

AMENDED IN ASSEMBLY MARCH 21, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 231

Introduced by Assembly Members Ting and Gomez

February 5, 2013

An act ~~relating to public safety~~ amend Sections 25100 and 25110 of, and to repeal and add Section 25105 of, the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 231, as amended, Ting. ~~Public safety: gun violence. Firearms:~~ *Firearms: criminal storage.*

Existing law establishes the offenses of criminal storage of a firearm in the first degree when a child obtains access to a person's loaded firearm resulting in death or great bodily injury, as specified, and criminal storage of a firearm in the 2nd degree, where the child obtains access to the firearm resulting in injury other than great bodily injury or the firearm is carried off premises, as specified. Existing law provides several exceptions to these offenses, including, among others, when a child obtains the firearm as a result of illegal entry to the premises, when the firearm is locked with a locking device, or when a child obtains, or obtains and discharges, the firearm in a lawful act of self-defense or defense of another person. Existing law makes the first degree offense punishable as a felony or misdemeanor with specified penalties and makes the 2nd degree offense punishable as a misdemeanor with specified penalties.

This bill would recast those offenses to make it a crime for a person to keep a loaded firearm within any premises under his or her custody or control and a child obtains access to a person's loaded firearm, as

specified, and would not require that the firearm be carried off premises or result in any injury or death. The only exception to the offense would be when a child obtains, or obtains and discharges, the firearm in a lawful act of self-defense or defense of another person. The bill would make the offense punishable as a felony or a misdemeanor with specified penalties. The bill would make a person who owns a firearm strictly liable for each incidence of property damage, bodily injury, or death resulting from the use of his or her firearm. This bill would provide that strict liability does not apply if the owner of the firearm has reported his or her firearm to local law enforcement as lost or stolen. By expanding the definition of a crime and imposing additional duties as local prosecutors, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law provides that the Legislature finds and declares that it is the right of every person, regardless of race, color, creed, religion, national origin, gender, gender identity, gender expression, age, sexual orientation, or handicap, to be secure and protected from fear, intimidation, and physical harm caused by the activities of violent groups and individuals.~~

~~This bill would state the intent of the Legislature to enact legislation that would ensure that Californians are not at undue risk of gun violence.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 25100 of the Penal Code is amended to*
2 *read:*

3 25100. (a) ~~Except as provided in Section 25105, a~~A person
4 commits the crime of “criminal storage of a ~~firearm of the first~~
5 ~~degree~~” *firearm*” if all of the following conditions are satisfied:

6 (1) The person keeps any loaded firearm within any premises
7 that are under the person’s custody or control.

1 (2) ~~The~~ *Regardless of whether the person knows or reasonably*
2 *should know that a child is likely to gain access to the firearm*
3 *without the permission of the child's parent or legal guardian*
4 *guardian, a child does obtain access to the firearm without*
5 *permission of the child's parent or legal guardian.*

6 ~~(3) The child obtains access to the firearm and thereby causes~~
7 ~~death or great bodily injury to the child or any other person.~~

8 ~~(b) Except as provided in Section 25105, a person commits the~~
9 ~~crime of "criminal storage of a firearm of the second degree" if~~
10 ~~all of the following conditions are satisfied:~~

11 ~~(1) The person keeps any loaded firearm within any premises~~
12 ~~that are under the person's custody or control.~~

13 ~~(2) The person knows or reasonably should know that a child~~
14 ~~is likely to gain access to the firearm without the permission of~~
15 ~~the child's parent or legal guardian.~~

16 ~~(3) The child obtains access to the firearm and thereby causes~~
17 ~~injury, other than great bodily injury, to the child or any other~~
18 ~~person, or carries the firearm either to a public place or in violation~~
19 ~~of Section 417.~~

20 ~~(b) This section does not apply when the child obtains, or obtains~~
21 ~~and discharges, the firearm in a lawful act of self-defense or~~
22 ~~defense of another person.~~

23 ~~SEC. 2. Section 25105 of the Penal Code is repealed.~~

24 ~~25105. Section 25100 does not apply whenever any of the~~
25 ~~following occurs:~~

26 ~~(a) The child obtains the firearm as a result of an illegal entry~~
27 ~~to any premises by any person.~~

28 ~~(b) The firearm is kept in a locked container or in a location~~
29 ~~that a reasonable person would believe to be secure.~~

30 ~~(c) The firearm is carried on the person or within close enough~~
31 ~~proximity thereto that the individual can readily retrieve and use~~
32 ~~the firearm as if carried on the person.~~

33 ~~(d) The firearm is locked with a locking device, as defined in~~
34 ~~Section 16860, which has rendered the firearm inoperable.~~

35 ~~(e) The person is a peace officer or a member of the Armed~~
36 ~~Forces or the National Guard and the child obtains the firearm~~
37 ~~during, or incidental to, the performance of the person's duties.~~

38 ~~(f) The child obtains, or obtains and discharges, the firearm in~~
39 ~~a lawful act of self-defense or defense of another person.~~

1 ~~(g) The person who keeps a loaded firearm on premises that are~~
2 ~~under the person’s custody or control has no reasonable~~
3 ~~expectation, based on objective facts and circumstances, that a~~
4 ~~child is likely to be present on the premises.~~

5 *SEC. 3. Section 25105 is added to the Penal Code, to read:*
6 *25105. (a) A person who owns a firearm shall be strictly liable*
7 *for each incidence of property damage, bodily injury, or death*
8 *resulting from the use of his or her firearm.*

9 *(b) This section does not apply if the owner of the firearm*
10 *reports the firearm to local law enforcement as lost or stolen.*

11 *SEC. 4. Section 25110 of the Penal Code is amended to read:*

12 *25110. ~~(a) Criminal storage of a firearm in the first degree is~~*
13 *punishable by imprisonment pursuant to subdivision (h) of Section*
14 *1170 for 16 months, or two or three years, by a fine not exceeding*
15 *ten thousand dollars (\$10,000), or by both that imprisonment and*
16 *fine; or by imprisonment in a county jail not exceeding one year,*
17 *by a fine not exceeding one thousand dollars (\$1,000), or by both*
18 *that imprisonment and fine.*

19 *~~(b) Criminal storage of a firearm in the second degree is~~*
20 *~~punishable by imprisonment in a county jail not exceeding one~~*
21 *~~year, by a fine not exceeding one thousand dollars (\$1,000), or by~~*
22 *~~both that imprisonment and fine.~~*

23 *SEC. 5. No reimbursement is required by this act pursuant to*
24 *Section 6 of Article XIII B of the California Constitution because*
25 *the only costs that may be incurred by a local agency or school*
26 *district will be incurred because this act creates a new crime or*
27 *infraction, eliminates a crime or infraction, or changes the penalty*
28 *for a crime or infraction, within the meaning of Section 17556 of*
29 *the Government Code, or changes the definition of a crime within*
30 *the meaning of Section 6 of Article XIII B of the California*
31 *Constitution.*

32 ~~SECTION 1. It is the intent of the Legislature to enact~~
33 ~~legislation that would ensure that Californians are not at undue~~
34 ~~risk of gun violence.~~