archives of Pediatric and Adolescent Medicine found that "70 percent of five to six year olds had sufficient finger strength to fire 59 (or 92 percent) of the 64 commonly available handguns examined in the study." *Id. See also The School Shootings*, *supra* note 9 (noting how a gun's little trigger resistance places even a three year old at risk of accidentally firing the weapon).

130. *See The School Shootings*, *supra* note 9.

131. The stories about unintentional shootings with guns are endless. For example, during a Senate debate for the "Childproof Handgun Act," Senator Frank Lautenberg of New Jersey recalled three children, ages four, five and six, who were placed down for a nap while visiting a relative in New Jersey. *See* 145 Cong. Rec. S1076-03, S1078 (daily ed. Jan. 28, 1999) (statement of Sen. Lautenberg). After being left alone in the bedroom, they discovered a stored, but unlocked gun with which they began to play. *See id.* Within moments, the gun accidentally discharged, hitting the four-year-old in the face. *See id.* Likewise, in July 1999, in Lakepark, Florida a six-year-old boy fatally shot his five-year-old brother while the two were playing with a gun found under a bed in their grandparents' bedroom. *See Guns in the Home*, *supra* note 6. Also, in Chicago, Illinois, a sixteen-year-old boy accidentally killed his fifteen-year-old cousin in May 1999. *See id.* They were playing with a loaded handgun in their grandmother's apartment when it accidentally discharged. *See id.*

132. *See* Jason Shepard, *Grieving Family Won't Be Charged in Girl's Gun Death*, THE CAPITAL TIMES, Nov. 8, 1999, at 1A.

133. *See id.*

the loaded firearm in the kitchen so that he could shoot raccoons and possums in the backyard.[134]

A similar tragedy occurred in Pontiac, Michigan, in July 1999. A two-year-old boy was shot and killed in his bedroom while he and his three-year-old brother played with a loaded gun they found.[135] The accident occurred with the boys' seven-month-old sister nearby.[136] Further, in Baltimore, Maryland, a three-year-old boy accidentally shot himself in the head in June 1999.[137] The boy found a loaded gun underneath his father's pillow and was playing with it in the basement of his home when it discharged.[138] He died two days later.[139]

Children also use guns found at home to intentionally shoot and kill others.[140] In 1994, juveniles committed nearly twenty percent of all violent crimes in the United States.[141] Furthermore, in 1996, children under the age of nineteen were responsible for using guns to kill more than 800 Americans.[142] Properly locking up and/or storing guns at home would place an extra obstacle in the way of a child looking for a gun to use for criminal activity and, as a result, may reduce the number of these homicides.

A school shooting in March 1998 in Jonesboro, Arkansas serves as an example of an incident that might have been prevented if a federal CAP law existed.[143] Two boys ambushed a local middle school, killing four students and a teacher, as well as injuring ten

134. *See id.* Dane County District Attorney did not file criminal charges, despite the strong case that existed against the girl's parents for improper gun storage. *See id.* "This family is grieving and suffering [after having] lost their beautiful daughter. There's nothing that . . . can [be done] to bring home more clearly the message and nature of this mistake." *Id.*

135. *See* Laura Berman, *Many Tragedies Get Little Attention Because We've Grown Immune*, THE DET. NEWS, July 22, 1999, at D1.

136. *See id.*

137. *See* Peter Hermann, *Man Sought In Death of 3-Year-Old; Police Charge Father of Boy Who Shot Himself With Reckless Endangerment*, THE BALTIMORE SUN, Dec. 11, 1999, at 2B.

138. *See id.* Following the shooting, the boy's father was charged with reckless endangerment and having an unsecured gun at home. *See id.*

139. *See id.*

140. *See Guns in the Home*, *supra* note 6. Proponents of CAP laws explain that requiring owners to lock up and/or store any guns kept at home will reduce both juvenile suicide and homicides committed by children. *See id.* Because the primary goal of the laws, however, is to prevent unintentional injury and death, this Note does not focus on intentional shootings.

141. *See* Protect Children From Violence Act, S. 538, 106th Cong. § 2(a)(3)(A) (introduced Mar. 4, 1999).

142. *See The School Shootings*, *supra* note 9.

143. *See Who, What, Where, When: The Arkansas Shooting* (visited Feb. 29, 2000) <http://www.courier-journal.com/cjextra/schoolshoot/SCHthe facts.html>.

others.[144] Mitchell Johnson, a thirteen-year-old seventh-grader, waited in some bushes with ten guns and a large amount of ammunition while Andrew Golden, an eleven-year-old sixth-grader, entered the school, pulled the fire alarm and then ran out to rejoin Johnson.[145] As the students emerged into the schoolyard, Johnson and Golden began shooting.[146] The owner of the weapons, Doug Golden, claimed that he continuously taught his grandson about the dangers of guns and the appropriate forms of usage.[147] Nevertheless, he did not adequately secure the key to the guns' locks.[148]

3. *Guns are the Only Unregulated Product at Home*

Proponents of CAP laws argue that the gun industry manufactures the only widely available consumer product designed to kill, and yet the gun lobby has successfully kept these products free from consumer product safety standards.[149] The gun industry is "well aware that the lack of safety features in the design of firearms leads to unintentional shootings, suicide and the criminal use of stolen firearms" but it refuses to take responsibility for safeproofing its products.[150]

The federal government has taken many steps to ensure a safer living environment for both children and adults: automobiles must come equipped with seat belts;[151] medicine bottles must include childproof safety caps; fencing must surround all swimming pools;

144. *See id.*

145. *See id.*

146. *See id.*

147. *See* Jim Adams, *At 11, the Littlest Shooter Had a Life With Guns* (visited Feb. 29, 2000) <http://www.courier-journal.com/cjextra/schoolshoot/SCHlittlest.html>.

148. *See id.* The guns were actually locked with a "padlocked steel cable threaded through . . . [their] trigger guards" but the location of the key had been previously entrusted to the boys. *Id.*

149. *See Gun Industry Reform* (visited Feb. 10, 2000) <http://www.handguncontrol.org/test/reform.htm>. *See also* Child Handgun Injury Prevention Act, H.R. 515, 106th Cong. § 2(3) (introduced Feb. 3, 1999) ("Firearms are the only products manufactured in the United States that are not subject to minimum safety standards."); *The School Shootings*, *supra* note 9 ("Of all the thousands of products with which children have contact, only one - firearms - are completely exempt from consumer protection regulations.").

150. *Gun Industry Reform*, *supra* note 149. "Since firearms are the only widely available consumer product designed to kill, firearm manufacturers, distributors' and retailers have a special responsibility to take into account the health and safety of the public in marketing firearms." Gun Industry Accountability Act, S. 560, 106th Cong. § 2(2) (introduced Mar. 8, 1999). Nevertheless, the gun industry has consistently refused to include the safety devices necessary to prevent unintentional shootings. *See id.*

151. *See, e.g.*, Child Restraint Systems, 49 C.F.R. § 571.213 (2000) (specifying requirements for child restraint systems used in motor vehicles); Occupant Crash Pro-

and poisonous cleaning materials must contain warning labels.[152] In fact, the government passes more safety standards regulating the manufacture of toy guns than real guns.[153] The government also recalls or bans hundreds of products when their flawed design reveals just the mere possibility of harm or injury to the public.[154] However, it refrains from regulating the presence of guns in the home.

Moreover, some laws specifically exempt the regulation of guns. For instance, in 1972, the CPSC was created by Congress to protect the public against unreasonable risk of injury associated with consumer products but guns were banned from its jurisdiction.[155] Even the ATF, which has jurisdiction over the commerce of guns, cannot set manufacturing safety standards for firearms.[156]

4. *Different Types of Safety Devices Available to Gun Owners*

CAP laws do not require owners to use specific safety devices on their guns. Instead, gun owners are given the opportunity to choose which device best suits their ownership purposes. When choosing a safety device, gun owners must also consider the ages of the children at home. A particular safety method may appropriately protect against a toddler's discovery and use of the gun, while proving futile around a teenager.[157]

Examples of safety devices include a variety of locks that can be attached to privately-owned guns. Some are as simple as a combination lock, where the gun will not fire unless the proper code is first entered.[158] Other locks, like the "Magna-Trigger" and the

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tection, 49 C.F.R. § 571.208 (2000) (requiring each "designated seating position" in a passenger car to have a seatbelt).

152. *See, e.g.*, Poison Prevention Packaging, 16 C.F.R. § 1700.3 (2000) (requiring specific packaging for any hazardous household substance).

153. *See Gun Industry Reform*, *supra* note 149.

154. *See The School Shootings*, *supra* note 9.

155. *See id.* The CPSC monitors safety standards for a range of consumer goods, from clothing to toys to lawn mowers. *See id.*; *see also* Editorial, *A Leader in Gun Safety*, BOSTON GLOBE, Apr. 4, 2000, at A22.

156. *See The School Shootings*, *supra* note 9.

157. *See* State v. Wilchinski, 700 A.2d 1, 10 (Conn. 1997) ("A high shelf in a closet may be a secure location when the only child in the household is a toddler, but when older children are present in the home, it may be necessary to use trigger locks and a locked container.").

158. *See Q&A: The City of New Orleans vs. the Gun Industry* (visited Feb. 10, 2000) <http://www.handguncontrol.org/test/no-qa.htm>. One example of a lock offered to gun purchasers is the "SAF-T-LOK." *See id.* The SAF-T-LOK is a "basic push-button combination lock incorporated into the grip of a handgun" that requires a three or four digit code before the gun can be fired. *Id.*

"SSR-6", involve radio transmitters or computer chips.[159] These devices keep "the firing mechanism of the handgun locked unless the shooter is wearing a specialized magnetic ring [or a magnetically encoded chip in a ring] that disengages the locking device when the ring touches the grip of the handgun."[160]

Manufacturers also provide numerous types of storage devices for their guns. Any safe, gun case or lock box that can only be opened with a key or combination would properly limit a child's access to the gun at home.[161]

Additionally, companies like Cold Manufacturing Company and Oxford Micro Devices, have been working on "smart guns" to better suit everyone's needs.[162] These guns "would use radio signals, magnetic coding, fingerprints or other means to distinguish an authorized shooter from an unauthorized one."[163] Engineers testing the products claim "smart guns" come the "closest to addressing the concerns . . . about issues such as reliability, simplicity and the ability . . . to use the gun in an emergency."[164] While these devices still require development and improvements, they illustrate the many possibilities that could be available to gun owners for locking up and/or storing their guns at home.

B. Arguments Against Child Access Prevention Laws

1. *The Frequent Misuse of Statistics*

The NRA contends that stories about unintentional shootings, like the ones mentioned above, are often taken out of context and given more emphasis than other accidental deaths despite the frequency with which the latter occur.[165] For instance, in 1997, for children between the ages of zero and fourteen, there were 220

159. *See id.*

160. *Id.*

161. *See* Youth Violence Prevention Act of 1999, H.R. 1726, 106th Cong. § 401(a) (introduced May 6, 1999).

162. *See* Leslie J. Nicolson, *Making Guns 'Smarter' Could Make Them Safer*, PHILADELPHIA INQUIRER, June 4, 1998, at F1; *see also* Daniel LeDuc, *Shooting for a Safer Deadly Weapon; Gunmakers, Lawmakers Look to High-Tech Locks and Personalized Pistols*, WASH. POST, Feb. 28, 2000, at A1; *Smart Guns Not Enough*, BANGOR DAILY NEWS, Jan. 10, 2000.

163. *Id.* One example of a type already in production is a personalized gun created by Sigarms Inc. in New Hampshire. *See* Matthew Campbell Washington, *'Smart Guns' Set to Curb Child Deaths*, SUNDAY TIMES (London), Jan. 9, 2000, at 23. The gun will only fire when the owner punches a code into a "battery-operated keypad under the barrel." *Id.*

164. *Id.*

165. *See Gun Accidents (and Kids & Gun Accidents)* (visited Feb. 17, 1999) <http://www.guncite.com/gun_control_gcvacci.html> [hereinafter *Gun Accidents*].

unintentional firearms deaths, compared to 2100 automobile accident deaths, 1050 drownings and 700 deaths by fires.[166] The NRA explains that "each year about five hundred children under the age of five accidentally drown in residential swimming pools, compared to about forty killed in gun accidents, despite the fact that there are only about five million households with swimming pools, compared to at least forty-three million with guns."[167] These numbers actually place the risk of fatal accidents one hundred times higher for swimming pools than for guns.[168] Nevertheless, the NRA suggests that because newspapers and television news programs report unintentional shootings more often than these other accidents, the public perceives the issue in a false light.[169]

The NRA also points out that the number of fatal firearm accidents among children has been decreasing nationwide since the mid-1970s.[170] The NRA argues that this declining rate of unintentional shootings is a result of the numerous programs it has created to teach the public about safely keeping a gun at home. For instance, the group holds programs at elementary schools across the country to teach children about the dangers of guns.[171] It also holds different training sessions on how to properly use a gun.[172] The NRA, therefore, maintains that people already know about

166. *See id.*; *see also* ILA Research & Information Division, *"Smart" Guns* (visited Feb. 14, 2000) <http://nraila.org/research/19990729-SmartPersonalizedGuns-001.html> [hereinafter *Smart Guns*] ("[I]n 1996, 138 children died in gun accidents, compared to 3015 in car crashes and 966 in drownings.").

167. *Id.*

168. *See id.*

169. *See id.*

170. *See* ILA Research & Information Division, *Firearm Safety in America* (visited Feb. 14, 2000) <http://nraila.org/research/19990729-Safety-002.html> [hereinafter *Firearm Safety in America*].

171. The NRA argues that although "exposure to the activities and philosophy of the [organization] . . . at a very young age" will encourage greater participation in the organization later in life, the real purpose for these programs is to educate children on the dangers of guns. *Simon*, *supra* note 18, at 2. For instance, the most well-known program, "Eddie Eagle Gun Safety," informs children that upon discovering a gun, they should immediately leave the area and find an adult. *See Eddie Eagle Educator Notes* (visited Feb. 29, 2000) <http://aaof.com/ed3.htm> [hereinafter *Eddie Eagle*]. Opponents to CAP laws add that "children have been taught from an early age that guns are [just as] dangerous . . . as power saws, kitchen knives, and electrical outlets" and, therefore, know to stay away from any weapon they may find at home. GunSAFE, *Smart Guns - Children, Guns, and "Smart Guns"* (visited Feb. 10, 2000) <http://www.gunsafe.org/position%20statements/Smart%20guns.htm> [hereinafter *Children, Guns, and "Smart Guns"*].

172. The NRA spends approximately $9 million a year to train firearms instructors, educate hunters and run or support national and international shooting competitions. *See Simon*, *supra* note 18, at 2.

the dangers of having a gun at home and as a result, they act responsibly in their storage methods.

2. *Constitutional Right to Bear Arms and Defend Oneself*

The NRA asserts that CAP laws impede upon a gun owner's liberties because mandatory trigger locks and storage safes obstruct the right to own a gun for self-defense.[173] The group argues that guns provide individuals with the chance to protect themselves in emergency situations.[174] However, by the time owners unlock their gun or retrieve it from storage, it could be too late.[175] As a result, concerned NRA members say that a criminal is afforded the chance to disable his victim's weapon and continue with his unlawful activity.[176]

Those in opposition to CAP laws acknowledge that having a gun at home could be dangerous, but they argue that the benefits of ownership outweigh the risks.[177] They point out that Americans use firearms for protection against criminals more than one million times a year.[178] Furthermore, the NRA argues that in most cases, victims of crimes do not even need to fire a shot to protect themselves.[179] Merely displaying the weapon is enough to scare the perpetrator away.[180] The group contends that allowing guns to be freely kept at home for protection also helps those that do not own

173. *See* David G. Nopel, *Children and Guns: Sensible Solutions* (visited Feb. 17, 1999) <http://www.hhi.com/agcmc/agcmcfiles/gunkids.html> [hereinafter *Children and Guns*]. *See also* United States v. Gomez, 92 F.3d 770, 774 n.7 (9th Cir. 1996) ("The Second Amendment embodies the right to defend oneself and one's home against physical attack."); Nelson Lund, *The Second Amendment, Political Liberty, and the Right to Self Preservation*, 39 ALA. L. REV. 103, 117-120, 130 (1987) (explaining that the Second Amendment guarantees the right to self-defense); Ingram & Ray, *supra* note 35, at 492 n.20 (citing Utah's Constitution as an example of a state that has guaranteed its citizens the right to self-defense).

174. *See Children and Guns*, *supra* note 173. *See also Disarming Good People*, *supra* note 36; *GunSAFE - Our Mission* (visited Feb. 10, 2000) <http://www.gunsafe.org/mission.htm> [hereinafter *GunSAFE*].

175. *See Children and Guns*, *supra* note 173.

176. *See id.*

177. *See GunSAFE*, *supra* note 174. *See also Gun Accidents*, *supra* note 165 ("[I]t is doubtful whether, for the average gun owner, the risk of a gun accident could counterbalance the benefits of keeping a gun in the home for protection . . . .").

178. *See* National Center for Policy Analysis, *The Case Against a New Program to Control the Interstate Flow of Items Connected to Crime: Guns* (visited Mar. 8, 2000) <http://www.ncpa.org/hotlines/juvcrm/jj4new/f4.html>. *See also GunSAFE*, *supra* note 174.

179. *See GunSAFE*, *supra* note 174.

180. *See id.* Most of these incidents are never even reported to the police because the victim is able to scare off the criminal on his own, before any damage is done. *See id.*

guns.[181] Criminals are unaware of who owns a gun, and therefore may be deterred from committing illegal acts in general.[182]

The NRA concedes that guns kept at home only for hobbies, like hunting or target shooting, should be unloaded and properly locked up and/or stored.[183] Firearms bought for self-defense, however, should be ready for use at all times.[184]

3. *Best Interests — "One Size Fits All" Requirement*

The NRA often accuses CAP laws of ignoring the best interests of the country. No "one size fits all" requirement can possibly meet the needs of all American gun owners.[185] The group argues that each family should be able to make its own determinations regarding how to store guns.[186] Similarly, the gun can be kept in a room in which the child does not spend any time. Generally, the NRA suggests that if a parent responsibly teaches his children the purpose of a gun and instructs them that any gun found at home is off limits, the gun can safely be kept at home.[187]

4. *"Smart Guns" Make the World More Dangerous*

The NRA contends that the potential dangers from "smart guns" outweigh the benefits provided, and as a result, requiring these guns would make situations more hazardous for children.[188] For instance, the gun may not fire when expected.[189] Like an automatic teller machine that stops working or a personal computer that crashes, the computer inside a "smart gun" may malfunction and not work.[190] Therefore, the NRA argues that a person who has a gun for self-defense takes the chance that it will not work and will provide no protection at all against a criminal.

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181. *See id.*; *see also Disarming Good People*, *supra* note 36.

182. *See GunSAFE*, *supra* note 174. *See also Disarming Good People*, *supra* note 36.

183. *See* NRA-ILA Research and Information Division, *Fact Sheet - Mandatory Storage/ Trigger Lock Legislation* (visited Mar. 3, 2000) <http://www.nraila.org/>.

184. *See id.*

185. *See id.*

186. *See id.* The decision on how to keep guns at home can be based upon factors such as: (1) the planned usage and authorized users of the gun; (2) the number and ages of any children at home; (3) the layout and possible hiding places within the house; and (4) any other circumstances that might prove relevant. *See id.*

187. *See id.*; *see also Eddie Eagle*, *supra* note 171.

188. *See Smart Guns*, *supra* note 166.

189. *See Children, Guns, and "Smart Guns"*, *supra* note 171.

190. *See id.*

Additionally, if the gun requires a fingerprint match to disengage the lock, the NRA explains that the sensor would not work in certain situations.[191] For example, if the owner is wearing gloves, he would not be able to use his gun against an attacker because the sensor would be blocked.[192]

The NRA states that another problem with "smart guns" is that they give an owner a false sense of guaranteed protection.[193] The group explains that as easily as the computer in these guns could prevent them from being fired, a malfunction could also make "smart guns" fire unexpectedly.[194] Nevertheless, such guns are believed to be automatically childproof and therefore, left loaded and accessible to children.[195] The NRA, therefore, contends that "smart guns" are unreliable and dangerous, and laws should not be passed requiring people to use such devices.[196]

C. Public Opinion

1. *Response to the Necessity of Child Access Prevention Laws*

In October 1998, a poll conducted by an anti-gun group in New Jersey revealed that seventy-three percent of respondents supported mandates for safety measures on guns.[197] The group specifically questioned registered Republicans to demonstrate to the state legislature that voting for a proposed CAP law would not affect the politicians' positions with their constituents.[198]

On a larger scale, in 1996 the Johns Hopkins Center for Gun Policy and Research and the National Opinion Research Center surveyed a sample of 1200 adults representative of the United States population on various gun-related issues and found results

191. *See id.*

192. *See id.*

193. *See id. See also Smart Guns*, *supra* note 166.

194. *See Children, Guns, and "Smart Guns"*, *supra* note 171.

195. *See id. See also* Daniel LeDuc, *Beretta Takes Aim at 'Smart Guns'; Accokeek Manufacturer Beefs Up Its Ammunition Against Glendening's Proposal*, WASH. POST, Feb. 7, 2000, at B1 ("People 'might believe that their weapon is now childproof and could leave their guns loaded and accessible to children, trusting the smart gun feature to prevent an accident' . . ."); *Gun Foes, Makers Say Locks Not Enough*, CHI. SUN-TIMES, May 12, 1999, at 48 ("[The] purpose [of "smart guns"] is to enable people to leave their guns loaded and even accessible to children . . . . That is a step backward from the conceptual idea of making sure guns are unloaded and away from children.").

196. *See Children, Guns, and "Smart Guns"*, *supra* note 171.

197. *See Poll Finds Support For Child-Proofing Guns*, N.Y. TIMES, Nov. 27, 1998, at B12. The poll was conducted by Cease Fire New Jersey and it questioned 500 people. *See id.*

198. *See id.*

that overwhelmingly favored some form of safety regulations for gun design.[199] Eighty-six percent of respondents supported legislation requiring all new handguns to be childproof and sixty-eight percent favored legislation requiring all new handguns to come equipped with a personalized safety device.[200] This poll revealed the strong public demand to treat handguns like other consumer products.[201] It demonstrated that if ordinary household items are regulated, privately-owned guns should be regulated as well.[202]

Additionally, the "Child Safety Lock Act," a bill proposed in 1997 by Senator Kohl,[203] pressed gun manufacturers to act.[204] In response to the proposal, several large handgun manufacturers agreed to voluntarily include safety locks with each gun they produce.[205] In a Rose Garden Ceremony, the manufacturers agreed with President Clinton that this precaution was necessary to protect children in America.[206]

Although it took a few years for any gun manufacturers to actually comply with this agreement, action was finally taken in March 2000 by the "nation's oldest and largest manufacturer of handguns."[207] In a "major victory for public safety," Smith & Wesson announced a commitment to changing the way guns are designed, distributed and marketed,[208] including:

1. immediately placing external child safety locks on all guns;
2. within two years, manufacturing all pistols with internal locks;

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199. *See The Johns Hopkins Center for Gun Policy and Research* (visited April 12, 1999) <http://www.ceasefire.org1.html/johns_hop.html> [hereinafter *Johns Hopkins Gun Policy*].

200. *See id.* "Personalized" guns include safety devices employed by "smart guns". *See supra* notes 162-164 and accompanying text.

201. *See Johns Hopkins Gun Policy*, *supra* note 199.

202. "It's bizarre to think that a 4-year-old, who can't open an aspirin bottle, can operate a loaded pistol." *Id.*

203. S. 428, 105th Cong. (introduced Mar. 12, 1997).

204. Telephone Interview with Brian Lee, General Counsel, in Senator Herb Kohl's office (Apr. 12, 1999).

205. *See id.*

206. *See id.* One manufacturer stated that he does not want the industry, and his livelihood, to be attached to the criminal implications arising out of the numerous accidents. *See id.*

207. James Dao, *Under Legal Siege, Gun Maker Agrees to Accept Curbs*, N.Y. TIMES, Mar. 18, 2000, at A1. "Smith & Wesson . . . produces about one-fifth of the 2.5 million handguns sold nationwide each year." Fox Butterfield & Raymond Hernandez, *Gun Maker's Accord on Curbs Brings Pressure From Industry*, N.Y. TIMES, Mar. 30, 2000, at A1.

208. Editorial, *A Breakthrough on Gun Control*, N.Y. TIMES, Mar. 18, 2000, at A14. *See also* Dao, *supra* note 207.

3. within one year, designing every firearm "so that it cannot be readily operated by a child under the age of six, including making the trigger pull more resistant or designing the firing mechanism so that an average five year old's hands would be too small to operate the gun, or by requiring multiple, sequenced actions in order to fire the gun"; and
4. devoting two percent of the company's gross revenues to the "development of 'smart,' personalized guns which can only be fired by an authorized use."[209]

While maintaining that its actions would not "sacrifice the Second Amendment rights of gun owners," the manufacturer explained that this agreement merely represents its willingness to "work with anyone serious about addressing the issue of firearms misuse, whether it be criminal, accidental or self inflicted."[210]

2. *Response to the Enactment of State Laws*

People have also reacted strongly to state CAP laws. Since the Florida law was enacted in 1989, gun dealers reported having difficulty keeping gun locks and safety boxes in stock.[211] Once gun owners realized the dangers attached to unlocked guns, they grew interested in safe storage.[212] Florida's legislators attributed this awareness to the state's CAP law.[213]

CAP laws in other states have also proven effective. Within two years of their enactment, twelve states reported a twenty-three percent decrease in accidental deaths of children from firearms.[214] Advocates exclaim that the laws' success comes from the increased "public awareness of the problem" and the requirement that owners properly lock up and/or store guns at home.[215]

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209. Center to Prevent Handgun Violence, *Smith and Wesson Becomes First Gun Manufacturer to Settle with Litigants: Sweeping Agreement with Clinton Administration Will Save Lives* (visited Apr. 4, 2000) <http://www.handguncontrol.org/press/release.asp?Record=131>. In exchange for these actions, the mayors of various cities that have filed lawsuits against the gun industry have agreed to drop their claims against Smith & Wesson. *See id.* "Since the agreement is a legal consent decree, it is a legally enforceable document in the courts. Compliance will be monitored and enforced by a special private commission that includes two representatives of the cities, one of the states, one from the ATF, and one from the gun industry." *Id.*

210. Smith & Wesson, *Smith & Wesson Announces Agreement Impacting Liability* (visited Apr. 4, 2000) <http://www.smith-wesson.com/misc/breakingnews.html>.

211. *See CAP Laws - Questions & Answers* (visited Mar. 5, 2000) <http://www.handguncontrol.org/gunlaw/B2/b2capqa.htm>.

212. *See id.*

213. *See id.*

214. *See The School Shootings*, *supra* note 9.

215. *Id.*

Additionally, courts have supported state CAP laws since their enactment. For instance, the Supreme Court of Connecticut provided a thorough constitutional analysis of Connecticut's CAP law in *State v. Wilchinski*.[216] In *Wilchinski*, a fifteen-year-old boy was fatally shot in the face when a gun found in his friend's home accidentally discharged.[217] The boys found the loaded gun underneath a dresser, stored in a zippered leather case.[218] Under Connecticut's CAP law, the owner of the gun was convicted of Criminally Negligent Storage of a Firearm.[219]

On appeal, the gun owner in *Wilchinski* claimed that the state's CAP law was unconstitutionally vague.[220] He argued that the statute "lack[ed] a core meaning because its language [was] . . . not susceptible of a consistent interpretation."[221] The court disagreed, however, noting that the law's meaning was actually quite clear.

Even though the law lacks requirements for a particular method of storage, the court reasoned that the language can be uniformly interpreted when an owner focuses on preventing children from gaining access to guns at home.[222] Furthermore, the court explained that the text and legislative history of the law indicate that the state legislators acted in response to the growing public concern over accidental shootings involving children in the homes of gun owners and, intended to require gun owners to use "age appropriate physical impediments to prevent children from gaining access to and misusing guns."[223]

The *Wilchinski* court added that the appropriateness and efficiency of a storage method must be analyzed on a case-by-case basis, depending upon the particular circumstances of the individual gun owner.[224] Some factors that would be examined include: (1) the ages of the children at home; (2) the physical layout of the home; and (3) the availability of the locked or stored gun to the

216. 700 A.2d 1 (Conn. 1997).

217. *See id.* at 3.

218. *See id.*

219. *See id.* at 2.

220. *See id.* at 4-5.

221. *Id.* at 7. More specifically, the defendant argued that the phrases "a securely locked box or other container" and "in a location which a reasonable person would believe to be secure" were too vague and thus unconstitutional. *Id.*

222. *See id.*

223. *Id.* The court noted that at the time of the law's enactment, there was an average of 25 children a year who were killed by firearms in the state. *See id.* at 8 n.11.

224. *See id.*

children.[225] Based on these factors, the court determined that the defendant did not appropriately restrict access to his gun and affirmed his conviction.[226]

The Supreme Court of Montana also recognized a gun owner's duty to safely lock up and/or store his gun in *Estate of Strever v. Cline*.[227] In *Strever*, an eleven-year-old boy was shot and killed with a gun that he and his friends stole from the owner's parked car.[228] The parents of the boy brought a suit against the owner for negligently leaving a loaded gun in an unlocked car.[229] The court dismissed the suit because of the intervening acts of the boys, but it stated that if not for those acts, the owner would have been liable for the boy's death.[230]

The court explained that the owner had a duty to the general public to use and store his gun in a safe manner.[231] Owning a gun includes the following responsibilities: (1) the weapon must be locked or unloaded; and (2) the weapon must be stored in a location and under circumstances providing the most protection against use by unauthorized persons, namely children.[232] The ruling in *Strever* surpasses the boundaries of typical CAP laws by implying that anyone owning a gun, regardless of whether it is kept at home with children, must responsibly store it in order to prevent accidental shootings.

Despite the support for CAP laws, both from the public and the courts, bills are constantly rejected. Therefore, in order to protect children from the accidental shootings that result from improperly keeping a gun at home, a model CAP law must be created.

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225. *See id.*

226. *See id.*

227. 924 P.2d 666 (Mont. 1996).

228. *See id.* at 668.

229. *See id.* The boys were showing off and playing with the gun when it accidentally discharged, hitting the victim in the head. *See id.*

230. *See id.* at 674.

231. *See id.* at 671.

> [R]equiring a gun owner to safely store his firearm (for example, in this case, by merely locking the vehicle, locking the gun in the glove compartment or removing the gun and ammunition from the vehicle) would not impose an undue burden upon the gun owner in light of the danger involved and the necessity of preventing thefts of firearms or accidental shootings.

Id. at 670.

232. *See id.* The gun owner in *Strever* kept his gun underneath the seat of his truck, in a bag. *See id.* at 668. Although he could not have predicted that teenagers would break into his car, the court believed that he still had a duty to lock up and/or store the gun in a safer condition. *See id.* at 670-71.

III. THE ENACTMENT OF A MODEL CHILD ACCESS PREVENTION LAW IS NECESSARY TO PROTECT CHILDREN

A. The National Rifle Association Unfairly Prevents Child Access Prevention Laws From Coming Into Existence

Despite the need for CAP laws in America and the public support for their enactment, proposals have yet to be enacted as federal law. Even though no direct evidence exists, it is difficult to not make the connection between this failure and the NRA's influence over the legislative decision-making process.[233]

Questioning the purposes of interest groups, many politicians and other powerful individuals have attempted to limit, and possibly even eliminate, lobbyists' scope of power.[234] Interest groups are necessary, however, to maintain a democratic environment and therefore, cannot be abolished.[235] Instead, attempts must be made to restrict the power of groups like the NRA and prevent them from taking control of the legislative process.

An interest group represents its members' opinions before the government. Individuals join the group not only to be heard, but also to make a difference. They view their participation as an opportunity to affect government decisions and policies. The NRA's success in defeating CAP law proposals may be defended, therefore, on the ground that the group merely represents its members' views to government. Nevertheless, when the NRA blocks legislation that would benefit all Americans, it needs to be stopped.

Despite the NRA's contentions, enacting CAP laws would not take away a gun owner's constitutional right to bear arms. The

233. *See, e.g.*, Duren Cheek, *"Smart Gun" Legislation Faces Uphill Battle in State House, Bill Calls for Study of 'Personalized' Safety Technology*, TENNESSEAN, Jan. 17, 2000, at A1 (illustrating the influence NRA members have over particular Congressmen); *Showdown at Credibility Gap*, CHI. TRIB., May 15, 1999, at 26 (noting that some Congressmen will protect the gun lobby rather than listen to public opinion).

234. On November 3, 1992, Bill Clinton addressed the nation for the first time, as president-elect, by stressing "the need to reform the political system, to reduce the influence of special interests and give more influence back to the . . . people . . . ." Rauch, *supra* note 93, at 4.

Earlier Presidents and presidential candidates similarly pledged to limit the power of interest groups. For example, Calvin Coolidge warned his successor Herbert Hoover of the "armies of interested parties" that would be visiting him and advised Hoover to just quietly listen to the groups' complaints and requests, even when such were obviously without merit. *Id.* And, in 1948, President Harry Truman announced that his campaign was a "crusade of the people against the special interests." *Id.*

235. *See* 1 ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 195 (1900). Without the opportunity to participate in government affairs, people would be unable to sustain the rights guaranteed to them by the Constitution. *See id.*

laws do not prevent a person from owning a gun, nor do they tell people how to lock up and/or store their guns. They simply mandate that a gun be properly locked up and/or stored when there is the chance that a child could gain access to it.

Additionally, CAP laws provide gun owners with complete control over how they lock up and/or store their guns.[236] Therefore, the laws are not as restrictive as the NRA claims. A gun owner ultimately chooses how to keep his guns at home.

The government cannot remain idle while more innocent children are killed before finally regulating guns at home. Accidents stemming from the failure to properly lock up and/or store private firearms affect all Americans. Thus, the opinions and best interests of all Americans should be reflected in legislators' decisions on CAP laws, not just those of the NRA.

One way to determine the opinions of all Americans would be to hold a nationwide vote on the issue. Although various polls have demonstrated the public concern over improperly keeping guns at home with children, legislators have not yet been able to overcome the NRA's influence and recognize the need for a CAP law. The results from a referendum, however, would increase awareness on the issue and demonstrate how truly unrepresentative the NRA is of the American people.

B. Child Access Prevention Laws are Necessary

CAP laws are necessary to protect the lives of children in America. Even though people may only buy guns for self-defense or hobbies like hunting, children frequently misuse them. Parents cannot ignore the naturally curious tendencies of their children. Children view guns as new and exciting toys with which to play, especially if they are prohibited from doing so. Therefore, even if a parent specifically warns his child about the dangers of guns and forbids their use, there are no guarantees that the child will obey.

Furthermore, individuals assume accidents will never happen to them. But by their nature, accidents occur without warning. Although accidents cannot be predicted, they can often be prevented. The numerous unintentional and intentional shootings that occurred over the past few years serve as good examples.[237] If the guns used during these tragedies were properly locked up and/or stored, the lives of many innocent children may have been spared.

236. *See supra* notes 157-164 and accompanying text.
237. *See supra* notes 131-148 and accompanying text.

To prevent accidents from occurring at home, the government regulates the way Americans keep many household products — guns should be included.[238]

The NRA accuses CAP laws of being too general and, therefore, inappropriate for the government to enact.[239] If the laws were as oppressive and overreaching as these claims suggest, voting in favor of them would be irresponsible and ineffective. The fact that people keep guns at home under many different circumstances and therefore could not be expected to store them in the same fashion is not disputed.

CAP laws, however, do not regulate in such a general manner. The laws require the use of a safety device when there is the possibility that a child could gain access to a gun, but they do not specify what device must be employed.[240] Instead, the laws provide owners with the choice of which device best accommodates their needs.[241] Therefore, if an individual fears that a particular lock will inhibit his ability to use a gun in an emergency situation, he has the opportunity to "shop around" and determine what would work best.

For example, when there is a toddler living at home, an owner can safely store his gun on a high shelf in a closet. However, once that child starts growing older, this type of storage would be inappropriate. Instead, the owner could buy a lock that requires a special key to be inserted into the gun before it could be shot. This lock, however, would only serve as a safety device if the key were kept on the owner at all times. Leaving the key in a dresser drawer or on a shelf in a closet would defeat the entire purpose of locking up the gun.[242]

C. Proposal for a Model Federal Child Access Prevention Law

1. *Provisions From Recent Proposals*

Although several states have already enacted CAP laws,[243] the federal government should require the use of a safety device on guns kept at home with children. Similar to the federal restrictions

238. *See supra* notes 149-153 and accompanying text.
239. *See supra* notes 185-187 and accompanying text.
240. *See supra* notes 157-164 and accompanying text.
241. *See supra* notes 157-164 and accompanying text.
242. For example, locking up privately-owned guns did not prevent the two boys in Arkansas from gaining access to the weapons they used during the massacre, because they knew the key's location. *See supra* notes 143-148 and accompanying text.
243. *See supra* Part I.A.3.

on gun ownership that already exist,[244] enacting a CAP law would provide uniformity to the prevention of accidental shootings. Many provisions of the recent proposals adequately mandate the use of safety devices. Each proposal, however, is incomplete. Therefore, the best way to ensure the safety of children from guns at home would be a revision of the recent proposals, combining them to form a model federal CAP law.

First, the model law must include penalties for gun manufacturers, dealers and importers. The 21st Century Act properly punishes manufacturers and dealers by mandating the provision of a locking device with the sale or transfer of handguns.[245] Even though merchants lack control over the products once they have left their premises, they are still responsible for furnishing the weapons to the public. Therefore, they are expected to act in a way that would most prevent tragic shootings from occurring.

Gun manufacturers, dealers and importers should not be imprisoned, however, when a child uses a gun that was improperly locked up and/or stored. Once they sell the gun and safety device, they have little control over how owners keep their guns at home. Thus, threat of the revocation or suspension of their licenses, and/or a steep monetary fine should provide sufficient incentive for compliance.

Second, a provision penalizing gun owners is necessary. When an unintentional shooting occurs, fault ultimately lies with the person that made his gun accessible to a child. Because this principle serves as a foundation for the laws, most recent proposals already include provisions that punish the owner. The incident that triggers liability differs slightly, though. To incur criminal penalties in most situations, the child must kill and/or seriously injure himself or someone else. However, the Children's Firearm Access Act takes liability one step further by also punishing owners when children merely exhibit guns in public.[246] Waiting for an accidental death or injury to occur defeats the purpose of CAP laws — to prevent unintentional shootings. If owners are punished the first time a child exposes their guns in public, they will be more likely to properly lock up and/or store their guns in the future. Therefore,

244. *See supra* notes 31-32.

245. *See* 21st Century Safe and Sound Communities Act, S. 716, 106th Cong. (introduced Jan. 19, 1999). *See also supra* notes 40-43 and accompanying text.

246. *See* Children's Firearm Access Prevention Act of 1999, H.R. 1342, 106th Cong. § 401 (introduced Mar. 25, 1999). *See also supra* notes 52-55 and accompanying text.

the chances of a child being able to find and use the gun at a later date will diminish greatly.

The penalties for a gun owner should differ, depending on what the child does with the gun. For instance, the first time a child exposes a gun in public, the owner should be fined, but not imprisoned. Each subsequent time the gun is exhibited, the owner's punishment should grow harsher, up to and including imprisonment. The severity of the punishment should also depend upon the manner in which the gun is exposed. If a child simply shows it to some friends, the fine and/or imprisonment should be less than that which the owner should receive when a child waves the gun around, threatening the lives of people around him. Conversely, if a child uses the gun to injure and/or kill himself or another, the owner should automatically face imprisonment.

Third, the model CAP law should include a provision that requires government agencies to conduct a study on the safety of guns at homes where children reside. Before releasing a law whereby people are punished for mishandling and misusing their guns, a determination must be made as to what actually constitutes "misuse." Agencies need to analyze guns and ascertain how they can be built differently to prevent the unauthorized and accidental use by children.[247] Additionally, they must determine how guns can still be kept at home but present the least amount of harm to children.

Following a year-long study, the agencies' resolutions should be transformed into minimum safety standards for all manufacturers, dealers, and importers to follow. Furthermore, these studies will enable the government to become familiar with the different types of safety devices. As a result, they could assist the gun industry by making recommendations as to which device will best suit particular situations. These suggestions could then be shared with purchasers and assist them with their decisions of which safety devices to buy.

Finally, the tax incentive provided by the Youth Violence Act should be included in the model law.[248] The Youth Violence Act allows a tax credit for any "qualified firearm safe storage device

247. *See, e.g.*, Children's Firearm Safety Act of 1999, H.R. 1342, 106th Cong. § 102(a) (introduced Mar. 25, 1999); Children's Gun Violence Prevention Act of 1999, S. 735, 106th Cong. § 102 (introduced Mar. 25, 1999).

248. *See* H.R. 1726, 106th Cong. § 201(a) (introduced May 6, 1999). *See also supra* notes 70-74 and accompanying text.

expenses" for the taxable year.[249] The continuous number of unintentional shootings and criminal acts caused by guns found at home demonstrate that protecting the lives of children is not enough of an incentive for gun owners to safely lock up and/or store their guns. Additionally, people may assume they are immune to accidents involving their guns and therefore, ignore whatever penalties are stated in the law. Providing Americans, and especially members of the NRA, with an added benefit of getting a tax credit, however, should help convince them of the advantage of complying with the law.

2. *Additional Provisions to Include*

The model CAP law should also include provisions that are not part of the present federal proposals but instead have been included in the state laws. First, a child should be defined as anyone under the age of twenty-one.[250] If a person has to wait until he is eighteen to vote, or until he is twenty-one to legally drink alcohol, he should also have to wait before being trusted with the presence of a gun at home. Considering the dangerous nature of guns in general, the limitations on when someone is mature enough to use a gun should be more restrictive than drinking and voting, not less.

Second, in addition to requiring manufacturers, dealers and importers to provide safety devices with the sale of any firearms product, the model CAP law should also mandate that a verbal and written warning be provided to purchasers.[251] Providing safety devices to gun owners do not automatically guarantee that these weapons will be locked up and/or stored at home. People may just assume they were sold an additional, optional feature and choose not to employ it at all. Therefore, purchasers should be given a warning, informing them of the dangers involved with gun ownership. These warnings will also serve to educate owners about the law and their risk of criminal penalties upon violation.

Furthermore, when purchasing a gun, owners should be required to sign an acknowledgment of the CAP law. This requirement would prevent people from later pleading ignorance of the law.

249. *See* H.R. 1726, 106th Cong. § 201(a) (introduced May 6, 1999). *See also supra* notes 70-74 and accompanying text.

250. *See supra* notes 88-91 and accompanying text. A person in the military can be distinguished from an ordinary child in that the former is trained when and how to properly use guns whereas an ordinary child only knows what he sees on television. Therefore, the fact that boys can be drafted when they turn eighteen is irrelevant to the age that must be set for the purpose of CAP laws.

251. *See, e.g.*, *supra* note 87 and accompanying text.

They also would not be able to accuse the merchant of neglecting to provide them with a verbal and/or written warning.

Even with this model CAP law, there is still no guarantee that safety devices will be used. Each provision mentioned above, however, helps serve as an extra protection against the unintentional use of guns improperly kept at home.

CONCLUSION

The government cannot wait until more innocent children are killed before finally regulating guns at home. CAP laws require people to properly lock up and/or store their guns, while providing owners with the freedom to use the weapons however they please. As a result, people will still be able to keep privately-owned guns at home, but children will be unable to use these guns to injure and/or kill themselves or others.