

# THE LEGAL EAGLE

A LEGAL NEWSPAPER FOR KIDS  
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SPECIAL GUN SAFETY EDITION

## U.S. Supreme Court Rules on Gun Safety

by Sylvia Mendoza

When an active shooter entered the Michigan State University campus on February 13, 2023, killing three students and wounding five others, for some it would be the second mass shooting they survived. Several MSU students had also survived a shooting at a Michigan high school in November 2021, and one student had been a sixth grader at a nearby school when the shooting at Sandy Hook Elementary School occurred in 2012.

There is not a consensus on the definition of a mass shooting; however, the Gun Archive, a nonprofit research group formed in 2013 to track gun violence, defines it as a shooting where at least four people are killed or injured. Other definitions only count those killed, not injured, but also put the number at four. The Federal Bureau of Investigation (FBI) does not set a minimum number of fatalities in its definition, which is: "An event



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## Throwing a Red Flag on Gun Safety

by Michael Barbella

Federal gun safety legislation signed into law by President Joseph Biden in June 2022 includes \$250 million for the establishment of state crisis intervention court proceedings, including extreme risk protection orders (ERPO).

Depending on what state you're in, these orders could be called extreme risk firearm protection orders, risk protection orders, gun violence restraining orders, emergency substantial risk orders or simply risk warrants. All of these orders fall under the umbrella of red flag laws, and 19 states, along with the District of Columbia, have them.

Red flag laws authorize courts to temporarily disarm individuals by removing firearms from those who pose a threat to themselves or others. These laws vary slightly by state—usually in who can file a petition for the order. Florida, for example, limits ERPO petitioners to a law enforcement officer or agency,

while New York extends the right to petition the court to family members, as well as teachers and school administrators.

New Jersey's law, enacted in 2019, stipulates that the request for an ERPO can come from law enforcement, a family member or a member of

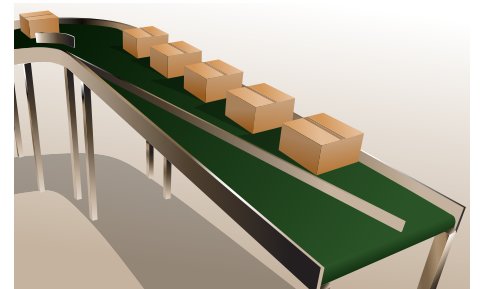


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## The Challenges of Holding Gun Manufacturers Accountable

by Daryl E Lucas

In almost every other industry, if you've sustained an injury, you have some course of **redress** through the courts. Not so with the gun industry, which includes gun makers, sellers and distributors. They are shielded by the Protection of Lawful Commerce in Arms Act (PLCAA), which was signed into law in 2005 by President George W. Bush.



The PLCAA protects the gun industry from **liability**, stating that gun manufacturers and dealers can't be sued for harms caused by the "criminal or unlawful misuse of firearm products." The National Rifle Association (NRA), a gun rights advocacy group, claims these types of lawsuits are frivolous and that once a gun is sold to someone, the seller and

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# Is Charging Parents for School Shootings a Solution?

by Jodi L. Miller

A project undertaken by *The Washington Post* that analyzed school shootings from 1999, the year of the Columbine High School shooting, revealed that the average age for school shooters is 16. According to a 2019 assessment published by the U.S. Department of Homeland Security, in 76% of school shootings the weapon used in the crime came from the home of a parent or close family relative.

Does that mean the parents of a shooter bear some responsibility? The Michigan court system is currently grappling with the issue.

On November 30, 2021, Ethan Crumbley, a sophomore at Oxford High School in Michigan, killed four of his classmates, injuring six other students and one teacher. Ethan was charged as an adult with 24 criminal charges, including first-degree murder. His

parents were each charged with four counts of **involuntary manslaughter**.

In October 2022, Ethan pleaded guilty to all charges and faces life in prison. He will not be sentenced until after his parents' trial is completed. Because Ethan pled guilty, which



means the right to **self-incrimination** is not an issue, he could be called to testify against his parents.

## Rare to charge parents

Sarah L. Swan, a professor at Rutgers Law School in Newark who teaches criminal law and focuses on third-party responsibility, says this type of charge is rare, but holding parents accountable for gun violence is not new. She points to a case in Indiana where a mother pled guilty to child neglect for not removing the firearms at her home after her mentally ill son used her gun to shoot at others in a school and then killed himself. In another Washington case, Professor Swan notes, a father was sentenced to two years in prison for illegally possessing firearms after his son used one of them to kill four students and himself.

Still, those cases did not result in as serious a charge as involuntary manslaughter, where James and Jennifer Crumbley could face 15 years in prison. At issue in the case against the Crumbleys is the fact that the gun used was allegedly bought for Ethan by his father just days before the shooting, and Jennifer Crumbley referred to it on social media as a "Christmas present" for her son. In February 2022, during

a preliminary hearing to determine whether the Crumbleys should stand trial, evidence was presented to suggest that the parents ignored their son's growing mental health problems, including entries from Ethan's journal, one of which read: "I actually asked my dad to take me to the doctor yesterday but he just gave me some pills and told me to suck it up... My mom just laughed when I told her."

In addition, on the day before the shooting, Ethan was caught in school looking up bullets on his cellphone. School personnel left a voicemail on his mother's phone but received no reply. On the morning of the shooting, according to a transcript of the hearing, one of Ethan's teachers reported to a counselor that Ethan had written disturbing phrases on his homework, including "my life is useless," "the world is dead," and "the thoughts won't stop." The Crumbleys were immediately called to the school that morning.

According to the transcript, the counselor testified that the parents were told their son needed help right away, but they said they could not take him home as they had to return to work. Ultimately, a district court judge granted the prosecution's request for the Crumbleys to be tried in court. The judge said: "The court finds the deaths of the four victims could have been avoided if James and Jennifer Crumbley exercised ordinary care and diligence in the care of their son."

## What prosecutors need to prove

Even with the evidence against the Crumbleys, proving their case will not be easy for the prosecution. As Professor Swan explains, they will have to prove their case to a standard of **beyond a reasonable doubt**.



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Jodi L. Miller  
EDITOR

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## Solution CONTINUED FROM PAGE 2

"The parents have been charged with involuntary manslaughter. In these circumstances, the prosecutor will need to show that the parents caused the death of the victims by acting with **gross negligence**," Professor Swan says. "They have to show that the conduct of the parents caused the deaths, meaning that without the conduct the deaths would not have happened, and that the conduct was the legal cause of the death."

Professor Swan would not speculate on what specific conduct the prosecution will rely on—such as failing to get their son mental health assistance or failing to store the gun properly. So, what about the ordinary care that the judge referred to?

As Professor Swan explains, in order to convict someone of a crime you have to show that they behaved with a mental state that makes them "morally culpable." This is known as "*mens rea*," Professor Swan says, which is Latin for "guilty mind."

For the crime of involuntary manslaughter, the *mens rea* or culpable mental state is one of gross negligence, says Professor Swan. She notes that the Michigan Model Jury Instructions describe gross negligence as "more than carelessness," which means "willfully disregarding the results to others that might follow from an act or failure to act."

Professor Swan says those instructions stipulate that a jury would have to find three things to convict: (1) the defendant "knew of the danger to another" (2) that they "could have avoided injuring another by using ordinary care" and (3) that they "failed to use ordinary care to prevent injuring another when, to a reasonable person, it

must have been apparent that the result was likely to be serious injury."

### CAP Laws

One issue the Crumbleys' case has brought to the forefront is Child Access Prevention laws, commonly referred to as CAP laws. These laws vary by state, but essentially hold that a person is criminally liable if a child gains access to a firearm, regardless of whether the child actually uses the firearm or causes an injury. While minors in Michigan are not allowed to own a handgun, the state does not have a CAP law.

Washington, D.C. and 23 states, including New Jersey, have some type of CAP law. In fact, in New Jersey firearms dealers are required to give 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."

### What a conviction could mean

In December 2022, the Michigan State Supreme Court temporarily halted the Crumbleys' trial and ordered an appeals court to review the parents' claim that they were improperly ordered to stand trial. Attorneys for the Crumbleys allege that there is new evidence that would lessen the parents' chance of conviction, including a school counselor that has come forward to say that the Crumbleys did not refuse to

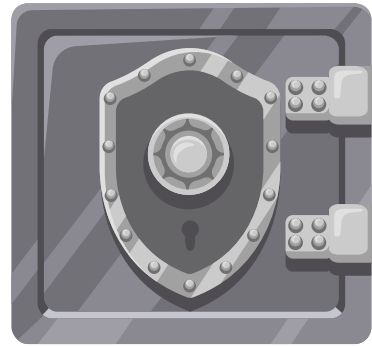
take their son home on the day of the shooting.

What would it mean for this type of prosecution if the Crumbleys are convicted of such a serious charge?

"I think the hope is that other parents will read about the case and may take more safeguards to ensure their firearms are not accessible to their

children as a result, and that parents might be more vigilant about noticing signs of mental illness and a desire for extreme violence in their kids," says Professor Swan. "The idea is that these kinds of precautions could help prevent future occurrences. If the parents are convicted, it might make other prosecutors more interested in charging parents, but these are difficult cases to win, which is part of the reason why we have not seen many of them until now."

At press time, the Crumbleys' trial is still on hold. 🪄



### GUN SAFETY STATISTICS

Gun violence costs the United States \$557.2 billion each year, an average cost of \$1,698 per person.

Source: Centers for Disease Control and Prevention

### DISCUSSION QUESTIONS



1. What do you think of parents being held accountable for the actions of their child? Does that give kids a pass on their bad behavior? Explain your answer.
2. What do you think of CAP laws? Would they be enough of a deterrent to keep guns out of the hands of minors? Explain your answer.
3. What support services should schools offer to students who, like Ethan Crumbley, may be struggling with mental health issues?

## Supreme Court CONTINUED FROM PAGE 1

in which one or more individuals are actively engaged in killing or attempting to kill people in a populated area. Implicit in this definition is the shooter's use of a firearm."

Using its definition, the Gun Archive reports there were 648 mass shootings nationwide in 2022. As of the first six weeks of 2023, the group has logged 80 mass shootings.

### Gun safety laws

After the mass shooting at Sandy Hook Elementary School, where 20 children and 7 adults were killed, 45 states enacted more than 350 gun safety laws. California leads the nation with over 100 gun safety laws on its books, followed closely by New Jersey, New York and Hawaii.

According to the Giffords Law Center to Prevent Gun Violence, a nonprofit organization that promotes gun safety legislation, states that have strong gun safety laws see less gun violence. Those laws, according to the Center, cover background checks, child and consumer safety, guns in public, gun sales, hardware and ammunition, owner responsibilities, as well as who can own a gun.

In determining whether a gun safety law is constitutional, the courts look to the Second Amendment to the U.S. Constitution which reads: "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."

According to Dru Stevenson, a professor at South Texas College of Law Houston, whose current research focuses on firearm law and policy, the U.S. Supreme Court's interpretation of the Second Amendment has changed. For many years, he says, the Court concluded the amendment referred to state militias.

"In the last 15 years, they decided it referred to an individual's right to own

and carry guns," explains Professor Stevenson. "They could change their minds again in the future. And even if we disagree with whatever view the Supreme Court holds right now, the Court has the power to set the rules that all lower courts must follow."

### Decision on carrying concealed

In June 2022, in *New York State Rifle and Pistol Association v. Bruen*, the U.S. Supreme Court handed down a 6–3 decision that overturned the Sullivan Act (1911), a New York gun safety law that established restrictions on carrying a concealed firearm. The Court ruled that requiring a license to carry concealed weapons in public places is unconstitutional under the Second Amendment. Justice Clarence Thomas wrote for the majority, saying the Second Amendment "protects an individual's right to carry a handgun for self-defense outside the home."

Professor Stevenson explains that the case was brought by gun owners who challenged the constitutionality of New York's gun permit system.

"The law was around 100 years old but had been revised and amended several times," says Professor Stevenson. "The specific issue in this case was that New York's system gave local police discretion to deny permits to anyone they suspected of being a criminal, or anyone who could not offer a good reason for needing a concealed carry permit."

Justice Thomas wrote that the restrictions on who may carry a concealed weapon "prevents law-abiding citizens with ordinary self-defense needs from exercising their right to keep and bear arms."

Some aspects of New York's permit system remain, including requiring a background check, restricting access if someone has a criminal record or mental health issues, and banning guns in certain places or situations. In his opinion, Justice Thomas indicated

that gun safety laws restricting guns in "sensitive places" such as schools, courthouses or polling places would likely be deemed constitutional; however, expanding those categories is not likely.

"Put simply, there is no historical basis for New York to effectively declare the island of Manhattan a 'sensitive place' simply because it is crowded and protected generally by the New York City Police Department," Justice Thomas wrote.

In his dissent, former Justice Stephen G. Breyer referenced the mass shootings at an elementary school in Uvalde, TX and a supermarket in Buffalo, NY.

"New York's legislature considered **empirical** evidence about gun violence and adopted a reasonable licensing law to regulate the concealed carriage of handguns in order to keep the people of New York safe," Justice Breyer wrote.

### A new test

Justice Breyer also criticized the new test outlined in the majority's decision that lower courts will need to use when deciding Second Amendment cases, claiming it harms the state's ability to regulate guns. Previously, courts followed a two-step test to determine whether a gun restriction was constitutional. First, a judge would determine if the restriction fit into a history of gun restrictions in the U.S. If an example could not be found, the second step would be to balance the need for a particular restriction against the right to bear arms. With the *Bruen* ruling, the second step was eliminated.

Justice Thomas wrote, "When the Second Amendment's plain text covers an individual's conduct [here the right to bear arms], the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation. Only then may a court conclude that the individual's conduct falls outside the





Second Amendment's 'unqualified command.'"

The decision did not offer much guidance on historical traditions but advised that courts should examine "whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified." So, what does this mean for future gun safety **legislation**?

"The simple answer is that nobody knows for sure what this means for legislatures moving forward," Professor

Stevenson says. "All the law professors who have commented on the *Bruen* decision so far in op-eds and academic article drafts have criticized it for leaving so much uncertainty and so many unanswered questions."

In an op-ed for *The Washington Post*, Joseph Blocher and Darrell A. H. Miller, co-directors of the Duke Center for Firearms Law, wrote: "From now on, the constitutionality of firearms regulations, like prohibitions on guns on

airplanes or in the hands of domestic abusers, will depend solely on whether they are, in some ill-defined sense, 'analogous' to a historical regulation, not whether they are effective in preventing serious harms."

Lower courts are bound to follow the Court's line of reasoning in considering challenges to other gun laws. Professor Stevenson notes that since the *Bruen* decision, there have been



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## Tracing Ghost Guns

A ghost gun is a weapon that lacks a serial number by which it can be identified. Without a serial number it is difficult for law enforcement to trace a weapon when it is used in a crime.

Parts or kits for ghost guns are typically bought online and assembled by the user. Between 2016 and 2020, according to statistics from the U.S. Justice Department, nearly 45,000 "privately made firearms," also called ghost guns, were recovered from crime scenes or during criminal investigations.

In April 2022, the Biden Administration announced a new rule regarding ghost guns. The rule requires commercial manufacturers of gun assembly kits, which are called "Buy, Build and Shoot" kits, to include serial numbers on the products. The rule clarifies that these kits qualify as firearms under the Gun Control Act.

"Until they are put together, they're not considered guns," Alex McCourt, a professor in the Department of Health Policy and Management at Johns Hopkins University's Bloomberg School of Public Health told National Public Radio. "And so, anybody that is prohibited from purchasing a gun or possessing a gun can get one of these kits."

Previously, because the kits were sold in parts, they were classified as components, not as a firearm. Because the items were not considered a gun, buyers were not subject to background checks. With no background check required, someone who would not be allowed to own a firearm—such as someone with a criminal history—could easily purchase an assembly kit.

Minors could also purchase these kits online. In November 2019, a 16-year-old bought a .45 caliber pistol assembly kit online and used the assembled weapon to shoot five of his classmates at Saugus High School in Santa Clarita, CA. The

student killed two classmates and then turned the gun on himself.

Since they are now selling firearms, the new rule stipulates that gun kit manufacturers must be federally licensed and include serial numbers on the kit's core components, like the frame or the receiver. Gun kit sellers must also become federally licensed and run background checks before selling a homemade gun kit. Sellers must also keep records of purchases for as long as they are in business. Everytown for Gun Safety, a gun control group that has tracked the growth of the gun kit industry, said there were 26 online gun retailers in 2014. In 2020, the number had jumped to 80.

Gun rights advocates claim the new rule is an unconstitutional overreach and violates the Second Amendment.

"Their argument is not valid," says Louis Moffa, an adjunct law professor at Rutgers Law School in Camden and a Cherry Hill attorney. "There is nothing preventing gun ownership. It merely requires identification."

Multiple court challenges to the Biden Administration's new rule are pending; however, two judges—one in Texas and one in North Dakota—denied efforts to block the rule.

In an August 2022 ruling, a district judge for the District of North Dakota wrote that the Biden Administration acted within its authority and the rule "was and remains constitutional under the Second Amendment."

After the North Dakota ruling was announced, a spokesperson for the Arizona Attorney General, who is spearheading the efforts of the 17 states that joined the North Dakota lawsuit and disagreed with the court's ruling, said the office "will continue to defend the Second Amendment against overly burdensome regulations."

—Jodi L. Miller



more than 100 cases across the nation in which lower courts have tried to apply the new *Bruen* test.

"Honestly, they are all over the place. For every court decision striking down a law, there seems to be another one in another state upholding the same law, Professor Stevenson says. "This is why *Bruen* is so controversial and has been very confusing for the lower courts to apply. Some judges so far are acting like *Bruen* changed everything, and some are acting like it changed very little."

### In the Garden State

In New Jersey, Governor Phil Murphy signed gun safety legislation less than three weeks before the *Bruen* decision was issued. The new law limited where and how an individual can carry a concealed handgun, not allowing them in several "sensitive places" including schools, courthouses, child care centers, nursing homes, polling places, government buildings, bars and restaurants where alcohol is served, airports, movie theaters and other entertainment centers, casinos, parks and beaches.

In January 2023, U.S. District Judge Renee Marie Bumb, a federal judge who sits in the District of New Jersey, granted a temporary restraining order from a coalition of gun owners. The order puts the law on hold while the case is pending in a Camden federal court. Judge Bumb did allow portions of the law to remain in place, including restrictions on carrying guns at playgrounds and youth sporting events. She cited "historic parallels" which complied with the *Bruen* decision.

Professor Stevenson says there are things states can do to improve enforcement of existing gun laws. For example, he suggests, "cracking down on gun dealers who are negligent about following laws, boosting the reporting of names to the FBI's

database of people prohibited from purchasing guns, and providing funding for violence

intervention programs and local gun buyback campaigns in cities."

On the national level, just two days after the *Bruen* decision was handed down, President Joseph Biden signed the **Bipartisan** Safer Communities Act into law—the first federal gun safety legislation enacted in 30 years. The federal law implements changes to the mental health system, school safety programs, as well as gun safety laws. The law allows for extended background checks for purchasers under 21, clarification of firearms license requirements and funding for crisis intervention programs.

### Not just mass shootings

While mass shootings grab headlines, the reality is that gun violence happens every day. The Gun Archive reports that overall gun violence—not just mass shootings—killed 44,000 people in 2022.

The New Jersey Gun Violence Research Center at Rutgers University (NJGVRC) puts that number at closer to 45,000 gun-related deaths in the U.S. annually, with nearly 60% being suicides.

"Only one percent are mass shootings, but they are the most shocking and skew perceptions," explains Mike Anestis, Ph.D., executive director of NJGVRC, as well as a professor at the Rutgers School of Public Health.

NJGVRC believes that by "better understanding gun-related violence and its predictors among various populations, we can develop better interventions to reduce various forms of gun-related death." Dr. Anestis' research is focused on understanding who is most at risk for firearm suicide, how factors such as firearm storage practices and firearm beliefs may influence risk, and how to diminish suicide risk among firearm owners, particularly military veterans.

In New Jersey, approximately 475 people die by guns annually, according to NJGVRC. Based on statistics from the Centers for Disease Control and

Prevention (CDC), that puts New Jersey at the 3rd lowest in the country for the rate of gun deaths based on population (5.5 deaths per 100,000 people).

For perspective, the state with the highest gun death rate, according to the CDC, is Alaska with 23 deaths per 100,000 people. Alaska has a population of more than 732,000, whereas New Jersey's population is over nine million.

"In a post-*Bruen* world, we have to keep our finger on the pulse of gun-related violence and the fundamental risks," Dr. Anestis says. 



### DISCUSSION QUESTIONS



1. What do you think of the U.S. Supreme Court's new "historical test" for determining the constitutionality of gun safety laws and the confusion it has created? How would you clarify the test? Explain your answer.
2. The article mentions several "sensitive places" where concealed guns would not be allowed. List three examples (whether from those mentioned in the article or come up with your own) and explain why it should or should not be designated as a sensitive area.
3. Read the sidebar "Tracing Ghost Guns" on page 5. Gun rights advocates believe the new rule regarding ghost guns is an "overly burdensome regulation," and violates the Second Amendment, while a district court upheld its constitutionality. Which argument do you find more compelling? Explain your answer.

the household. The person whose weapons are to be seized has the opportunity to be heard in court within 10 days where they can present evidence that they are not a danger to themselves or others. At that time, a judge issues a final order where the petition to keep the weapons from the gun owner is either granted or denied. If the petition is granted, it lasts indefinitely; however, the gun owner can seek to have the order terminated through the courts.

According to data compiled by NJ Advance Media, there have been nearly 1,000 gun seizures since the state's red flag law went into effect. In 200 of those cases the gun owners were given their weapons back. In 500 cases the orders were made permanent. The status of the remaining cases, according to state records, is unresolved.

Attorney General Matthew Platkin told NJ Advance Media, "To be clear, this is not about taking guns away from law-abiding citizens. This is about keeping the public safe, preventing tragedies, and saving lives."

Are they effective?

Gun safety advocates contend that red flag laws are crucial tools to prevent gun violence. They cite research from various sources as to their effectiveness. A University of California study, for example, found that between 2016 and 2018, California's red flag law was used to confiscate weapons from 58 individuals who were threatening to carry out a mass shooting. Six of those cases involved minors who had targeted schools. According to a 2020 report, published by Everytown for Gun Safety, a nonprofit that advocates for gun control, the gunmen in more than half of all mass shootings between 2009 and 2020 displayed warning signs before the attack, particularly in cases of school shootings.

"Removing firearms during crisis situations allows for mental health intervention or law enforcement investigation, and can prevent tragedies from occurring," said Jennifer Pomeranz in a press statement. Pomeranz is a professor at New York University's School of Global Public Health, and lead

author of a 2021 study on the national landscape of red flag laws. "Research shows that prior to an attempted suicide or homicide, there are warning signs that a shooter intends to act," said Professor Pomeranz.

The U.S. House of Representatives passed a bill in June 2022 creating a federal red flag law, but the legislation failed in the U.S. Senate, never making it out of committee. The bill was sponsored by U.S. Representative Lucy McBath of Georgia, who lost a teenage son to gun violence in 2012.

"Red flag laws work to prevent school and mass shootings," Rep. McBath told *The New York Times*. "They work to keep those who may be contemplating suicide from accessing a weapon. They can be used to keep guns out of the hands of those who should not have them."

Opponents of red flag laws contend that they don't work, noting that they failed to prevent several high profile shootings including the May 14, 2022 attack at a Buffalo, NY supermarket, where 10 people were killed and three wounded; the July 4, 2022 mass shooting in Highland Park, IL, where seven people were killed, and 48 wounded; and the January 21, 2023, shooting in Monterey Park, CA, where 11 people were killed and 10 wounded.

Associated Press statistics show that red flag laws are not used often. Since 2020, analysis of all 19 states and



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**CHILDREN AND TEEN GUN DEATHS**

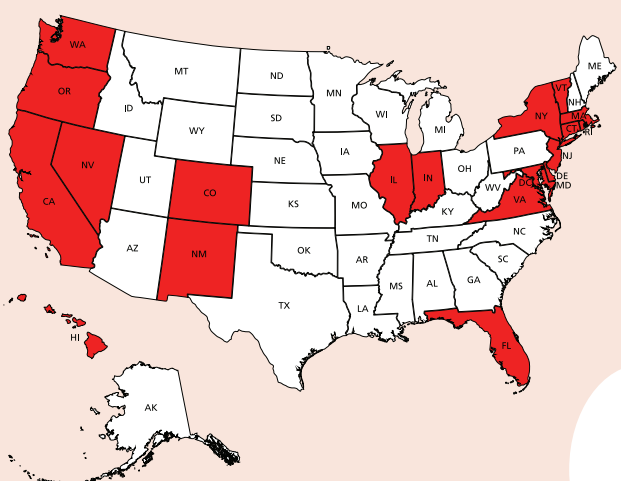
Guns are the leading cause of death among children and teens in the United States. An average of 3,540 children and teens die by guns every year. Of these deaths, 35% are suicides and 60% are homicides. Black children and teens in the United States are 14 times more likely than their white peers to die by gun homicide.

*Source: Centers for Disease Control and Prevention*

States with Red Flag Laws

- |             |               |                  |
|-------------|---------------|------------------|
| California  | Indiana       | Oregon           |
| Colorado    | Maryland      | Rhode Island     |
| Connecticut | Massachusetts | Vermont          |
| Delaware    | Nevada        | Virginia         |
| Florida     | New Jersey    | Washington       |
| Hawaii      | New Mexico    | Washington, D.C. |
| Illinois    | New York      |                  |

Source: Everytown for Gun Safety



### GUN DEATHS BY INTENT

In the United States, 59% of gun deaths are suicides and 38% are homicides. Mississippi has the highest rate of gun deaths in the country, Wyoming has the highest rate of gun suicides, and Washington, D.C. has the highest rate of gun homicides.

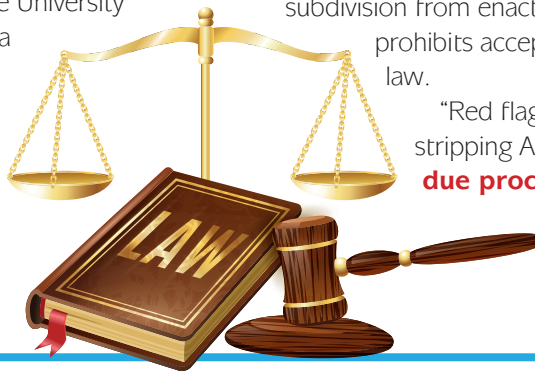
Every year, an average of 23,891 people in the United States die by gun suicides and 2,294 are wounded by gun suicide attempts—a rate of 6.9 suicides and 0.7 suicide attempts per 100,000 people. In the United States, white people are three times more likely than Black people to die by gun suicide.

Source: Centers for Disease Control and Prevention

the District of Columbia found that these **statutes** were leveraged 15,049 times to remove firearms from potentially dangerous individuals—fewer than 10 per 100,000 adult residents.

“It’s too small a pebble to make a ripple,” Duke University sociologist Jeffrey Swanson who studies red flag laws, told *PBS News Hour*. “It’s as if the law doesn’t exist.”

In an op-ed for *The Washington Post*, Veronica Pear, a professor in the Violence Prevention Research Program in the Department of Emergency Medicine at the University of California at Davis, wrote that this was a failure of implementation, not a failure of the laws themselves. She claimed there is “compelling evidence that red flag laws can help prevent mass shootings,”



pointing to the 58 cases in California where ERPOs were used to stop mass shooting threats.

“Importantly, red flag laws can help reduce firearm violence beyond mass shootings. They are primarily used in response to threats of self-harm or interpersonal violence,” Professor Pear wrote. “This ‘everyday’ violence constitutes 99% of firearm deaths each year. We have strong evidence that ERPOs are preventing firearm suicide, with an estimated one suicide prevented for every 10 to 20 orders removing firearms.”

In an interview with National Public Radio, April M. Zeoli, a professor at the University of Michigan’s School of Public Health and a director at its Institute for Firearm Injury Prevention, who is collecting data on red flag laws in six states, said she has already seen in her research that red flag laws are used unevenly. She also said that pointing to ERPOs as a prevention to mass shootings is hard to prove.

“Being able to say this year you didn’t have any mass shootings and that’s because of extreme risk protection orders is difficult because you may not have had any anyway,” Professor Zeoli said.

### What about due process?

Some gun rights advocates have taken things a step beyond simply not implementing red flag laws. In Oklahoma, lawmakers passed the Anti-Red Flag Act. The law, passed in May 2020, prohibits the state, city, county or political subdivision from enacting a red flag law. In addition, the law prohibits accepting grant funding to enact a red flag law.

“Red flag laws would circumvent our laws, stripping American citizens of their rights to **due process** under the law,” Oklahoma State

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## ATTENTION: TEACHERS! LOOKING FOR A LESSON PLAN? OUR CIVICS BLOG HAS YOU COVERED

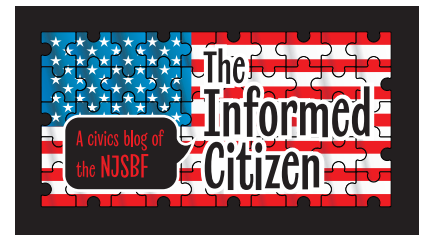
If you’re looking for a civics lesson plan, look no further than The New Jersey State Bar Foundation’s **FREE** civics blog, *The Informed Citizen*.

Each blog post contains discussion questions and relevant glossary words, providing ready-made lesson plans to help students (and adults) better understand the subject matter. Civics topics can be hard to grasp, but *The Informed Citizen* is written in plain language with the goal of keeping readers engaged.

Posts are added periodically throughout the school year. Here are just some of the topics you’ll find explained on the blog:

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## Gun Safety CONTINUED FROM PAGE 8

Representative Jay Steagall, author of the bill, said in press statements when it was signed into law.

"The foundation of due process is that everyone gets notice and an opportunity to be heard before the government can take away your life, liberty, or property," says Louis Moffa, an adjunct law professor at Rutgers Law School in Camden and a Cherry Hill attorney.

Moffa notes that the main criticism of red flag laws is a lack of due process, but he points out that the laws require that the subject be given a hearing within a short period of time after the law is put into effect by a judge and firearms are seized.

"So, the 'taking' of property is only temporary and very short-term prior to a full hearing, where the person can make arguments in court about why the law should not apply in their case," Moffa says.

Most gun rights advocates argue that the Second Amendment right to bear arms is absolute. Moffa says that is "plainly wrong."

"None of the rights protected in our Constitution are 'absolute.' All of them have limits and exceptions," Moffa says. "For example, the First Amendment plainly says that Congress 'shall make no law' that infringes on the right to speech. But the courts have consistently held that the government can impose reasonable time, place, and manner restrictions on speech, and there are numerous exceptions to what otherwise could be protected 'speech.' As a result, there is no



reason why the government could not impose 'reasonable' restrictions on gun ownership, and that is precisely what the U.S. Supreme Court said in the famous Heller case."

Moffa is referring to the 2008 case of *District of Columbia v. Heller* in which the U.S. Supreme Court protected a citizen's right to possess

a handgun; however, the majority opinion, written by Justice Antonin Scalia also stated: "Like most rights, the Second Amendment right is not unlimited. It is not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose...The Court's opinion should not be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill..."

### DISCUSSION QUESTIONS



1. Proponents of red flag laws contend that they save lives, while opponents say they don't make a difference. Statistics for both sides were outlined in the article. Which argument do you find more compelling? Explain your answer.
2. What do you think of the due process argument against red flag laws?
3. What do you think of the notion that the Second Amendment right to bear arms is absolute?

## New Jersey Gun Safety Statistics

### Gun Deaths Over Time

In New Jersey, the rate of gun deaths decreased 10% from 2011 to 2020, compared to a 33% increase nationwide. The rate of gun suicides decreased 6% and gun homicides decreased 13% compared to a 12% increase and 70% increase nationwide, respectively.

### Cost of Gun Violence

New Jersey has the 3rd lowest societal cost of gun violence in the US at \$594 per resident each year. Gun deaths and injuries cost New Jersey \$5.3 billion each year, of which \$168.9 million is paid by taxpayers.

### Gun Death by Intent

In New Jersey, 42% of gun deaths are suicides and 56% are homicides. Every year, an average of 185 people in New Jersey die by gun suicides and 11 are wounded by gun suicide attempts—a rate of 1.9 suicides and 0.1 suicide attempts per 100,000 people. New Jersey has the lowest rate of gun suicides and gun suicide attempts in the United States.

### Children and Teen Gun Deaths

Guns are the 3rd leading cause of death among children and teens in New Jersey. On average, 36 children and teens die by guns every year in New Jersey. Of those deaths, 15% are suicides and 81% are homicides.

Source: Centers for Disease Control and Prevention



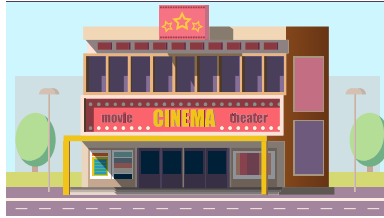
## Challenges CONTINUED FROM PAGE 1

the manufacturer are not responsible for what that person does with their product.

Gun manufacturers and dealers have maintained that they should not be held accountable if someone misuses their product, likening themselves to the car industry. In press statements, a representative of the National Shooting Sports Foundation (NSSF), a firearms trade association, stated, “You would no more charge or blame Ford or General Motors for drunk driving accidents.”

The law has been successful in protecting the gun industry. For example, when the families of the victims in the 2012 Aurora, CO movie theater shooting sued the online store where the shooter purchased some of the ammunition used in the killings, a federal judge dismissed the lawsuit. In fact, pursuant to Colorado law, the judge ordered the **plaintiffs** in the case to pay the gun store’s legal fees.

There are a number of exceptions to the civil **immunity** outlined in the PLCAA. For instance, gun dealers or manufacturers can be held liable if a defective weapon causes death or injury. Another exception is if a seller or manufacturer violates a state or federal **statute** in the marketing or sale of a product.



### What led to the PLCAA

In 1998, Chicago Mayor Richard M. Daley sued 22 gun makers, including Smith & Wesson, Colt, and Browning, as well as 12 gun stores and four gun distributors, for \$433 million for creating a “public nuisance.” The lawsuit cited the excess costs sustained by the city in terms of the police and fire department, as well as the burden on public hospitals because of gun violence.

“Gun manufacturers and retailers know exactly what they’re doing,” Mayor Daley said at a press conference when the lawsuit was announced. “They knowingly market and distribute their deadly weapons to criminals in Chicago and refuse to impose even the most basic controls.”

In 2004, the Illinois Supreme Court dismissed Chicago’s lawsuit. Other cities, including New Orleans, Miami, and Bridgeport, CT brought similar lawsuits. Eventually those suits were thrown out as

well.

In April 1999, two students killed 12 classmates and one teacher, wounding 20 others, at Columbine High School in Littleton, CO. At the time, Columbine was the worst school shooting the country had seen and the gun industry was on the hotseat. With the pressure from lawsuits already in

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## Gun Safety Around the Globe

Three countries have a constitutional right to keep and bear arms—Mexico, Guatemala and the United States. Six other countries—Bolivia, Costa Rica, Columbia, Honduras, Nicaragua and Liberia—previously had laws granting private citizens the right to own guns; however, all six countries **rescinded** that right.

While Mexico and Guatemala allow its citizens to own guns, both countries put restrictions on those rights. For example, Mexico does not allow its civilians to buy firearms “reserved for use by the military” and “carrying arms within inhabited places without complying with police regulations” is forbidden.

Guatemala also places restrictions on civilian gun ownership. For example, citizens are not allowed to own fully automatic weapons, and semi-automatic weapons, handguns, rifles, and shotguns require a permit. In addition, the country limits the amount of ammunition citizens can purchase and they must re-apply and re-qualify for firearm licenses every one to three years, according to gunpolicy.org, an online source for data on firearm laws. Even with these restrictions, Guatemala is considered to have the highest gun ownership rate in Latin America.

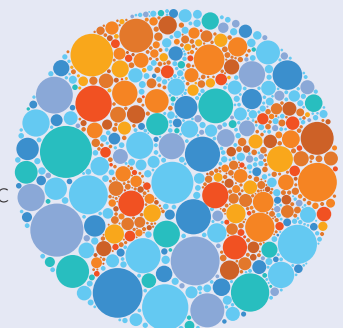
The United States, with less than five percent of the world’s population, accounts for 46 percent of

the world’s civilian-owned guns, according to the Small Arms Survey, an independent research project at the Graduate Institute of International and Development Studies in Geneva, Switzerland. In 2020, the National Shooting Sports Foundation, a U.S. firearms trade association, estimated that the total number of firearms in civilian hands is approximately 433.9 million—that’s more than the U.S. population, which is 331.9 million people.

### Mass shootings in other countries

Mass shootings are not unique to the United States. Here’s what a few other countries have done in the aftermath of such tragedies.

**England:** In 1987, in what would become known as the “Hungerford Massacre,” a 27-year-old man went on a six-hour shooting spree in several locations, including a school that he once attended in Hungerford, England. Using two semi-automatic rifles and a handgun, the shooter killed 16 people and wounded 15 others before shooting himself.



## Challenges CONTINUED FROM PAGE 10

progress and the threat of more, one gun maker—Smith & Wesson—agreed to reforms of its products.

According to an article in *The Washington Post*, Smith & Wesson agreed to “voluntary reforms including child-safe triggers, development of ‘smart guns’ that could be fired only by the owner, and a ban on sales to gun dealers linked to crimes and those with loose policies regarding background checks.”

Smith & Wesson’s settlement set off alarms throughout the gun industry. The NRA vigorously protested this deal and called for its members to boycott Smith & Wesson. Eventually, the gun company collapsed. Smith & Wesson was sold and restructured without making any of the changes it agreed to.

Ryan Busse, a former gun industry executive and author of *Gunfight: My Battle Against the Industry that Radicalized America*, claims that the modern gun industry was born after the Columbine tragedy. In his book, Busse details secret tapes of NRA representatives discussing possible responses to Columbine.

Busse told *Time* magazine, “They basically had debates behind the scenes about, ‘OK do we give in and be conciliatory, or do we basically use these sorts of events to



stir up hatred and fear and division and all the stuff that rules our politics now?’ They obviously chose the latter.”

The gun industry **lobbied** Congress for protection against liability, with the PLCAA being the result. The law was passed with **bipartisan** support.

### Weakening of the PLCAA

In March 2019, the Connecticut Supreme Court ruled that the PLCAA does not shield gun makers from state laws, such as the Connecticut Unfair Trade Practices Act of 1973 (CUTPA). This ruling allowed the lawsuit against Remington, brought by the parents of the children killed in the 2012 Sandy Hook Elementary School shooting, to move forward. The Court’s ruling **reversed** a lower court decision that stated the lawsuit “falls squarely within the broad immunity” provided to gun manufacturers and dealers by the federal PLCAA.

The strategy in the Sandy Hook case exploits one of the PLCAA’s exceptions—violating a law in the marketing or sale of a product. The complaint states that Remington marketed its firearm not as a sporting or hunting tool, but as a military-style weapon using the slogan: “Consider your man card reissued.” Such marketing practices violate Connecticut law. In November 2019, the U.S. Supreme Court refused to block

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In the wake of the tragedy, Parliament passed the Firearms Amendment Act in 1988. The act banned the ownership of semi-automatic rifles and restricted the use of shotguns with more than three cartridges. Less than 10 years later, in 1996, another tragedy occurred in Dunblane, Scotland. Armed with four handguns, a man killed 16 students and one teacher at Dunblane Primary School, injuring 15 others, and killing himself. That incident led to two more Firearms Acts, which essentially outlawed all private ownership of handguns. In addition, the government instituted a temporary buyback program for lawful handgun owners to sell their now-banned weapons.

**Australia:** In 1996, a 29-year-old man, using a semi-automatic rifle, killed 35 people and wounded 23 others in the tourist town of Port Arthur, Tasmania in Australia. The shooter pled guilty and received 35 life sentences without the possibility of parole. Within two weeks of the tragedy, the Australian federal government, with support from legislators from the states and territories, backed bans on semi-automatic rifles and pump-action firearms. The National Agreement on Firearms also mandated licensing and registration for other firearms, and instituted a temporary buyback program that took approximately 650,000 assault weapons out of circulation.

**New Zealand:** In 2019, a white supremacist shot up two mosques in Christchurch, New Zealand. The lone gunman, a 28-year-old man, began his rampage at the Al Noor Mosque and continued his killing 12 minutes later at the Linwood Islamic Center. He was apprehended on his way to a third mosque. In the end, 51 people were killed and 40 more were injured. The gunman pled guilty to 51 counts of murder and 40 counts of attempted murder. He was sentenced to life in prison without the possibility of parole. In the wake of the shootings, the government immediately banned all of the weapons used by the shooter—two AR-15 style rifles, two 12-gauge shotguns and two other rifles. The government also instituted a costly buyback program where gun owners had six months to sell their weapons to the government. The program cost more than \$100 million in New Zealand dollars (approximately \$65 million US dollars). The program took more than 60,000 firearms, as well as a significant number of high-capacity magazines, out of circulation. A year later, New Zealand instituted a firearms registry, shorter terms for license renewal on first-time license holders and banned more types of weapons.

—Jodi L. Miller

## Challenge CONTINUED FROM PAGE 10

the civil lawsuit against Remington. In February 2022, the gunmaker settled the Sandy Hook lawsuit for \$73 million dollars.


Lawsuits from the families of victims in other mass shootings are employing similar legal strategies to bypass the PLCAA. For example, survivors and family members of the victims of the July 4th shooting in Highland Park, IL in 2022 are suing two gun sellers, as well as Smith & Wesson. The complaint claims that the “shooter was the type of young consumer susceptible to Smith & Wesson’s deceptive and unfair marketing” and the two gun sellers were negligent in selling the shooter the weapon—an M&P15—used in the killings. The attorneys in the case contend that the M&P15 is deceptively marketed as a military-style weapon, a tactic that is “particularly effective with young men fascinated with militaristic combat missions.”

The families and survivors of the Robb Elementary School shooting in Ulvade, TX are suing Daniel Defense, the manufacturer of the gun used in the shooting, as well as Firequest International Inc., the company that designed the accessory trigger system the gunman used with the weapon. In addition, the suit names the gun store that sold the weapon to the shooter.

### State laws

State legislatures are passing laws intended to hold gun makers accountable for the role their products play in gun deaths. For example, a 2021 New York state law allows gun makers to be sued for “improper marketing,” as well as “creating a public nuisance” should their weapons end up being used in a crime. In an attempt reminiscent of the efforts of Mayor Daley, the city of Buffalo filed a lawsuit in December 2022 under the New York law. Buffalo is suing five gun manufacturers—Beretta, Smith & Wesson, Glock, Remington and Bushmaster.

New Jersey Governor Phil Murphy signed a similar law in 2022 allowing the state to sue gun companies as a public nuisance, which is defined as “conduct that interferes with the public’s rights” and includes any company that fails to “establish, implement, and enforce reasonable controls” on their products. The National Shooting Sports Foundation challenged both state laws in court claiming they are too vague. In February 2023, a U.S. district judge for the District of New Jersey blocked New Jersey’s law claiming it violates the PLCAA. New Jersey is appealing the ruling. Meanwhile, a district court in New York dismissed NSSF’s challenge to its state law. The New York ruling is being **appealed** by the NSSF.

The differing rulings create what is known as a circuit split—when two or more appeals courts give conflicting rulings on the same issue. Legal experts say the split could entice the U.S. Supreme Court to take up the issue in the future. 



## GLOSSARY

**appealed** — when a decision from a lower court is reviewed by a higher court.

**beyond a reasonable doubt** — must believe to a moral certainty in the guilt of the accused. This is the highest standard required in a criminal case.

**bipartisan** — supported by two political parties.

**due process** — legal safeguards that a citizen may claim if a state or court makes a decision that could affect any right of that citizen.

**empirical** — based on verifiable observation or experience rather than theory.

**gross negligence** — carelessness that is in reckless disregard for the safety of others.

**immunity** — exempt from penalty.

**involuntary manslaughter** — the crime of killing someone unlawfully but unintentionally.

**legislation** — laws made by a legislative body.

**liability** — an obligation of responsibility for an action or situation, according to the law.

**lobby** — process of influencing elected officials to pass certain laws and/or implement certain policies.

**plaintiff** — person or persons bringing a civil lawsuit against another person or entity.

**redress** — satisfaction, in the form of compensation or punishment, for an injury or wrongdoing.

**rescind** — revoke, cancel or repeal.

**reverse** — to void or change a decision by a lower court.

**self-incrimination** — to testify against yourself.

**statute** — a particular law established by a legislative branch of government.

### DISCUSSION QUESTIONS



1. What do you think about the immunity that PLCAA provides to the gun industry? Should civil litigation be available to survivors and victims of mass shootings or is it an unfair burden to put on the gun industry? Explain your answer.
2. What do you think about the marketing exception to the PLCAA? Should gun manufacturers be held liable for mass shootings if they use aggressive marketing tactics or market to minors? Explain your answer.
3. What do you make of the analogy by the gun industry between guns and cars/gun violence and drunk driving? Is it an appropriate analogy? What are the similarities and differences between the gun and car industries?