



**“Considering the many news stories involving the accidental deaths of unsupervised children who have accessed firearms, it came as a surprise to me that several states still have not adopted CAP laws.”**

# Young Lawyers

BY GUEST COLUMNIST **ASHLEY ALEXANDRIA BALDUCCI, ESQ.**

## CHILD ACCESS PREVENTION LAWS

I came across Child Access Prevention (CAP) laws when I was researching an issue for a criminal case. CAP laws are meant to impose criminal liability when a child gains access to a firearm without supervision. While this definition is not all-inclusive, it provides the general idea of what a CAP law is. A legislative history is not required in order to understand the reasoning behind a CAP law, because it is quite obvious from the text. CAP laws are meant to prevent accidental deaths of children by preventing their easy access to firearms and imposing criminal liability on people who leave, or negligently store, firearms. The law shifts the risk to the parent or guardian, who will suffer both the civil and criminal consequences of not properly storing or supervising a firearm. It also serves to prevent the deaths of other innocent persons.

During my research, I noticed a trend among those states that have adopted CAP laws.<sup>1</sup> Considering the many news stories involving the accidental deaths of unsupervised children who have accessed firearms, it came as a surprise to me that several states still have not adopted CAP laws. It seems like almost every day I hear or read another tragic story about the death of a child or other innocent person resulting from a lack of supervision or easy access to a firearm in the home.

Although my research focused more on CAP laws that impose criminal liability for the negligent storage of firearms, I later found that there is little uniformity to CAP laws. It took me some time to even narrow my search to simply CAP laws. Once I refined my search, I found an abundant amount of information on CAP laws in general and, more specifically, on Nevada’s CAP law. I came across the Law Center to Prevent Gun Violence’s website, where the organization has compiled and summarized the CAP Laws for all fifty states.<sup>2</sup>

I discovered that states with CAP laws, including Nevada, do not extend criminal liability to the negligent storage of firearms across the board.

Depending on the state, the stringency and application of the CAP law varied.

Nevada’s CAP law does impose criminal liability on a person who aids, or knowingly permits, a child’s handling, possession or control of any firearm.<sup>3</sup> The statute applies to children under the age of 18 and includes all firearms.<sup>4</sup> There are several exceptions, which I do not intend to address in this article, but I think they are worth noting.

The Nevada CAP law has some teeth, because it increases the penalty from a misdemeanor to a felony if a person aids, or knowingly permits, a child to handle, possess or control any

firearm, while knowing or having reason to believe that there is a substantial risk the child will use the firearm to commit a violent act.<sup>5</sup>

On the one hand, when compared to other states’ CAP laws, Nevada’s CAP law appears rather mild. For example, in California, criminal liability is attached to unloaded firearms.<sup>6</sup> Similarly, in Massachusetts, the CAP law requires that all firearms have a mechanical lock or other safety device.<sup>7</sup> On the other hand, Nevada’s CAP law provides more protection than do the various states for which I could not find a CAP law, such as Alabama, Louisiana and New York. Some states went so far as to impose criminal liability if the child “may” gain access to the firearm.<sup>8</sup> Even the age of the child varied depending on the state.

Although the differences and exceptions vary from state to state, the concept remains the same. My research found that a growing trend among the states, to prohibit children from accessing firearms in order to prevent accidental deaths within the United States, continues to flourish and expand on both a civil and criminal level. A basic search on the internet reveals various studies on CAP laws and the number of annual accidental deaths of children and other innocent persons due to both a lack of supervision and/or negligent storage of firearms. If and when Nevada will follow California and other states in extending the scope and reach of its CAP law, remains in the hands of the legislature. ■

1 <http://smartgunlaws.org/child-access-prevention-policy-summary>.

2 *Id.*

3 Nev. Rev. Stat. § 202.300.

4 *Id.*

5 *Id.*

6 Cal. Penal Code § 25200.

7 Mass. Gen. Laws. Ch. 140, § 131L.

8 *Id.*

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