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OFFICE OF THE CITY CLERK  
OAKLAND

# CITY OF OAKLAND

## BILL ANALYSIS



13 JUL 18 PM 3:57  
Date Filed July 18, 2013

Bill Number: AB 231

Bill Author: Assemblymember Phil Ting

### DEPARTMENT INFORMATION

Contact: Oliver Luby  
Department: Office of Dan Kalb, Councilmember, District 1  
Telephone: 510-238-7013 Fax: 510-238-69130 email: oluby@oaklandnet.com

RECOMMENDED POSITION: Support

**Summary of the Bill:** The purpose of this bill is to provide that if a person keeps any loaded firearm within any premises that are under the person's custody or control and negligently stores or leaves a loaded firearm in a location where the person knows, or reasonably should know, that a child is likely to gain access to the firearm, that person would be guilty of the crime of criminal storage of a firearm in the third degree, a misdemeanor, unless reasonable action is taken by the person to secure the firearm against access by the child.

**Positive Factors for Oakland:** The unintentional firearm injury and death rate among children, ages 14 and under, in the United States is nine times higher than in 25 other industrialized countries combined.<sup>1</sup> In 2009, of all the deaths of young people age 15-19, one in four were firearm-related. The presence of unlocked guns in the home increases the risk of both accidental gun injuries and intentional shootings. Most unintentional firearm-related deaths among children occur in or around the home; 50 percent at the home of the victim, and 40 percent at the home of a friend or relative. A recent study found that more than 75 percent of the guns used in youth suicide attempts and unintentional injuries were stored in the residence of the victim, a relative, or a friend.<sup>2</sup> In one-third of gun-owning households, nearly half stored guns in unlocked places (49-53%). More than 1/5 of all guns kept in homes (21-22%) were kept both loaded and unlocked.<sup>3</sup> One third of all households with children younger than eighteen have a gun and more than 40 percent of gun-owning households with children store their guns unlocked.<sup>4</sup>

Child Access Prevention (CAP) laws prevent firearm injuries caused by children by limiting their access to firearms. While California has two CAP laws in code, they both address what can happen after a child gains access to a loaded firearm and either:

- 1) Uses it to cause injury, death or destruction; or

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2) Takes the firearm to a public space, such as a school.

This is in sharp contrast to Texas, New Jersey, Minnesota, Massachusetts, Maryland and Hawaii, which each have some form of criminal liability for merely allowing a child to gain access to a firearm. AB 231 strengthens California's existing CAP laws and sets an important standard on safe firearm storage practices around children.

**Negative Factors for Oakland: None**

**PLEASE RATE THE EFFECT OF THIS MEASURE ON THE CITY OF OAKLAND:**

- Critical** (top priority for City lobbyist, city position required ASAP)  
 **Very Important** (priority for City lobbyist, city position necessary)  
 **Somewhat Important** (City position desirable if time and resources are available)  
 **Minimal or**  **None** (do not review with City Council, position not required)

**Known support:**

Brady Campaign to Prevent Gun Violence, California Chapters  
San Francisco District Attorney  
American Academy of Pediatrics  
Law Center to Prevent Gun Violence

**Known Opposition:**

California Association of Federal Firearms Licensees  
California Attorneys for Criminal Justice  
California Rifle and Pistol Association, Inc.  
California Right to Carry  
California Sportsman's Lobby  
California Waterfowl Association  
Gun Owners of California Incorporated  
National Rifle Association of America  
Outdoor Sportsman Coalition of California  
Safari Club International

**Attached: bill text.**

Respectfully Submitted,



Councilmember Dan Kalb

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<sup>1</sup> Preventing School Violence, US National Library of Medicine National Institutes of Health.

<sup>2</sup> David C. Grossman, Donald T. Reay & Stephanie A. Baker,  
Self-inflicted and Unintentional Firearm Injuries Among Children  
and Adolescents: The Source of the Firearm, 153 Arch. Pediatr.  
Adolesc. Med. 875, 875 (Aug. 1999).

<sup>3</sup> Via the Brady Campaign website - Johnson, Renee, Tamera  
Coyne-Beasley, and Carol W. Runyan., "Firearm Ownership and  
Storage Practices, U.S. Households, 1992-2002: A Systematic  
Review," American Journal of Preventive Medicine, 27(2) (2004):  
173-182.

<sup>4</sup> Schuster M.A. et al. Firearm Storage Patterns in U.S. Homes  
With Children. American Journal of Public Health  
2000;90(4):588-594, p. 590.

AMENDED IN ASSEMBLY MAY 6, 2013  
AMENDED IN ASSEMBLY APRIL 18, 2013  
AMENDED IN ASSEMBLY APRIL 11, 2013  
AMENDED IN ASSEMBLY MARCH 21, 2013  
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 231**

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Introduced by Assembly Members Ting and Gomez

February 5, 2013

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An act to amend Section 1714.1 of, and to repeal Section 1714.3 of, the Civil Code, and to amend Sections 25100 and 25110 of the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 231, as amended, Ting. Firearms: eriminal storage.

~~Existing law establishes civil liability for any injury to the person or property of another proximately caused by the discharge of a firearm by a minor under 18 years of age and imputes that liability to a parent or guardian having custody and control of the minor for all purposes of civil damages. Existing law provides that the parent or guardian is jointly and severally liable with the minor for any damages resulting from that act, if the parent or guardian either permitted the minor to have the firearm or left the firearm in a place accessible to the minor. Existing law provides that the liability imposed is in addition to any liability otherwise imposed by law and that no person, or group of persons collectively, shall incur liability under those provisions in any amount exceeding \$30,000 for injury to or death of one person as a result of any one occurrence or, subject to the limit as to one person,~~

~~exceeding \$60,000 for injury to or death of all persons as a result of any one occurrence. Existing law authorizes imputing liability to a parent or guardian for specified conduct of a minor, as specified, and provides that an insurer shall not be liable for certain conduct by a minor imputed to a parent or guardian for any amount in excess of \$10,000.~~

~~This bill would revise and recast these provisions to remove the dollar limitations in those liability provisions as to the parent or guardian, if the parent or guardian either permitted the minor to have the firearm or left the firearm in a place accessible to the minor. The bill would provide that the \$10,000 limitation as to the insurer for liability arising out of the discharge of a firearm by a minor also apply under those circumstances. The bill would make additional technical, nonsubstantive changes.~~

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 establish the offense of criminal storage of a firearm in the 3rd degree when a person keeps a loaded firearm within any premises under his or her custody or control and negligently stores or leaves a loaded firearm in a location where the person knows, or reasonably should know, that a child is likely to gain access to the firearm, unless reasonable action is taken by the person to secure the firearm against access by the child. The bill would make the offense punishable as a misdemeanor. ~~The bill would also provide that "child" for all degrees of criminal storage of a firearm means an individual who is 14 years of age or younger.~~ By creating a new crime, 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.

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

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

1 SECTION 1.—Section 1714.1 of the Civil Code is amended to  
2 read:

3 ~~1714.1.—(a) Any act of willful misconduct of a minor that~~  
4 ~~results in injury or death to another person or in any injury to the~~  
5 ~~property of another shall be imputed to the parent or guardian~~  
6 ~~having custody and control of the minor for all purposes of civil~~  
7 ~~damages, and the parent or guardian having custody and control~~  
8 ~~shall be jointly and severally liable with the minor for any damages~~  
9 ~~resulting from the willful misconduct.~~

10 Subject to the provisions of subdivision (c), the joint and several  
11 liability of the parent or guardian having custody and control of a  
12 minor under this subdivision shall not exceed twenty-five thousand  
13 dollars (\$25,000) for each tort of the minor, and in the case of  
14 injury to a person, imputed liability shall be further limited to  
15 medical, dental and hospital expenses incurred by the injured  
16 person, not to exceed twenty-five thousand dollars (\$25,000). The  
17 liability imposed by this section is in addition to any liability now  
18 imposed by law.

19 ~~(b) Any act of willful misconduct of a minor that results in the~~  
20 ~~defacement of property of another with paint or a similar substance~~  
21 ~~shall be imputed to the parent or guardian having custody and~~  
22 ~~control of the minor for all purposes of civil damages, including~~  
23 ~~court costs, and attorney's fees, to the prevailing party, and the~~  
24 ~~parent or guardian having custody and control shall be jointly and~~  
25 ~~severally liable with the minor for any damages resulting from the~~  
26 ~~willful misconduct, not to exceed twenty-five thousand dollars~~  
27 ~~(\$25,000), except as provided in subdivision (c), for each tort of~~  
28 ~~the minor.~~

29 ~~(c) The amounts listed in subdivisions (a) and (b) shall be~~  
30 ~~adjusted every two years by the Judicial Council to reflect any~~

1 increases in the cost of living in California, as indicated by the  
2 annual average of the California Consumer Price Index. The  
3 Judicial Council shall round this adjusted amount up or down to  
4 the nearest hundred dollars. On or before July 1 of each  
5 odd-numbered year, the Judicial Council shall compute and publish  
6 the amounts listed in subdivisions (a) and (b), as adjusted according  
7 to this subdivision.

8 ~~(d) Civil liability for any injury to the person or property of~~  
9 ~~another proximately caused by the discharge of a firearm by a~~  
10 ~~minor under 18 years of age shall be imputed to a parent or~~  
11 ~~guardian having custody and control of the minor for all purposes~~  
12 ~~of civil damages, and that parent or guardian shall be jointly and~~  
13 ~~severally liable with the minor for any damages resulting from the~~  
14 ~~act, if the parent or guardian either permitted the minor to have~~  
15 ~~the firearm or left the firearm in a place accessible to the minor.~~  
16 ~~The liability imposed by this section is in addition to any liability~~  
17 ~~otherwise imposed by law.~~

18 ~~(e) The maximum liability imposed by this section is the~~  
19 ~~maximum liability authorized under this section at the time that~~  
20 ~~the act of willful misconduct by a minor was committed.~~

21 ~~(f) Nothing in this section shall impose liability on an insurer~~  
22 ~~for a loss caused by the willful act of the insured for purposes of~~  
23 ~~Section 533 of the Insurance Code. An insurer shall not be liable~~  
24 ~~for the conduct imputed to a parent or guardian by this section for~~  
25 ~~any amount in excess of ten thousand dollars (\$10,000).~~

26 ~~SEC. 2.—Section 1714.3 of the Civil Code is repealed.~~

27 ~~SEC. 3.~~

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

30 25100. (a) Except as provided in Section 25105, a person  
31 commits the crime of “criminal storage of a firearm in the first  
32 degree” if all of the following conditions are satisfied:

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

35 (2) The person knows or reasonably should know that a child  
36 is likely to gain access to the firearm without the permission of  
37 the child’s parent or legal guardian.

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

1 (b) Except as provided in Section 25105, a person commits the  
2 crime of “criminal storage of a firearm in the second degree” if all  
3 of the following conditions are satisfied:

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

6 (2) The person knows or reasonably should know that a child  
7 is likely to gain access to the firearm without the permission of  
8 the child’s parent or legal guardian.

9 (3) The child obtains access to the firearm and thereby causes  
10 injury, other than great bodily injury, to the child or any other  
11 person, or carries the firearm either to a public place or in violation  
12 of Section 417.

13 (c) Except as provided in Section 25105, a person commits the  
14 crime of “criminal storage of a firearm in the third degree” if the  
15 person keeps any loaded firearm within any premises that are under  
16 the person’s custody or control and negligently stores or leaves a  
17 loaded firearm in a location where the person knows, or reasonably  
18 should know, that a child is likely to gain access to the firearm,  
19 unless reasonable action is taken by the person to secure the firearm  
20 against access by the child.

21 ~~(d) For purposes of this chapter, “child” means an individual~~  
22 ~~who is 14 years of age or younger.~~

23 ~~SEC. 4:~~

24 *SEC. 2.* Section 25110 of the Penal Code is amended to read:

25 25110. (a) Criminal storage of a firearm in the first degree is  
26 punishable by imprisonment pursuant to subdivision (h) of Section  
27 1170 for 16 months, or two or three years, by a fine not exceeding  
28 ten thousand dollars (\$10,000), or by both that imprisonment and  
29 fine; or by imprisonment in a county jail not exceeding one year,  
30 by a fine not exceeding one thousand dollars (\$1,000), or by both  
31 that imprisonment and fine.

32 (b) Criminal storage of a firearm in the second degree is  
33 punishable by imprisonment in a county jail not exceeding one  
34 year, by a fine not exceeding one thousand dollars (\$1,000), or by  
35 both that imprisonment and fine.

36 (c) Criminal storage of a firearm in the third degree is punishable  
37 as a misdemeanor.

38 ~~SEC. 5:~~

39 *SEC. 3.* No reimbursement is required by this act pursuant to  
40 Section 6 of Article XIII B of the California Constitution because



1 the only costs that may be incurred by a local agency or school  
2 district will be incurred because this act creates a new crime or  
3 infraction, eliminates a crime or infraction, or changes the penalty  
4 for a crime or infraction, within the meaning of Section 17556 of  
5 the Government Code, or changes the definition of a crime within  
6 the meaning of Section 6 of Article XIII B of the California  
7 Constitution.

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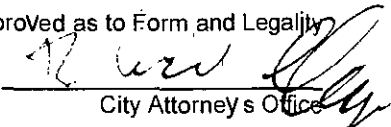
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OAKLAND

2013 JUL 18 PM 5:06

# OAKLAND CITY COUNCIL

Resolution No. \_\_\_\_\_ C.M.S.

Approved as to Form and Legality

  
City Attorney's Office

INTRODUCED BY COUNCILMEMBER DAN KALB

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**RESOLUTION IN SUPPORT OF ASSEMBLY BILL (AB) 231 (TING) –  
STATE LEGISLATION THAT WOULD ESTABLISH CRIMINAL PENALTY  
FOR FAILURE TO SECURELY STORE LOADED FIREARM IN LOCATION  
WHERE CHILD COULD GAIN ACCESS**

**WHEREAS**, the presence of unlocked guns in the home increases the risk of both accidental gun injuries and intentional shootings; and

**WHEREAS**, guns used in youth suicide attempts and unintentional injuries often originate from the residence of the victim, a relative, or a friend; and

**WHEREAS**, Child Access Prevention (CAP) laws help prevent firearm injuries caused by children by limiting their access to firearms; and

**WHEREAS**, California's current CAP laws apply only if a child gains access to a gun and either uses it to cause harm or brings it to a public space, in marked contrast to stricter laws in several states; and

**WHEREAS**, AB 231 strengthens California's existing CAP laws and sets an important standard on safe firearm storage practices around children; and

**WHEREAS**, injuries and deaths due to guns are atrociously high in Oakland; now, therefore be it

**RESOLVED:** That the Oakland City Council endorses AB 231, authored by Assemblymember Phil Ting; and be it

**FURTHER RESOLVED:** That a copy of this Resolution be provided to the Governor, Assembly Speaker John Pérez, Senate President pro Tem Darrell Steinberg, State Senator Loni Hancock, Assemblymember Rob Bonta, Assemblymember Nancy Skinner, and Assemblymember Phil Ting.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF, AND PRESIDENT KERNIGHAN

NOES -

ABSENT -

ABSTENTION -

ATTEST:

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LATONDA SIMMONS  
City Clerk and Clerk of the Council of the  
City of Oakland, California