



LAW1199.COM NEWSLETTER™

2024 ★ ISSUE #12

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SECURING FIREARMS IN VEHICLES & HOMES

By: Richard Pinckard

It is common for the law enforcement community to band together in support of new laws which get tough on criminals. Far less frequent, however, are new criminal laws which specifically target members of the law enforcement community. Such is the case with the recent addition of Sections 25140, 25452 and 25612 to the California Penal Code.

Penal Code § 25452 states:

A peace officer and an honorably retired peace officer shall, when leaving a Handgun in an unattended vehicle, secure the handgun in the vehicle pursuant to Section 25140.

As a result of this law, any peace officers (on or off duty) and any retired officers who may ever have a reason to leave a handgun in their unattended vehicle should obtain a locking storage container which can be attached or secured to part of the vehicle. The only exception for on-duty law enforcement officers would be circumstances requiring immediate aid or action within the course of their duties. Placing a handgun in the back of a duty SUV without first placing the gun in a locked container would violate this law, even for an on-duty officer. However, locking a duty handgun in the trunk (without being in a locked container) would constitute compliance with the law for on-duty officers who drive sedans, as well as off-duty and retired officers.

At the present time, violation of this law is considered an infraction, punishable with a fine of up to \$1,000.00. In the worst-case scenario, an officer could learn that his/her stolen firearm had been used to take an innocent victim's life - a tragic loss which could easily have been prevented.

In addition to the law regarding the safe storage of firearms *in vehicles*, officers should understand that the unsafe storage of a firearm in their private residence can also expose them to criminal prosecution under the provisions of Penal Code section 25100. The focus of this penal Code provision is keeping firearms out of the hands of children. Violations of this section are separated into three degrees. The most serious (first degree) is a felony, punishable by imprisonment for up to three years, and a \$10,000 fine. The least serious (third degree) is a misdemeanor, punishable by up to twelve months in county jail and a \$1,000 fine. The mid-range (second degree) is a wobbler and punishable as either a misdemeanor or a felony. The degree of

the offense will be determined by the actual harm flowing from your unsafe storage of the firearm.

Putting your gun on top of the refrigerator or in the cupboard behind the marshmallows, or in the nightstand drawer is no longer acceptable if you have kids or grandkids, or any of their friends in your home. You will be in violation of Penal Code section 25100 if you keep a firearm within any premises under your control, and you know 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 (including yourself if it is your child), or that a person prohibited from possessing a firearm or deadly weapon pursuant to state or federal law is likely to gain access to the firearm. If the child accesses your firearm and causes death or serious injury to themselves or another, you can be prosecuted for the felony.

If the child accesses your firearm and causes minor injury, or simply carries it to a public place, or commits a 417 with the firearm, the wobbler penalties apply. Even if the child *never* accesses the firearm, but *could have*, the misdemeanor penalties apply. There is no distinction between handguns and long guns; and, there is no exemption for peace officers.

Keep in mind, even if a city or county prosecutor declines to file a criminal complaint against you for a violation of Penal Code section 25100, your agency can (and likely will) initiate an administrative investigation and administrative discipline for failing to conform to the laws of the State of California.

Gun safes can be expensive; however, spending less than 100 dollars for a DOJ approved lockbox, and/or trigger lock, and/or cable may be a very wise investment, and a small price to pay to avert a potential catastrophe.



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