RESOLVED, That the American Bar Association urges federal, state, local, territorial, and tribal governments to enact statutes, rules and regulations that: (a) define the requirements of safe storage of a firearm; (b) require firearm owners to meet those requirements; and (c) promote safe storage education for firearm owners; and

FURTHER RESOLVED, That the American Bar Association urges the federal government to incentivize safe storage programs within the states.
I. The Need for Safe Storage Regulations

Safe storage laws are a constitutional means to protect the public from preventable suicides, tragic accidents, and crime, while respecting Americans’ Second Amendment rights. All too often, unauthorized users gain access to guns that are left unsecured in homes or in vehicles and use those guns to harm themselves or others. In homes across the United States, gun owners and non-gun owners alike face the devastating impacts of family fire – a shooting involving an improperly stored or misused firearm in the home that results in injury or death. And, without safe storage, individuals who are too dangerous to possess a gun, and may even be prohibited from legally acquiring one, frequently resort to stealing them from cars and homes. For this reason, several states and municipalities have passed what are known as “safe storage” laws. While safe storage laws vary by location, they generally refer to regulations requiring gun owners to store their weapons unloaded, in locked containers, or disable them with trigger locks to prevent tragedies and save lives.

A. Safe Storage Protects Children

Improperly stored firearms pose a significant threat to children. Not only do 4.6 million children have access to unlocked or unsupervised guns in their homes, but 75 percent of them know exactly where those guns are kept. As a result, family fire unintentionally kills or injures 8 children and teens every day. Indeed, a recent study showed that family fire is one of the single greatest contributors to firearm injury and death among children. That same study also suggested that safe storage practices could cut the rates of unintentional death and suicide by up to a third.

In 2017, firearms accounted for nearly 19 percent of non-interpersonal violence-related deaths (unintentional deaths, suicides, and undetermined deaths) among America’s teenage youth while accounting for only 11 percent of non-interpersonal violence-related deaths among Americans as a whole. In addition, nearly 3,000 children and teens age 1-17 are shot every year in the U.S.

In a country where 4.6 million children live in homes with an unlocked, loaded gun, many are able to easily access firearms in times of crisis. A study of youth gun suicides showed that over two-thirds of youths died by suicide in their own homes, and over half used a firearm owned by a family member.

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1 https://www.bradyunited.org/key-statistics
3 https://www.ncbi.nlm.nih.gov/pubmed/16651499
4 https://jamanetwork.com/journals/jamapediatrics/article-abstract/2733158
5 https://webappa.cdc.gov/sasweb/ncipc/mortrate.html
6 https://www.bradyunited.org/key-statistics
7 https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3085447/
Safe storage not only prevents unintentional death and suicide, but also mass shootings. In 2018, for example, the Washington Post’s analysis showed that safe storage could have prevented two-thirds of the 145 school shootings that have occurred since Columbine.8

B. Safe Storage Prevents Accidents and Suicides

Safe firearm storage effectively prevents unintentional shootings and suicides. A ten-year study found that a disproportionately large share of unintentional firearm fatalities occurred in states where gun owners were more likely to store their firearms loaded or unlocked.9 The firearm death rate was, on average, four percent higher in states where an additional one percent of gun-owning households stored loaded firearms.10 In the six states where firearm owners were most likely to store loaded firearms, there were twice as many unintentional firearm fatalities compared with the ten states where firearm owners were least likely to store their firearms loaded.11

Readily accessible firearms increase the likelihood that lives will be lost from suicide. Suicide is a significant factor driving the country’s gun deaths. Of the 100 people whom gun violence kills every day, about 61 of them die by suicide. Guns make suicidal ideology especially lethal. Suicides attempted with firearms are fatal 85 percent of the time, compared to just three percent for other common methods such as drug overdose.12 And lethality matters; it is estimated that between .05 percent and 2.0 percent of individuals who make a non-fatal attempt at suicide go on to die by suicide within a year.13 Safe firearm storage that limits access to firearms when a person is in crisis can therefore decrease the number of fatalities caused by suicide.

Further, access to guns specifically increases the likelihood of death by suicide in children and teens. A recent study demonstrates that low emotion-relevant impulse control – or reduced control over how an individual acts in response to an emotion – is associated with an increased risk of a suicide attempt.14 Scientific literature notes that neurobiological development makes children and teens more prone to impulsive behavior, including suicide attempts. The combination of low emotion-relevant impulse control and access to firearms is a lethal combination.

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10 Id.
11 Id.
12 https://www.hsph.harvard.edu/magazine/magazine_article/guns-suicide/
14 https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5045310/
C. Safe Storage Prevents Theft from Vehicles

Unsecured guns in vehicles are a separate yet similarly troubling issue. The federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has claimed that lost and stolen guns pose a “substantial threat” to public safety, as well as to law enforcement. “Those that steal firearms commit violent crimes with stolen guns, transfer stolen firearms to others who commit crimes, and create an unregulated secondary market for firearms.”

Requiring safe storage is critical to protect firearms in vehicles from theft.

A recent survey of select police departments revealed “steady increases in reports of guns stolen from vehicles.” In Atlanta, the stolen gun count rose from 439 in 2009 to over 1,000 in 2018. In St. Louis, it increased from 200 to nearly 600 over the same nine-year period. And, in Tennessee, the number of guns reported stolen from vehicles nearly doubled between 2016 and 2017, from roughly 2,200 to over 4,000.

II. Existing Forms of Safe Storage Regulation

Though federal law has required federal firearms licensees to sell every handgun with a secure gun storage or safety device since 2005, buyers do not always use these mechanisms at home or in their vehicles, and federal law does not require them to do so. Therefore, lawmaking and enforcement has historically fallen to the states, but only a handful of them have considered safe storage.

Despite the fact that about 8 in 10 Americans support laws requiring gun owners to keep their guns locked when they are stored, only a few states actually legislate safe storage of firearms with locking devices. Massachusetts is the only state in the nation to require that all guns are locked or safely stored at all times and in all circumstances when they are not in use. Connecticut recently updated its safe storage law to require gun owners in homes with children to unload their firearms and store them in locked containers. Other states, like California and New York, have laws on the books that require safe storage of firearms under certain circumstances - for instance, if someone living in the home is a prohibited purchaser under state or federal law.

Certain municipalities have enacted stricter regulations than their states. For example, even though California does not require owners to safely store every firearms in their home, San Francisco requires owners to store every handgun in their home in a locked container or disable it with a trigger lock (a plastic or metal device that fits over the gun’s trigger and trigger guard to prevent the gun from being fired - they are available in versions with either a key or combination) when in a residence. The city of Sunnyvale in California

17 Id.
18 18 U.S.C. § 922(z)(1)
19 https://www.apmresearchlab.org/locked-gun-storage/
20 Mass. Gen. Laws ch. 140 § 131L
21 https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXX/Chapter140/Section131L
goes one step further, and requires all firearms to be locked in this manner - not just handguns. New York City and Albany also go above and beyond state law in this realm as well, requiring firearm owners to safely store or render inoperable a firearm outside of his or her immediate control.22

Another category of safe storage laws - child access prevention (CAP) laws – is explicitly designed to keep guns out of the hands of those who are most vulnerable to mis-using them: children and teens. From 2013-2017, children and teens made up 20 percent of all fatal unintentional shootings and 15 percent of unintentional shooting injuries nationwide. Accordingly, states distinguish between households with and without children when determining what constitutes safe storage. Unlike general safe storage laws, which have only been adopted by a handful of states and municipalities, 27 states and the District of Columbia have enacted some form of child access prevention legislation to date.

Not all CAP laws are created equal, however. Like many other state gun laws, their strength (and intent) varies considerably. Some states impose criminal liability on individuals who negligently store a firearm that a child could gain access to, even if the child does not actually do so. Others impose criminal liability only in cases where a child actually handles a negligently stored firearm. While others impose criminal liability only in cases where a child not only handles a negligently stored firearm, but also gets injured as a result.

On the more lax end, some states only impose criminal liability on individuals who intentionally, knowingly, or recklessly give a firearm to a minor. This is a much higher threshold than simple negligence, making it more difficult to prosecute under CAP laws in these states. Other states such as California, Illinois, and Nevada, do not impose criminal liability. Instead, these states impose civil liability on individuals who allow a minor to access or use a firearm.

III. Incentivization of Safe Storage Regulation

At the federal level, the House of Representatives has introduced bipartisan legislation that would incentivize retailers to promote safe storage. The Prevent Family Fire Act of 2019, H.R. 4926, gives retailers a tax credit when they sell safe storage devices. The credit is equal to 10% of cost at sale, with a maximum credit of $40 per safe storage device sold domestically. This bill is a lawful means to promote safe storage, by giving retailers an incentive to stock and market safe storage devices, and steer consumers to purchase them.

IV. Constitutionality of Safe Storage Regulation

Arguments that safe storage laws would necessarily violate the Second Amendment, as established in District of Columbia v. Heller, 554 U.S. 570, 128 S. Ct. 2783, 171

L.Ed.2d.637 (2008) are unavailing. In *Heller*, the United States Supreme Court considered a challenge to the D.C. law that “totally ban[ned] handgun possession in the home,”23 and “require[d] that any lawful firearm in the home be disassembled or bound by a trigger lock *at all times*, rendering it inoperable.”24 Ultimately, the Court held that law-abiding, responsible citizens have a right to keep a handgun in the home for self-defense.25 At the same time, *Heller* made clear that the Second Amendment is not unlimited, and laws restricting commercial sales are permitted.26 Under this framework, the Court held that D.C.’s law was unconstitutional because it required residents to render their handguns *completely inoperable*, thereby infringing the Second Amendment right to self-defense. In contrast, Courts across the country have routinely found that safe-storage laws that require practices such as keeping firearms in locked containers or using trigger locks do not infringe on self-defense rights.

In 2014, the Ninth Circuit, for example, upheld a safe storage law, San Francisco Police Code section 4512, noting that “[u]nlike the challenged regulation in *Heller*, section 4512 does not substantially prevent law-abiding citizens from using firearms to defend themselves in the home. Rather, section 4512 *regulates how San Franciscans must store their handguns when not carrying them on their persons.*”27 The Ninth Circuit, therefore, found that requiring people to store their handguns “in a locked storage container or with a trigger lock when not carried on the person is substantially related to the important government interest of reducing firearm-related deaths and injuries.”28 Ultimately, the U.S. Supreme Court declined to review the decision, so the Ninth Circuit’s reasoning still stands.

In addition to San Francisco, several other cities and states have also passed safe storage laws that courts have likewise upheld. In 2010, for example, the Massachusetts Supreme Court upheld a state law requiring firearm owners to either secure weapons in a locked container or equip them with trigger locks “does not require that firearms in the home be rendered and kept inoperable at all times and does not prohibit a licensed gun owner from carrying a loaded firearm in the home” it does not violate the Second Amendment right to self-defense.”29 And in 2012 a New York court found that a New York City law requiring firearm owners to render weapons inoperable by using a safety lock when they are not in possession of the weapon did not violate the Second Amendment, noting that “[u]nlike *Heller* and *McDonald v. City of Chicago*, 561 U.S. 742 (2010), New

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23 *Id.* at 2817.
24 *Id.* (emphasis added).
25 *Id.*
26 *Id.* at 2816-2817 (“[N]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.”) (emphasis added).
27 *Jackson v. City & County of San Francisco*, 746 F.3d 953, 958 (9th. Cir. 2014) (emphasis added).
28 *Id.* at 966.
York City’s ‘statute and regulation do not require a licensee to keep any firearm *in his possession* unloaded and locked.’”30

Respectfully submitted,

Joshu Harris
Chair, Standing Committee on Gun Violence
February 2020

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GENERAL INFORMATION FORM

Submitting Entity: Standing Committee on Gun Violence
Submitted By: Joshu Harris, Chair

1. Summary of Resolution(s).

Urges federal, state, local, territorial, and tribal governments to enact statues, rules and regulations that would: a) define the requirements of safe storage of a firearm; b) require firearm owners to meet those requirements; and c) promote safe storage education for firearm owners. Further urges the federal government to incentivize safe storage programs within the states.

2. Approval by Submitting Entity.
   November 12, 2019

3. Has this or a similar resolution been submitted to the House or Board previously?
   No.

4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?
   The ABA has approved a number of policies regarding state and federal regulation of firearms. These include: Guns in Classrooms (19M106A), and Gun Violence Restraining Orders (17A118B). Further, the ABA also has policy on School Violence Prevention Education (04M109).

5. If this is a late report, what urgency exists which requires action at this meeting of the House? NA

6. Status of Legislation. (If applicable)
   H. R. 4926 - Introduced 10/30/2019
   H. R. 4691 - Referred to the House Committee on Energy and Commerce 10/16/2019

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.
   If adopted this policy can be the basis of advocacy at the federal and state levels and possible amicus brief applications. It will also be incorporated into programs that the Standing Committee on Gun Violence offers.

8. Cost to the Association. (Both direct and indirect costs) None
9. **Disclosure of Interest.** (If applicable) none

10. **Referrals.**
    - Commission on Youth at Risk
    - Government & Public-Sector Lawyers Division
    - Health Law Section
    - Judicial Division
    - Section of Family Law
    - Section of Litigation
    - Section of State and Local Government Law
    - Standing Committee on Pro Bono and Public Service
    - Tort Trial & Insurance Practice Section
    - Young Lawyers Division

11. **Contact Name and Address Information.** (Prior to the meeting. Please include name, address, telephone number and e-mail address)
    - Joshu Harris, Chair
    - Philadelphia, PA 19125-3901
    - (646) 621-4164

12. **Contact Name and Address Information.** (Who will present the report to the House? Please include name, address, telephone number, cell phone number and e-mail address.)
    - Monte E. Frank
    - Pullman & Comley
    - Bridgeport, CT 06604-7006
    - T: 203-330-2000
    - mfrank@pullcom.com
EXECUTIVE SUMMARY

1. Summary of the Resolution

Urges federal, state, local, territorial, and tribal governments to enact statues, rules and regulations that would: a) define the requirements of safe storage of a firearm; b) require firearm owners to meet those requirements; and c) promote safe storage education for firearm owners. Further urging the federal government to incentivize safe storage programs within the states.

2. Summary of the Issue that the Resolution Addresses

All too often, unauthorized users gain access to guns that are left unsecured in homes or in vehicles and use those guns to harm themselves or others.

3. Please Explain How the Proposed Policy Position Will Address the Issue

Urge legislation to create regulations to define safe storage requirements and require them to meet those requirements.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

None.