

California Penal Code

12035. (a) As used in this section, the following definitions apply:

- (1) "Locking device" means a device that is designed to prevent the firearm from functioning and when applied to the firearm, renders the firearm inoperable.
- (2) "Loaded firearm" has the same meaning as set forth in subdivision (g) of Section 12031.
- (3) "Child" means a person under 18 years of age.
- (4) "Great bodily injury" has the same meaning as set forth in Section 12022.7.
- (5) "Locked container" has the same meaning as set forth in subdivision (d) of Section 12026.2.

(b) (1) Except as provided in subdivision (c), a person commits the crime of "criminal storage of a firearm of the first degree" if he or she keeps any loaded firearm within any premises that are under his or her custody or control and he or she 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 legal guardian and the child obtains access to the firearm and thereby causes death or great bodily injury to himself, herself, or any other person.

(2) Except as provided in subdivision (c), a person commits the crime of "criminal storage of a firearm of the second degree" if he or she keeps any loaded firearm within any premises that are under his or her custody or control and he or she 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 legal guardian and the child obtains access to the firearm and thereby causes injury, other than great bodily injury, to himself, herself, or any other person, or carries the firearm either to a public place or in violation of Section 417.

(c) Subdivision (b) shall not apply whenever any of the following occurs:

- (1) The child obtains the firearm as a result of an illegal entry to any premises by any person.
- (2) The firearm is kept in a locked container or in a location that a reasonable person would believe to be secure.
- (3) The firearm is carried on the person or within such a close proximity thereto that the individual can readily retrieve and use the firearm as if carried on the person.
- (4) The firearm is locked with a locking device that has rendered the firearm inoperable.
- (5) The person is a peace officer or a member of the armed forces or National Guard and the child obtains the firearm during, or incidental to, the performance of the person's duties.
- (6) The child obtains, or obtains and discharges, the firearm in a lawful act of self-defense or defense of another person, or persons.

(7) The person who keeps a loaded firearm on any premise that is under his or her custody or control has no reasonable expectation, based on objective facts and circumstances, that a child is likely to be present on the premises.

(d) Criminal storage of a firearm is punishable as follows:

- (1) Criminal storage of a firearm in the first degree, by imprisonment in the state prison for 16 months, or two or three years, by a fine not exceeding ten thousand dollars (\$10,000), or by both that imprisonment and fine; or by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars (\$1,000), or by both that fine and imprisonment.
- (2) Criminal storage of a firearm in the second degree, by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

(e) If the person who allegedly violated this section is the parent or guardian of a child who is injured or who dies as the result of an accidental shooting, the district attorney shall consider, among other factors, the impact of the injury or death on the person alleged to have violated this section when deciding whether to prosecute an alleged violation. It is the Legislature's intent that a parent or guardian of a child who is injured or who dies as the result of an accidental shooting shall be prosecuted only in those instances in which the parent or guardian behaved in a grossly negligent manner or where similarly egregious circumstances exist. This subdivision shall not otherwise restrict, in any manner, the factors that a district attorney may consider when deciding whether to prosecute alleged violations of this section.

(f) If the person who allegedly violated this section is the parent or guardian of a child who is injured or who dies as the result of an accidental shooting, no arrest of the person for the alleged violation of this section shall occur until at least seven days after the date upon which the accidental shooting occurred. In addition to the limitation contained in this subdivision, a law enforcement officer shall consider the health status of a child who suffers great bodily injury as the result of an accidental shooting prior to arresting a person for a violation of this section, if the person to be arrested is the parent or guardian of the injured child. The intent of this subdivision is to encourage law enforcement officials to delay the arrest of a parent or guardian of a seriously injured child while the child remains on life-support equipment or is in a similarly critical medical condition.

(g) (1) The fact that the person who allegedly violated this section attended a firearm safety training course prior to the purchase of the firearm that is obtained by a child in violation of this section shall be considered a mitigating factor by a district attorney when he or she is deciding whether to prosecute the alleged violation.

(2) In any action or trial commenced under this section, the fact that the person who allegedly violated this section attended a firearm safety training course prior to the purchase of the firearm that is obtained by a child in violation of this section, shall be admissible.

(h) Every person licensed under Section 12071 shall post within the licensed premises the notice required by paragraph (7) of subdivision (b) of that section, disclosing the duty imposed by this section upon any person who keeps a loaded firearm.

12036. (a) As used in this section, the following definitions shall apply:

(1) "Locking device" means a device that is designed to prevent the firearm from functioning and when applied to the firearm, renders the firearm inoperable.

(2) "Child" means a person under the age of 18 years.

(3) "Off-premises" means premises other than the premises where the firearm was stored.

(4) "Locked container" has the same meaning as set forth in subdivision (d) of Section 12026.2.

(b) A person who keeps a pistol, revolver, or other firearm capable of being concealed upon the person, loaded or unloaded, within any premises that are under his or her custody or control and he or she knows or reasonably should know that a child is likely to gain access to that firearm without the permission of the child's parent or legal guardian and the child obtains access to that firearm and thereafter carries that firearm off-premises, shall be punished by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

(c) A person who keeps any firearm within any premises that is under his or her custody or control and he or she 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 legal guardian and the child obtains access to the firearm and thereafter carries that firearm off-premises to any public or private preschool, elementary school, middle school, high school, or to any school-sponsored event, activity, or performance whether occurring on school grounds or elsewhere, shall be punished by imprisonment in a county jail not exceeding one year, by a fine not exceeding five thousand dollars (\$5,000), or by both that imprisonment and fine.

(d) A pistol, revolver, or other firearm capable of being concealed upon the person that a child gains access to and carries off-premises in violation of this section shall be deemed "used in the commission of any misdemeanor as provided in this **code** or any felony" for the purpose of subdivision (b) of Section 12028 regarding the authority to confiscate firearms and other deadly weapons as a nuisance.

(e) This section shall not apply if any one of the following circumstances exists:

(1) The child obtains the pistol, revolver, or other firearm capable of being concealed upon the person as a result of an illegal entry into any premises by any person.

(2) The pistol, revolver, or other firearm capable of being concealed upon the person is kept in a locked container or in a location that a reasonable person would believe to be secure.

(3) The pistol, revolver, or other firearm capable of being concealed upon the person is locked with a locking device that has rendered the firearm inoperable.

(4) The pistol, revolver, or other firearm capable of being concealed upon a person is carried on the person within such a close range that the individual can readily retrieve and use the firearm as if carried on the person.

(5) The person is a peace officer or a member of the Armed Forces or National Guard and the child obtains the pistol, revolver, or other firearm capable of being concealed upon the person during, or incidental to, the performance of the person's duties.

(6) The child obtains, or obtains and discharges, the pistol, revolver, or other firearm capable of being concealed upon the person in a lawful act of self-defense or defense of another person or persons.

(7) The person who keeps a pistol, revolver, or other firearm capable of being concealed upon the person has no reasonable expectation, based on objective facts and circumstances, that a child is likely to be present on the premises.

(f) If the person who allegedly violated this section is the parent or guardian of a child who is injured or who dies as the result of an accidental shooting, the district attorney shall consider, among other factors, the impact of the injury or death on the person alleged to have violated this section when deciding whether to prosecute the alleged violation. It is the Legislature's intent that a parent or guardian of a child who is injured or who dies as the result of an accidental shooting shall be prosecuted only in those instances in which the parent or guardian behaved in a grossly negligent manner or where similarly egregious circumstances exist. This subdivision shall not otherwise restrict, in any manner, the factors that a district attorney may consider when deciding whether to prosecute alleged violations of this section.

(g) If the person who allegedly violated this section is the parent or guardian of a child who is injured or who dies as the result of an accidental shooting, no arrest of the person for the alleged violation of this section shall occur until at least seven days after the date upon which the accidental shooting occurred. In addition to the limitation contained in this subdivision, a law enforcement officer shall consider the health status of a child who suffers great bodily injury as the result of an accidental shooting prior to arresting a person for a violation of this section, if the person to be arrested is the parent or guardian of the injured child. The intent of this subdivision is to encourage law enforcement officials to delay the arrest of a parent or guardian

of a seriously injured child while the child remains on life-support equipment or is in a similarly critical medical condition.

(h) (1) The fact that the person who allegedly violated this section attended a firearm safety training course prior to the purchase of the firearm that is obtained by a child in violation of this section shall be considered a mitigating factor by a district attorney when he or she is deciding whether to prosecute the alleged violation.

(2) In any action or trial commenced under this section, the fact that the person who allegedly violated this section attended a firearm safety training course prior to the purchase of the firearm that is obtained by a child in violation of this section, shall be admissible.

(i) Every person licensed under Section 12071 shall post within the licensed premises the notice required by paragraph (7) of subdivision (b) of that section, disclosing the duty imposed by this section upon any person who keeps any firearm

Note:

To reference any of the other law sections mentioned in the two statutes above, you may find them online at <http://www.leginfo.ca.gov/calaw.html>