

## Memorandum 2008-62

**Nonsubstantive Reorganization of Deadly Weapon Statutes  
(Staff Draft Preliminary Part)**

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This memorandum presents a staff draft of the “preliminary part” of the tentative recommendation on the nonsubstantive reorganization of deadly weapon statutes.

The draft is a work in progress. As further work is completed on the proposed law, conforming changes may need to be made to the preliminary part.

As drafted, the preliminary part will have two appendices. Appendix A is included here. Appendix B is not included, because it will be the same as the list of clean-up issues attached to Memorandum 2008-61, with some minor formatting changes.

The staff invites suggestions on how the staff draft might be improved.

Respectfully submitted,

Brian Hebert  
Executive Secretary

# CALIFORNIA LAW REVISION COMMISSION

STAFF DRAFT

TENTATIVE RECOMMENDATION

## Nonsubstantive Reorganization of Deadly Weapon Statutes

December 2008

The purpose of this tentative recommendation is to solicit public comment on the Commission's tentative conclusions. A comment submitted to the Commission will be part of the public record. The Commission will consider the comment at a public meeting when the Commission determines what, if any, recommendation it will make to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made to it.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN \_\_\_\_\_.

The Commission will often substantially revise a proposal in response to comment it receives. Thus this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

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## SUMMARY OF TENTATIVE RECOMMENDATION

The Legislature has directed the Law Revision Commission to “study, report on, and prepare recommended legislation by July 1, 2009, concerning the revision of the portions of the Penal Code relating to the control of deadly weapons....” 2006 Cal. Stat. res. ch. 128. The general purpose of the study is to improve the organization and accessibility of the deadly weapons statutes, without making any change to criminal liability under those statutes.

This tentative recommendation was prepared pursuant to that direction. In drafting the proposed law, the Commission took extreme care to ensure that it would not cause any substantive change in the law.

The Law Revision Commission invites public review and comment. In particular, the Commission invites comment on whether any provision of the proposed law would cause any substantive change in the law.

## NONSUBSTANTIVE REORGANIZATION OF DEADLY WEAPON STATUTES

1 In 2006, the Legislature enacted Assembly Concurrent Resolution 73  
2 (McCarthy) (hereafter “ACR 73”), which directed the Law Revision Commission  
3 to “study, report on, and prepare recommended legislation by July 1, 2009,  
4 concerning the revision of the portions of the Penal Code relating to the control of  
5 deadly weapons ....” The resolution states:

6 WHEREAS, Title 2 (commencing with Section 12000) of Part 4 of the Penal  
7 Code, relating to the control of deadly weapons, is lengthy and complex, and  
8 could be simplified; and

9 WHEREAS, It is the intent of the Legislature that the firearms laws be  
10 simplified and reorganized; now, therefore, be it

11 *Resolved by the Assembly of the State of California, the Senate thereof*  
12 *concurring*, That the Legislature authorizes and requests that the California Law  
13 Revision Commission study, report on, and prepare recommended legislation by  
14 July 1, 2009, concerning the revision of the portions of the Penal Code relating to  
15 the control of deadly weapons, and that this legislation shall accomplish the  
16 following objectives:

17 (a) Reduce the length and complexity of current sections.

18 (b) Avoid unnecessary use of cross-references.

19 (c) Neither expand nor contract the scope of criminal liability under current  
20 provisions. In the event that the commission’s draft changes the scope of criminal  
21 liability under the current provisions, this shall be made explicit in the  
22 commission’s draft or any commentary related to the draft.

23 (d) To the extent compatible with objective (c), use common definitions of  
24 terms.

25 (e) Organize existing provisions in such a way that similar provisions are  
26 located in close proximity to each other.

27 (f) Eliminate duplicative provisions; and be it further

28 *Resolved*, That nothing in this resolution shall be construed to prevent the  
29 Legislature, prior to receipt of the commission’s recommendations, from enacting  
30 any measure related to the Penal Code sections under review by the California  
31 Law Revision Commission; and be it further

32 *Resolved*, That the Chief Clerk of the Assembly transmit copies of this  
33 resolution to the California Law Revision Commission and to the author for  
34 appropriate distribution.<sup>1</sup>

35 The impetus for this study appears to have been a veto message by Governor  
36 Schwarzenegger, in which he stated:

37 Before a government exercises its power to take away one’s liberty, it should be  
38 clear to every person what actions will cause them to forfeit their freedom. Instead  
39 of adding to the lengthy and complex area of firearm laws, a reorganization of the

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1. ACR 73 (McCarthy); 2006 Cal. Stat. res. ch. 128 (emphasis in original).

1 current laws should be undertaken to ensure that statutes that impose criminal  
2 penalties are easily understandable.<sup>2</sup>

3 This tentative recommendation presents draft legislation consistent with the  
4 direction provided in ACR 73. The objectives of the proposed law and the  
5 methods used in preparing it are discussed more fully below. The Commission  
6 invites public review and comment on this tentative recommendation.

## 7 SCOPE OF STUDY

8 ACR 73 directs the Commission to study, report on, and prepare legislation  
9 “concerning the revision of the portions of the Penal Code relating to the control  
10 of deadly weapons ...” By itself, this directive seems clear, but reading it together  
11 with other portions of ACR 73 raises some issues regarding the intended scope of  
12 the Commission’s study. Those issues are discussed below.

### 13 **Type of Weapons**

14 An initial issue is whether the Commission’s study should focus exclusively on  
15 provisions relating to firearms, or should also encompass provisions relating to  
16 other types of deadly weapons.

17 The preamble to ACR 73 states that it “is the intent of the Legislature that the  
18 firearms laws be simplified and reorganized.” However, the preamble further  
19 states that “Title 2 (commencing with Section 12000) of Part 4 of the Penal Code,  
20 relating to the control of deadly weapons, is lengthy and complex, and could be  
21 simplified ...” These statements are arguably in conflict, but ACR 73 specifically  
22 directs the Commission to study, report on, and prepare legislation “concerning  
23 the revision of the portions of the Penal Code relating to the control of deadly  
24 weapons ....”

25 As introduced, ACR 73 referred only to “firearms.”<sup>3</sup> Significantly, the resolution  
26 was later revised to refer to “deadly weapons.”<sup>4</sup>

27 In light of the language of the resolution and its history, the Commission  
28 believes that the study should encompass all deadly weapons. That is the scope of  
29 the legislation proposed in this tentative recommendation.

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2. As introduced on June 13, 2005, ACR 73 cited the Governor’s statement as a basis for the resolution. The cited language is from the Governor’s veto message on SB 1140 (Scott) (2004), which would have made changes to provisions regulating the storage of firearms. See also Senate Committee on Judiciary Analysis of ACR 73 (August 24, 2006).

3. See ACR 73 (McCarthy) (as introduced on June 13, 2005).

4. *Id.* (as amended July 12, 2005).

1 **Relevant Code Sections**

2 A second issue is whether the Commission’s study should focus on a specific  
3 portion of the Penal Code, or instead encompass any Penal Code provision that  
4 relates to the “control of deadly weapons.”

5 The preamble to ACR 73 refers specifically to “Title 2 (commencing with  
6 Section 12000) of Part 4 of the Penal Code, relating to the control of deadly  
7 weapons ....” The resolution then directs the Commission to study “the portions of  
8 the Penal Code relating to the control of deadly weapons ....” It is unclear whether  
9 this directive refers back to Title 2, or is meant to include all provisions in the  
10 Penal Code relating to the control of deadly weapons, regardless of where they are  
11 located.

12 To determine the intent, the Commission examined the analyses and different  
13 versions of ACR 73, and discussed the matter with legislative staff. Although  
14 other interpretations are possible, the Commission concluded that this study  
15 should focus on Title 2 of Part 4 of the Penal Code.<sup>5</sup> The language of ACR 73 is  
16 broad enough to permit revision of other provisions relating to deadly weapons if  
17 needed, but the bulk of such provisions are in Title 2 and these appear to be the  
18 provisions that the Legislature considered in need of attention. That is the  
19 approach taken in the proposed law.<sup>6</sup>

20 **Sentence Enhancements**

21 There are some provisions in Title 2 of Part 4 of the Penal Code that do not  
22 relate directly to the control of deadly weapons. These provisions establish  
23 “sentence enhancements.”<sup>7</sup> A sentence enhancement is a provision that imposes an  
24 additional and consecutive term to the base term of punishment for a crime when  
25 specified conditions are met.

26 Many of the sentence enhancements in Title 2 of Part 4 of the Penal Code do not  
27 involve deadly weapons at all.<sup>8</sup> Others include the use or possession of a deadly

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5. Penal Code §§ 12000-12809. Unless otherwise indicated, all further statutory references are to the Penal Code.

6. There is one exception. Section 653k, which is located outside of Title 2, is included within the scope of the proposed law. Section 653k regulates the ownership, sale, and transfer of switchblade knives. It is currently located in a chapter on miscellaneous offenses, which contains a variety of unrelated provisions. ACR 73 directs the Commission to: “Organize existing provisions in such a way that similar provisions are located in close proximity to each other.” In accord with that direction, the proposed law would move the substance of Section 653k to the same location as other provisions regulating knives. See proposed Sections 16965, 17235, 21510 *infra*.

7. Sections 12022.6-12022.95.

8. See Sections 12022.1 (secondary offense), 12022.6 (taking or damaging property), 12022.7 (great bodily injury), 12022.75 (administration of controlled substance), 12022.8 (infliction of great bodily injury in committing sexual offense), 12022.85 (sexual offense by person with AIDS), 12022.9 (crime causing termination of pregnancy), 12022.95 (injury to child).

1 weapon as a condition for imposing a sentence enhancement, but do not relate to  
2 the ownership, transfer, sale, or storage of deadly weapons.<sup>9</sup>

3 The proposed law would leave these sentence enhancement provisions  
4 unchanged, in their current location in the Penal Code.<sup>10</sup> They would not be  
5 included within the reorganized body of statutes governing the control of deadly  
6 weapons.

7 There are two reasons for this approach. First, the sentence enhancement  
8 provisions do not primarily concern the control of deadly weapons. Second, it is  
9 preferable not to change the section numbers of provisions that are used in  
10 calculating criminal sentences. Judges and attorneys rely on a number of tools to  
11 assist in calculating sentences. Those tools would need to be updated if the section  
12 numbers of the sentence enhancement provisions were changed.

## 13 STUDY OBJECTIVES

### 14 **Improve Accessibility of the Law**

15 The primary purpose of this study is to simplify and improve the organization of  
16 the statutes governing control of deadly weapons, to make them more  
17 understandable and useable, without making any substantive changes to that law.  
18 The author of ACR 73, Assembly Member Kevin McCarthy, described the need  
19 for simplification of the law as follows:

20 These areas of the law are not for legal experts only. Firearms owners, licensed  
21 dealers, and law enforcement need to be able to interpret these provisions in order  
22 to comply with the law and avoid criminal liability. Ambiguity and confusion do  
23 not promote the public policy goals that those laws were designed to accomplish.

24 ...

25 Gun owners shouldn't have to consult an attorney specializing in firearms law  
26 just to find out what they need to do to avoid committing a crime. Law  
27 enforcement should have clear, bright line, easily understandable guidelines on  
28 how to enforce these laws. This resolution is offered in the hope that an  
29 independent, expert body of legal experts can offer up some helpful suggestions  
30 on ways that these laws can be clarified so that our citizens will be able to

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9. See Sections 12021.5 (street gang crimes), 12022 (possession or use of firearm or dangerous weapon), 12022.2 (armor piercing ammunition or body vest), 12022.3 (sexual offenses), 12022.4 (furnishing firearm used in crime), 12022.5(a) (personal use of firearm in commission of felony), 12022.53 (personal use or discharge of firearm), 12022.55 (discharge of firearm from vehicle causing great bodily injury).

A few provisions in Title 2 of Part 4 of the Penal Code provide sentence enhancements that are specific to crimes involving the control of deadly weapons. See Sections 12072(g)(4), 12280(a)(2) & (d). These provisions are closely tied to the substance of the sections in which they are located. They would therefore be moved to proposed Part 6, and kept in close proximity to the same substantive material as at present. See proposed Sections 27590, 30600, 30615 *infra*.

10. See proposed Sections 12001-12022.95 ("Title 2. Sentence Enhancements") *infra*.

1 determine, with relative ease, what the law requires and prohibits in the area of  
2 firearms regulation.<sup>11</sup>

3 In addition to the benefits described by Assembly Member McCarthy,  
4 improvement of the clarity and organization of the deadly weapon statutes would  
5 also facilitate the future development of the law, by making it easier for the  
6 Legislature to assess the state of existing law and thereby avoid redundancy or  
7 inconsistency in enacting new provisions.

#### 8 **Nonsubstantive Reform**

9 The proposed law would improve the organizational clarity of the deadly  
10 weapons statutes, as intended. However, there is an important limit on the extent  
11 to which the Commission can make that law clearer, simpler, or better organized.  
12 ACR 73 requires that any reform proposed by the Commission “[n]either expand  
13 nor contract the scope of criminal liability under current provisions.”

14 That limitation has been the controlling principle in the preparation of the  
15 proposed law. The Commission has exercised extreme care to ensure that the  
16 proposed law would not result in any substantive change in outcome under the  
17 affected statutes.

18 Specific measures taken by the Commission to avoid making any substantive  
19 change in the law are described below.

#### 20 ***Objective and Participatory Study Process***

21 The Commission’s study process is well-suited to the development of a  
22 nonsubstantive reform of the deadly weapon statutes, for the following reasons:

- 23 • The Commission is neutral and objective, with no special interest in the  
24 subject of deadly weapons. The Commission has no motivation to introduce  
25 substantive changes into the deadly weapon statutes.
- 26 • The Commission has prior experience in drafting legislation to recodify  
27 complex bodies of law without making any substantive change.<sup>12</sup>
- 28 • The Commission’s work is transparent. All materials are publicly  
29 distributed. All deliberations are conducted at open public meetings.
- 30 • The Commission actively solicits input from affected interest groups.  
31 Interim drafts of the proposed law are provided to those groups for review.  
32 Any objection that a change would have a substantive effect is carefully  
33 analyzed and addressed by the Commission. This tentative recommendation  
34 furthers that process.
- 35 • In proposing legislative reform, the Commission prepares a thorough  
36 explanatory report (similar to this tentative recommendation) that explains

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11. Senate Floor Analysis of ACR 73 (Aug. 26, 2006), pp. 4-5.

12. For example, the Commission recently recommended the nonsubstantive recodification of the civil discovery statutes, an important and sensitive body of law. See *Civil Discovery: Nonsubstantive Reform*, 33 Cal. L. Revision Comm’n Reports 789 (2003); enacted as 2004 Cal. Stat. ch. 182.

1 the purpose and effect of the proposed law, and sets out a complete draft of  
2 the proposed legislation, with a detailed table of contents and a table  
3 showing the disposition of every affected section. This report facilitates  
4 public review of the proposed law.

5 ***Commission Comments***

6 In preparing a recommendation, the Commission drafts an explanatory  
7 “Comment” for every section that is added, amended, or repealed.<sup>13</sup> A Comment  
8 indicates the derivation of a section and often explains its purpose, its relation to  
9 other law, and potential issues concerning its meaning or application.

10 The Comments in this recommendation state expressly, for each affected  
11 section, that the proposed law is not intended to make any change to the substance  
12 of the affected provision.

13 On completion of a final recommendation, the full recommendation, including  
14 the proposed legislation and the Comments, will be presented to the Legislature  
15 and the Governor. If legislation is introduced to effectuate the proposed law, the  
16 full recommendation will be provided to each member of every policy committee  
17 that reviews the legislation.

18 Commission materials that have been placed before and considered by the  
19 Legislature are considered evidence of legislative intent,<sup>14</sup> and are entitled to great  
20 weight in construing statutes.<sup>15</sup> The materials are a key interpretive aid for  
21 practitioners as well as courts,<sup>16</sup> and courts may judicially notice and rely on  
22 them.<sup>17</sup> Courts at all levels of the state<sup>18</sup> and federal<sup>19</sup> judicial systems use

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13. The Comments follow each section of the proposed legislation *infra*.

14. See, e.g., *Fair v. Bakhtiari*, 40 Cal. 4th 189, 195, 147 P.3d 653, 657, 51 Cal. Rptr. 3d 871, 875 (2006) (“The Commission’s official comments are deemed to express the Legislature’s intent.”); *People v. Williams*, 16 Cal. 3d 663, 667-68, 547 P.2d 1000, 128 Cal. Rptr. 888 (1976) (“The official comments of the California Law Revision Commission on the various sections of the Evidence Code are declarative of the intent not only of the draft[ers] of the code but also of the legislators who subsequently enacted it. [Citation]”).

15. See, e.g., *Dep’t of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.*, 40 Cal. 4th 1, 13 n.9, 145 P.3d 462, 469 n.9, 50 Cal. Rptr. 3d. 585, 593 n.9 (2006) (Commission’s official comments are persuasive evidence of Legislature’s intent); *Hale v. Southern Cal. IPA Med. Group, Inc.*, 86 Cal. App. 4th 919, 927, 103 Cal. Rptr. 2d 773, 778 (2001):

In an effort to discern legislative intent, an appellate court is entitled to take judicial notice of the various legislative materials, including committee reports, underlying the enactment of a statute. (*Kern v. County of Imperial* (1990) 226 Cal. App. 3d 391, 400, fn. 8 [276 Cal. Rptr. 524]; *Coopers & Lybrand v. Superior Court* (1989) 212 Cal. App. 3d 524, 535, fn. 7 [260 Cal. Rptr. 713].) In particular, reports and interpretive opinions of the Law Revision Commission are entitled to great weight. (*Schmidt v. Southern Cal. Rapid Transit Dist.* (1993) 14 Cal. App. 4th 23, 30, fn. 10 [17 Cal. Rptr. 2d 340].)

16. *Cf.* 7 B. Witkin, *Summary of California Law Constitutional Law* § 123, at 230 (10th ed. 2005) (Commission reports as aid to construction); Gaylord, *An Approach to Statutory Construction*, 5 Sw. U. L. Rev. 349, 384 (1973).

17. See, e.g., *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.*, 133 Cal. App. 4th 26, 34 Cal. Rptr. 3d 520 (2005) (providing overview of materials that may be judicially noticed in

1 Commission materials to construe statutes enacted on Commission  
2 recommendation.<sup>20</sup>

3 The Commission's Comments will make clear that the proposed law should be  
4 construed as an entirely nonsubstantive reorganization of the law.

5 *Statements of Legislative Intent*

6 The proposed law would be known as the Deadly Weapons Recodification Act  
7 of 2012.<sup>21</sup> It would include a number of codified provisions making clear that the  
8 proposed law would continue existing law without any substantive change. That  
9 general point would be stated in proposed Section 16005:

10 16005. Nothing in the Deadly Weapons Recodification Act of 2012 is intended  
11 to substantively change the law relating to deadly weapons. The act is intended to  
12 be entirely nonsubstantive in effect. Every provision of the act, including, without  
13 limitation, every cross-reference in every provision of the act, shall be interpreted  
14 consistent with the nonsubstantive intent of the act.

15 In addition, proposed Section 16010 would make clear that a provision of the  
16 proposed law is intended as a restatement and continuation of the provision that it  
17 restates, and that any reference to a restated provision is deemed to include a  
18 reference to the section that restates it (and vice versa):

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determining legislative intent); *Hale*, 86 Cal. App. 4th at 927, *supra* note 15; *Barkley v. City of Blue Lake*, 18 Cal. App. 4th 1745, 1751 n.3, 23 Cal. Rptr. 2d 315, 318-19 n.3 (1993).

18. See, e.g., *Sullivan v. Delta Air Lines, Inc.*, 15 Cal. 4th 288, 935 P.2d 781, 63 Cal. Rptr. 2d 74 (1997) (California Supreme Court); *Administrative Management Services, Inc. v. Fidelity & Deposit Co.*, 129 Cal. App. 3d 484, 181 Cal. Rptr. 141 (1982) (court of appeal); *Rossetto v. Barross*, 90 Cal. App. 4th Supp. 1, 110 Cal. Rptr. 2d 255 (2001) (appellate division of superior court).

19. See, e.g., *California v. Green*, 399 U.S. 149 (1970) (United States Supreme Court); *Southern Cal. Bank v. Zimmerman (In re Hilde)*, 120 F.3d 950 (9th Cir. 1997) (federal court of appeal); *Williams v. Townsend*, 283 F. Supp. 580 (C.D. Cal. 1968) (federal district court); *Ford Consumer Fin. Co. v. McDonell (In re McDonell)*, 204 B.R. 976 (B.A.P. 9th Cir. 1996) (bankruptcy appellate panel); *In re Garrido*, 43 B.R. 289 (Bankr. S.D. Cal. 1984) (bankruptcy court).

20. See, e.g., *Jevne v. Superior Court*, 35 Cal. 4th 935, 947, 11 P.3d 954, 962, 28 Cal. Rptr. 3d 685, 694-95 (2005) (Commission report entitled to substantial weight in construing statute); *Collection Bureau of San Jose v. Rumsey*, 24 Cal. 4th 301, 308 & n.6, 6 P.3d 713, 718 & n.6, 99 Cal. Rptr. 2d 792, 797 & n.6 (2000) (Comments to reenacted statute reiterate the clear understanding and intent of original enactment); *Brian W. v. Superior Court*, 20 Cal. 3d 618, 623, 574 P.2d 788, 791, 143 Cal. Rptr. 717, 720 (1978) (Comments persuasive evidence of Legislature's intent); *Volkswagen Pac., Inc. v. City of Los Angeles*, 7 Cal. 3d 48, 61-63, 496 P.2d 1237, 1247-48, 101 Cal. Rptr. 869, 879-80 (1972) (Comments evidence clear legislative intent of law); *Van Arsdale v. Hollinger*, 68 Cal. 2d 245, 249-50, 437 P.2d 508, 511, 66 Cal. Rptr. 20, 23 (1968) (Comments entitled to substantial weight); *County of Los Angeles v. Superior Court*, 62 Cal. 2d 839, 843-44, 402 P.2d 868, 870-71, 44 Cal. Rptr. 796, 798-99 (1965) (statutes reflect policy recommended by Commission).

21. See proposed Section 16000 *infra*. In selecting this title, the Commission assumed that because of its magnitude the proposed legislation would not be introduced until the first year of the 2011-2012 legislative session, and would not be enacted until the following year. The Commission solicits comments on this timing of bill introduction.

1           16010. (a) A provision of this part, insofar as it is substantially the same as a  
2 previously existing provision relating to the same subject matter, shall be  
3 considered as a restatement and continuation thereof and not as a new enactment.

4           (b) A reference in a statute to a previously existing provision that is restated and  
5 continued in this part shall, unless a contrary intent appears, be deemed a  
6 reference to the restatement and continuation.

7           (c) A reference in a statute to a provision of this part that is substantially the  
8 same as a previously existing provision shall, unless a contrary intent appears, be  
9 deemed to include a reference to the previously existing provision.

10          The Commission has taken special care to avoid any ambiguity with respect to  
11 the operation of provisions that concern repeat offenses. Proposed Section 16015  
12 would expressly state that a conviction under a restated section is also deemed to  
13 be a conviction under the section that restates it:

14           16015. If a previously existing provision is restated and continued in this part, a  
15 conviction under that previously existing provision shall, unless a contrary intent  
16 appears, be treated as a prior conviction under the restatement and continuation of  
17 that provision.

18          Finally, proposed Sections 16020 and 16025 would make clear that restatement  
19 of a provision is not intended to have any effect, positive or negative, on a judicial  
20 interpretation of the restated provision or a judicial holding that the provision is  
21 unconstitutional:

22           16020. (a) A judicial decision interpreting a previously existing provision is  
23 relevant in interpreting a provision of this part that restates and continues that  
24 previously existing provision.

25           (b) However, in enacting the Deadly Weapons Recodification Act of 2012, the  
26 Legislature has not evaluated the correctness of any judicial decision interpreting  
27 a provision affected by the act.

28           (c) The Deadly Weapons Recodification Act of 2012 is not intended to, and  
29 does not, reflect any assessment of any judicial decision interpreting any  
30 provision affected by the act.

31           16025. (a) A judicial decision determining the constitutionality of a previously  
32 existing provision is relevant in determining the constitutionality of a provision of  
33 this part that restates and continues that previously existing provision.

34           (b) However, in enacting the Deadly Weapons Recodification Act of 2012, the  
35 Legislature has not evaluated the constitutionality of any provision affected by the  
36 act, or the correctness of any judicial decision determining the constitutionality of  
37 any provision affected by the act.

38           (c) The Deadly Weapons Recodification Act of 2012 is not intended to, and  
39 does not, reflect any determination of the constitutionality of any provision  
40 affected by the act.

41          By their terms, the provisions discussed above would apply to the entire body of  
42 recodified deadly weapon statutes. The Commission invites comment on whether  
43 there are any other general statements of legislative intent that would be helpful to

1 include in the proposed law, to avoid any implication that the proposed law would  
2 have a substantive effect.

3 **Legislative Process**

4 After the Commission completes its study process and issues a final  
5 recommendation, the proposed law would be scrutinized carefully in the  
6 legislative process. This would serve as a final safeguard against any unintended  
7 substantive change in the law. To facilitate careful legislative review of the  
8 proposed law, the Commission intends to request that a joint informational hearing  
9 be held by the Public Safety Committees of the Senate and Assembly, to invite  
10 further public review and comment on the proposed law, before the introduction of  
11 any legislation.

12 **DRAFTING APPROACH**

13 **Structure of Proposed Law**

14 The proposed law would relocate most of the provisions of existing Title 2 of  
15 Part 4 of the Penal Code to a new Part 6 of the Penal Code, commencing with  
16 proposed Section 16000.<sup>22</sup>

17 The provisions of existing Title 2 are organized into two levels: chapters and  
18 articles. That provides little organizational flexibility, making it difficult to group  
19 similar provisions together unless they are combined into an excessively long  
20 section.

21 By contrast, proposed Part 6 would be organized into four levels: Titles,  
22 divisions, chapters, and articles. This provides much greater latitude to group  
23 similar provisions together, and then combine similar groupings into a logical  
24 hierarchical structure.

25 This approach complies with the Legislature’s directive to “[o]rganize existing  
26 provisions in such a way that similar provisions are located in close proximity to  
27 each other.”<sup>23</sup> It allows for a more coherent and intuitive organizational structure,  
28 which should make it easier for a reader to find relevant provisions within the  
29 statute.

30 **Short, Simple Sections**

31 One of the common complaints about existing Title 2 of Part 4 of the Penal  
32 Code is that many of its sections are excessively long. For example, Assembly

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22. A number of sentence enhancement provisions would not be relocated to new Part 6. See discussion under “Sentence Enhancements” *supra*. The portion of Section 12590 relating to picketing in the uniform of a peace officer would be placed in “Chapter 4.5. Peace Officers” of Title 3 of Part 2 of the Penal Code. See proposed Section 830.95 *infra*.

23. ACR 73.

1 Member McCarthy noted that “Penal Code Section 12078 is 5,880 words long and  
2 occupies 11 pages....”<sup>24</sup>

3 Excessively long sections can obscure relevant details of law, especially if a  
4 single section addresses several different subjects.

5 A better approach is to divide the law into a larger number of smaller sections,  
6 with each section limited to a single subject. Short sections have numerous  
7 advantages. They enhance readability and understanding of the law, and make it  
8 easier to locate and refer to pertinent material. In contrast to a long section, a short  
9 section can be amended without undue technical difficulties and new material can  
10 be inserted where logically appropriate, facilitating sound development of the law.  
11 The use of short sections is the preferred drafting technique of the California Code  
12 Commission,<sup>25</sup> the Legislature,<sup>26</sup> the Legislative Counsel,<sup>27</sup> and the Law Revision  
13 Commission.<sup>28</sup>

14 Moreover, ACR 73 specifically directs the Commission to “[r]educe the length  
15 and complexity of current sections.”

16 For all of the reasons discussed above, the proposed law would divide lengthy  
17 sections into shorter and simpler provisions. The result would be a significant  
18 increase in the number of sections, but not much change in the word count of the  
19 governing law.<sup>29</sup>

## 20 Definition of Terms

21 Under existing law, many definitions are scattered throughout Title 2 of Part 4  
22 of the Penal Code. Some terms are used with different definitions in different  
23 contexts,<sup>30</sup> or are defined for some uses but not others. This can create uncertainty  
24 as to whether any given term is subject to a statutory definition. That may lead to

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24. Senate Committee on Judiciary Analysis of ACR 73 (August 24, 2006), p. 4.

25. California Code Commission, *Drafting Rules and Principles for Use of California Code Commission Draftsmen*, 1947-48 Report, app. G, at 4.

26. Senate & Assembly Joint Rule 8 (Jan. 9, 2007).

27. Legislative Counsel of California, *Legislative Drafting Manual* 26-28 (1975).

28. Commission Staff Memorandum 76-24 (Feb. 17, 1976); First Supplement to Commission Staff Memorandum 85-64 (May 31, 1985).

29. Title 2 of Part 4 of the Penal Code consists of 230 sections, with \_\_\_ words of text. The proposed legislation (including all material derived from Title 2 of Part 4, whether placed in the title on “Sentence Enhancements,” in proposed Part 6, or elsewhere) would consist of \_\_\_ sections, with \_\_\_ words of text. The modest increase in word count is primarily due to the addition of statements of legislative intent (see discussion of “Statements of Legislative Intent” *supra*) and the repetition of exceptions formerly consolidated in Section 12078 (see discussion of “Section 12078” *infra*).

Proposed Part 6 would commence with proposed Section 16000 *infra*. The Commission deliberately left numbering gaps in proposed Part 6. This will allow for future changes in the law, without resort to decimal numbering.

30. For example, the term “antique firearm” has three different definitions as applied in different contexts. See Sections 12001(e), 12020(b)(5), 12078(p)(6)(B), 12085(e)(3), 12088.8(a), 12276.1(d)(3), 12278(d), 12801(b).

1 misunderstanding of the law. It may also lead to unintended consequences, if the  
2 Legislature uses a defined term without realizing that it would be subject to an  
3 already existing definition.

4 The proposed law would group most of the definitions in a separate division  
5 near the beginning of the proposed law, in alphabetical order. The Commission’s  
6 Comments to sections that use a defined term would include a cross-reference to  
7 the applicable definition. This approach would make it easier for members of the  
8 public, attorneys, judges, and the Legislature to quickly determine whether a term  
9 is subject to a statutory definition. It will also make it easier for the Legislature to  
10 identify and review cases where a single term has multiple definitions that are  
11 similar but not identical. That would facilitate future simplification of the law.

12 In drafting the definition provisions, the Commission was careful neither to  
13 expand nor contract the existing scope of application of any definition. Where an  
14 existing definition applies to every use of a term in Title 2 of Part 4 of the Penal  
15 Code, the proposed law would provide that the definition applies to every use of  
16 that term in proposed Part 6 of the Penal Code. That statement of general  
17 application will facilitate the use of uniform definitions in the future. It will allow  
18 the Legislature to use a term in its defined sense without the need to draft a new  
19 definition provision.

20 Where an existing definition applies to some but not all uses of a term in Title 2  
21 of Part 4, the proposed law would limit the definition to the same uses as under  
22 current law. For example, Section 12126 defines “semiautomatic pistol” for  
23 purposes of that section. The term is also used without definition elsewhere in  
24 Title 2 of Part 4.<sup>31</sup> To avoid creating a risk of a substantive change, the definition  
25 of “semiautomatic pistol” in the proposed law would apply only to the provisions  
26 that would continue the substance of Section 12126.<sup>32</sup>

27 In two cases, the proposed law deviates from the general approach of grouping  
28 all definitions together near the beginning of proposed Part 6 of the Penal Code.

29 First, some existing provisions include common terms that are given special  
30 definitions (e.g., “furnishes”<sup>33</sup>). It may not be immediately obvious to a reader of  
31 such a provision that the common term has a special definition. That could lead to  
32 misunderstanding of the law. In those cases, the definition is located near the  
33 provision that uses the defined term.<sup>34</sup>

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31. See Sections 12071(b)(8)(D)(i), 12130(d)(1)-(3), 12132(i), 12276.1(a)(4)-(5).

32. See proposed Section 17140 *infra* (defining “semiautomatic pistol” as used in proposed Sections \_\_\_\_).

33. See Section 12552.

34. See proposed Sections 16730(c) (“transaction”), 17280(b) (“major component”), 19915(b) (“furnishes”), 20170(b) (“public place”), 25000 (“child”), 25200(d) (“off-premises”), 26045(c) (“immediate”), 26915(g) (“secured”), 27550 (“collusion”), 28150(a)-(b) (“purchase,” “purchaser”), 28150(c) (“sale”), 28170 (“transaction”), 28200(a)-(b) (“purchase,” “purchaser”), 28200(c)-(d) (“sale,” “seller”), 30510(f) (“series”), \_\_\_\_\_ (“malfunction”), \_\_\_\_\_ (“transaction”) *infra*.

1 Second, some existing provisions mix definitions with substantive rules in  
2 complex ways. Rather than separate those definitions from the related substantive  
3 rules, the provisions are left largely unchanged and located with other provisions  
4 addressing the same substance.<sup>35</sup> In order to help readers find those definitions, the  
5 proposed law includes “guidepost” provisions in the definitions division, which  
6 refer to those definitions located elsewhere.<sup>36</sup>

### 7 **Substantive Organization**

8 Proposed Part 6 of the Penal Code would be divided into four different titles.  
9 Title 1, entitled “Preliminary Provisions,” would include the statements of  
10 legislative intent described above.<sup>37</sup> Title 1 would also include the definitions for  
11 new Part 6, in alphabetical order.

12 Title 2, entitled “Weapons Generally,” would include substantive provisions that  
13 apply to all types of deadly weapons, such as the rules pertaining to seizure of a  
14 deadly weapon at the scene of domestic violence. Title 2 would also include other  
15 laws that relate to both firearms and non-firearms. For example, it would include  
16 the provisions governing a “destructive device,” which is defined to include some  
17 items that would be classified as a firearm and others that would not.<sup>38</sup>

18 Title 3, entitled “Weapons and Devices Other Than Firearms,” would include  
19 laws governing control of such deadly weapons as imitation firearms, knives,  
20 knuckles, nunchakus, and other non-firearms. The title would be divided into  
21 divisions, each of which would cover a different type of deadly weapon. The

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35. See proposed Sections 26700 (“dealer,” “licensee,” or “person licensed pursuant to Sections 26700 to 26915, inclusive”), 30510 (“assault weapon”), 30515 (further clarification of “assault weapon”), \_\_\_\_ (“drop safety requirement for handguns”), \_\_\_\_ (“firing requirement for handguns”), \_\_\_\_ (“unsafe handgun”) *infra*.

36. See proposed Sections 16200 (“assault weapon” guidepost provision), 16440 (“dealer” guidepost provision), 16500 (“drop safety requirement for handguns” guidepost provision), 16560 (“firing requirement for handguns” guidepost provision), 16820 (“licensee” guidepost provision), 16980 (“person licensed pursuant to Sections 26700 to 26915, inclusive” guidepost provision), 17300 (“unsafe handgun” guidepost provision) *infra*.

The proposed law also includes “guidepost” provisions to help readers when several terms are defined synonymously. For example, proposed Section 16370 would define “certified instructor” and “DOJ Certified Instructor” synonymously, and would be located with other definitions that begin with the letter “C”. A guidepost provision for “DOJ Certified Instructor” would be located with the definitions that begin with the letter “D,” and would state that “[u]se of the term ‘DOJ Certified Instructor’ is governed by Section 16370.” See proposed Section 16480 *infra*. For additional examples, see proposed Sections 16420 (“dagger” guidepost provision), 16470 (“dirk” or “dagger”), 16530 (“firearm capable of being concealed upon the person,” “pistol,” and “revolver”), 16810 (“licensed premises,” “licensee’s business premises,” and “licensee’s place of business”), 16822 (“licensee’s business premises” guidepost provision), 16824 (“licensee’s place of business” guidepost provision), 17010 (“pistol” guidepost provision), 17080 (“revolver” guidepost provision).

37. See discussion of “Statements of Intent” *supra*.

38. See proposed Section 16460 *infra*, which would continue the definition of “destructive device” currently found in Section 12301(a).

1 divisions would be arranged in alphabetical order, starting with “BB Devices” and  
2 ending with “Tear Gas and Tear Gas Weapons.”

3 Title 4, entitled “Firearms,” would contain the extensive provisions relating to  
4 control of firearms. It would consist of a number of different divisions, including  
5 one entitled “Special Rules Relating to Particular Types of Firearms or Firearm  
6 Equipment.” Within that division, there would be several different chapters, each  
7 of which would cover a different type of firearm or firearm equipment. The  
8 chapters would be arranged in alphabetical order, starting with “Ammunition” and  
9 ending with “Zip Guns.”

10 In reorganizing existing law in this manner, the Commission made a few  
11 drafting decisions that are particularly noteworthy. These decisions relate to the  
12 following provisions:

- 13 • Section 12020
- 14 • Sections 12028 and 12029
- 15 • Section 12078

16 The treatment of these provisions is described below.

17 ***Section 12020***

18 Section 12020 is an extremely long provision that generally prohibits the  
19 manufacture, import, sale, gift, loan, or possession of a panoply of weapons and  
20 associated equipment. The provision includes numerous exemptions, some of  
21 which relate to a broad range of weapons, while others relate to only one specific  
22 type of weapon.<sup>39</sup> Thus, a person interested in the rules applicable to a particular  
23 type of weapon may have to read much irrelevant material before finding the  
24 relevant portions of Section 12020.

25 To make it easier for persons to find the relevant rules, the Commission divided  
26 up the substance of Section 12020 according to the type of weapon or equipment  
27 to which it pertains. For example, the rules relating to short-barreled rifles and  
28 short-barreled shotguns would be placed in a chapter with other provisions relating  
29 to those types of weapons.<sup>40</sup> Similarly, the many rules relating to large capacity  
30 magazines would be placed in a chapter on large-capacity magazines.<sup>41</sup>

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39. See Section 12020(b)(1)-(32).

40. See proposed Sections \_\_\_\_\_ - \_\_\_\_\_ *infra*.

41. See proposed Sections \_\_\_\_\_ - \_\_\_\_\_ *infra*.

For a list of all of the provisions that would continue the substance of the weapon prohibitions in Section 12020, see proposed Section 16590 *infra*, which would define the term “generally prohibited weapon” to include all of the items now covered by Section 12020.

1 Some of the exemptions in Section 12020 are broad. They pertain to more than  
2 one type of weapon or equipment, and do not clearly specify which items are  
3 within their scope.<sup>42</sup>

4 Ideally, it would be possible to determine which items are covered by a broad  
5 exemption, and to state the exemption in the division, chapter, or article for each  
6 item covered. Because it is not entirely clear which items are covered, however,  
7 the broad exemptions could not be treated in that manner without creating a risk of  
8 a substantive change.<sup>43</sup>

9 Instead, the proposed law would place the broad exemptions in a chapter within  
10 the title on “Weapons Generally.”<sup>44</sup> The entire chapter (as opposed to specific  
11 provisions within the chapter) would be cross-referenced in every section  
12 prohibiting the manufacture, import, sale, gift, loan, or possession of a type of  
13 weapon or equipment that was covered by Section 12020.<sup>45</sup> That would draw  
14 attention to the broad exemptions, without taking a position on whether a  
15 particular exemption pertains to a particular type of weapon or equipment.<sup>46</sup>

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42. For example, paragraph (b)(9) creates an exemption for an instrument or device possessed by a historical society, museum, or institutional collection:

(b) Subdivision (a) does not apply to any of the following:

....

(9) Instruments or devices that are possessed by federal, state, and local historical societies, museums, and institutional collections which are open to the public, provided that these instruments or devices are properly housed, secured from unauthorized handling, and, if the instrument or device is a firearm, unloaded.

Other broad exemptions are stated in paragraphs (b)(5), (b)(7)-(8), (b)(10)-(13), and (b)(16)-(18).

43. For example, it is unclear whether the exemption for “an instrument or device” possessed by a historical society, museum, or institutional collection (paragraph (b)(9)) would extend to a flechette dart, which is a type of ammunition. A court might consider that exemption inapplicable to a flechette dart, because some of the other exemptions in Section 12020 specifically refer to “ammunition,” not just to “an instrument or device.” But such an interpretation is not a foregone conclusion.

The Commission could try to predict which interpretation a court would adopt, and then either include or omit the exemption from the portion of the code relating to flechette darts, in accordance with its prediction. That would necessarily entail a risk of a substantive change, however, because the Commission’s prediction might be incorrect.

44. See proposed Sections 17700-17745 *infra*.

45. For example, proposed Section 20610 would state:

20610. *Except as provided in Chapter 1 (commencing with Section 17700) of Division 2 of Title 2, any person in this state who manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, lends, or possesses any lipstick case knife is punishable by imprisonment in a county jail not exceeding one year or in the state prison.*

(Emphasis added.)

46. The possibility of relocating these provisions could be explored in the future, as a separate law reform project. See discussion of “Minor Clean-up Issues for Possible Future Legislative Attention” *infra* and Appendix B (Item # 20) *infra*.

1        **Sections 12028 and 12029**

2        Section 12028 is another provision that pertains to a variety of weapons. It states  
3 that certain weapons constitute a nuisance under specified circumstances. The  
4 section also provides procedures for surrender and disposal of those weapons.  
5 Section 12029 is quite similar, except it classifies different weapons as a nuisance  
6 and the procedures for surrender and disposal of those weapons are much less  
7 detailed.

8        The Commission treated these two provisions the same way as Section 12020,  
9 dividing up their substance according to the type of weapon or equipment to which  
10 it pertains.<sup>47</sup> The generally applicable procedures for surrender and disposal of  
11 weapons would be placed in the title on “Weapons Generally,”<sup>48</sup> and cross-  
12 referenced in each weapon-specific provision derived from the same section.<sup>49</sup> The  
13 cross-reference would help a reader find the procedures for surrender and disposal  
14 of the weapon in question.

15        **Section 12078**

16        Section 12078 is an enormous provision that consists of 48 different exceptions,  
17 each of which relates to one or more enumerated code sections. As so drafted, the  
18 meaning of each exception is difficult to grasp without careful study.

19        To make the substance of Section 12078 more readily understandable, the  
20 proposed legislation would divide it up, such that each exception is stated in close  
21 proximity to each substantive rule that it modifies. For example, subdivision (e) of  
22 Section 12078 creates an exception relating to gunsmiths: “Section 12071,  
23 subdivisions (c) and (d) of Section 12072, and subdivision (b) of Section 12801  
24 shall not apply to the delivery of a firearm to a gunsmith for service or repair, or to  
25 the return of the firearm to its owner by the gunsmith.” In the proposed legislation,  
26 that exception for gunsmith transactions would be stated in close proximity to (1)  
27 the provisions that would continue Section 12071,<sup>50</sup> (2) the provision that would

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47. For example, the substance of Section 12028 relating to a switchblade knife would be continued in a chapter on switchblade knives. See proposed Section 21590 *infra*.

48. See proposed Sections 18000 and 18005, which would continue the surrender and disposal rules from Section 12028, and proposed Section 18010, which would continue the surrender and disposal rules from Section 12029.

49. For example, the provision on switchblade knives constituting a nuisance (proposed Section 21590 *infra*) would cross-refer to proposed Sections 18000 and 18005, which would continue the surrender and disposal rules from Section 12028:

21590. The unlawful possession and carrying of any switchblade knife, as provided in Section 21510, is a nuisance *and is subject to Sections 18000 and 18005*.

(Emphasis added.)

50. The substance of Section 12071 (other than definitions) would be continued in proposed Sections 26700-26915 *infra*. The exception for gunsmith transactions would be stated nearby, in proposed Section 27105 *infra*. For convenient reference, it would be located with other exceptions to proposed Sections 26700-26915, and those exceptions would be cross-referenced in the Comments to proposed Sections 26700-26915.

1 continue Section 12072(c),<sup>51</sup> (3) the provision that would continue Section  
2 12072(d),<sup>52</sup> and (4) the provision that would continue Section 12801(b).<sup>53</sup> This  
3 would make it more easily apparent which substantive rules are modified by the  
4 exception.

5 **Unnecessary Cross-References**

6 ACR 73 directs the Commission to “[a]void unnecessary use of cross-  
7 references.” Consistent with that direction, the proposed law would eliminate  
8 cross-references where doing so would not affect the meaning of a provision or  
9 make it more difficult to understand.

10 One type of cross-reference that can often be eliminated without affecting the  
11 substance of the law is a cross-reference to an applicable definition. As discussed  
12 above, the proposed law would group most definitions together near the beginning  
13 of proposed Part 6 of the Penal Code, with clear statements indicating the  
14 application of each definition. Each section that uses a defined term would have a  
15 Commission Comment directing the reader to the applicable definition. This  
16 obviates the need to include a statutory cross-reference whenever a defined term is  
17 used.<sup>54</sup>

18 **Conforming Cross-References**

19 Title 2 of Part 4 of the Penal Code contains many provisions that cross-refer to  
20 other statutes. As material is reorganized in new Part 6 of the Penal Code, each  
21 such cross-reference must be conformed to the new numbering scheme.

22 Often, an existing cross-reference can simply be replaced by a cross-reference to  
23 a new provision containing the exact same material as the previously cross-  
24 referenced provision.

25 In some instances, however, that is not the best approach, either because the  
26 referenced provision has been reorganized into a series of smaller provisions  
27 (some of which are not relevant to the purpose of the cross-reference) or because

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51. The substance of Section 12072(c) would be continued in proposed Section 27540 *infra*. The exception for gunsmith transactions would be stated nearby, in proposed Section 27705 *infra*. For convenient reference, it would be located with other exceptions to proposed Section 27540, and those exceptions would be cross-referenced in the Comment to proposed Sections 27540.

52. The substance of Section 12072(d) would be continued in proposed Section 27545 *infra*. The exception for gunsmith transactions would be stated nearby, in proposed Section 27890 *infra*. For convenient reference, it would be located with other exceptions to proposed Section 27545, and those exceptions would be cross-referenced in the Comment to proposed Sections 27545.

53. The substance of Section 12801(b) would be continued in proposed Section \_\_\_\_ *infra*. The exception for gunsmith transactions would be stated nearby, in proposed Section \_\_\_\_ *infra*. For convenient reference, it would be located with other exceptions to proposed Section \_\_\_\_, and those exceptions would be cross-referenced in the Comment to proposed Section \_\_\_\_.

54. However, there are some instances where a cross-reference to a definition has been preserved, where the definition is particularly important, potentially confusing, or likely to be overlooked. See, e.g., proposed Sections 17505, 17740, 23925, 25105, 25205, 27820, 27870, 27875, 27880, 27995, 27965 *infra*.

1 the referenced provision has been grouped with other material (which may not be  
2 relevant to the purpose of the cross-reference). In such cases, it is necessary to  
3 exercise some judgment to properly conform the cross-reference in a way that is  
4 consistent with its original purpose. In making such changes, the Commission  
5 carefully examined the substance of the provisions in question and determined that  
6 there would be no substantive change. The Commission’s Comments would state  
7 as much, and would be official legislative history.<sup>55</sup> In addition, proposed Section  
8 16005 would state expressly that changes to cross-references should be construed  
9 as nonsubstantive.

10 There are also a few provisions that contain one or more cross-references that  
11 are plainly erroneous. Where the proper cross-reference is obvious, the  
12 Commission has corrected the cross-reference, rather than perpetuating the error.  
13 These corrections are listed and explained in Appendix A.<sup>56</sup> Where the proper  
14 cross-reference is not altogether obvious, the Commission has left it alone, so as  
15 not to create a risk of a substantive change. These situations could be addressed in  
16 a future reform.<sup>57</sup>

17 Finally, there are a large number of statutory provisions that are located outside  
18 of Title 2, which include cross-references to provisions located within Title 2. The  
19 proposed law would also correct those cross-references to reflect the new  
20 organization.<sup>58</sup>

### 21 Provisions That Might Be Obsolete

22 Some of the provisions in Title 2 of Part 4 of the Penal Code contain language  
23 that might be obsolete, such as rules that no longer apply,<sup>59</sup> deadlines that have  
24 long since passed,<sup>60</sup> and procedures for programs that have ended.<sup>61</sup> In drafting the

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55. See “Commission Comments” *supra*.

56. The Commission also corrected an obvious drafting error in Section 12076(c). That provision governs electronic or telephonic transfer of applicant information for a firearm transaction. Section 12076(b) is a parallel provision, which governs use of a register for submitting applicant information to the Department of Justice for a firearm transaction. Much of the wording of these provisions is similar, except Section 12076(c) refers to “the electronic or telephonic transfer” and Section 12076(b) refers to “the register.”

In one place, however, Section 12076(c)(1) refers to “the register,” not “the electronic or telephonic transfer.” That reference is misplaced in a provision on electronic or telephonic transfer. The reference to “the register” should be replaced with a reference to “the electronic or telephonic transfer.” The Commission has made this correction. See proposed Section 28250 *infra*.

57. See discussion of “Minor Clean-up Issues for Possible Future Legislative Attention” *infra*.

58. See “Conforming Revisions” *infra*.

59. See, e.g., Section 12076(a)(1), which says that “[b]efore January 1, 1998, the Department of Justice shall determine the method by which a dealer shall submit firearm purchaser information to the department and the information shall be in one of the following formats ....” (Emphasis added.)

60. See, e.g., Section 12021(i), which calls for development of a protocol that “shall be completed on or before January 1, 2005.”

1 proposed legislation, the Commission preserved almost all of that language. The  
2 Commission took this cautious approach because deleting such language might  
3 raise concerns about a possible substantive change, and because the apparently  
4 obsolete language might remain useful for reference purposes, such as deciding  
5 what crimes can be charged for conduct that occurred in the past. In a number of  
6 instances, the Commission suggests studying whether future clean-up to eliminate  
7 or otherwise revise obsolete language would be appropriate.<sup>62</sup>

#### 8 **Other Drafting Techniques**

9 In reorganizing the provisions on control of deadly weapons, the Commission  
10 used a few other drafting techniques, which it regularly employs. In particular, the  
11 Commission (1) replaced gender-specific with gender neutral language, (2)  
12 primarily used the singular form instead of the plural, because the singular form  
13 tends to be more clear,<sup>63</sup> and (3) eliminated awkward phrases such as “he or she,”  
14 “himself or herself,” “his or hers,” and “him or her” when possible. The  
15 Commission only used these drafting techniques where there appeared to be no  
16 risk of a substantive change.

### 17 **DISPOSITION TABLE**

18 This recommendation concludes with a disposition table showing, for every  
19 provision of Title 2 of Part 4 of the Penal Code, the new provision that would  
20 continue it. This table will be part of the Commission’s final recommendation and  
21 will assist the public and the Legislature in reviewing the proposed law.

22 If legislation enacting this recommendation is enacted, the disposition table will  
23 be provided to legal publishers, who would typically make the table available as  
24 part of the print and online versions of the Penal Code. The table would then help  
25 to correlate a court decision or other document that cites an existing provision,  
26 with the new provision that would continue the existing provision. This would  
27 ease the transition from existing law to the new law.

### 28 **MINOR CLEAN-UP ISSUES FOR POSSIBLE** 29 **FUTURE LEGISLATIVE ATTENTION**

30 In conducting this study, the Commission identified a number of minor  
31 problems within Title 2 of Part 4 of the Penal Code, which could not be addressed

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61. See, e.g., subdivision (f) of Section 12281, which requires relinquishment or disposal of an SKS rifle in a specified manner “on or before January 1, 2000,” and subdivision (h) of the same section, which establishes a purchase program for SKS rifles relinquished pursuant to subdivision (f).

62. See discussion of “Minor Clean-up Issues for Possible Future Legislative Attention” *infra* and Appendix B (Items ## 32, 33, 57 & \_\_) *infra*.

63. A change from plural form to singular form (or vice versa) does not affect the meaning of a provision. See Section 7 (“the singular number includes the plural, and the plural the singular ....”).

1 without potentially raising concerns about a substantive change. Because this  
2 study is strictly nonsubstantive, the proposed law does not include any language to  
3 address those problems.

4 Instead, the Commission has prepared a list of “Minor Clean-up Issues for  
5 Possible Future Legislative Attention.” The proposed law includes an uncodified  
6 provision that would authorize the Commission to study the problems noted in the  
7 list and recommend legislation to correct them. No other authority would be  
8 granted under that provision.

9 The minor clean-up issues are listed in Appendix B. As far as the Commission is  
10 aware, these issues are unlikely to involve significant controversy.

#### 11 DEFERRED OPERATIVE DATE

12 Because of the breadth of the organizational changes that would be made by the  
13 proposed law, the Commission recommends that it be given a deferred operative  
14 date. The proposed law includes an uncodified provision to that effect, delaying  
15 the operation of the proposed law by \_\_\_\_ year.

16 This deferred operation will provide time for those who work closely with the  
17 affected statutes, including legal publishers, to adjust to the new organization  
18 before it takes effect.

#### 19 REQUEST FOR COMMENTS

20 The Commission solicits comments on this tentative recommendation, in any  
21 format and by whatever means of delivery is most convenient for the person or  
22 organization submitting comments. The Commission recognizes that the tentative  
23 recommendation is lengthy and will be time-consuming to review. Comments of  
24 any nature are encouraged: A single sentence evaluation of the concept of the  
25 proposed reform, a detailed section-by-section analysis of the proposed legislation,  
26 or any other expression of views on the tentative recommendation. It is just as  
27 important to provide positive comments as negative comments. The Commission  
28 considers each comment submitted, and may substantially revise its proposal in  
29 light of the input received.



## APPENDIX A: CORRECTED CROSS-REFERENCES

1 In reorganizing the provisions on control of deadly weapons, the Law Revision  
2 Commission found some provisions that contain one or more incomplete or  
3 incorrect cross-references. Where the proper cross-reference is obvious, the  
4 Commission corrected the cross-reference in drafting its proposed legislation. That  
5 approach seemed more sensible than perpetuating a plainly incorrect cross-  
6 reference.

7 Those instances are described in detail below:

- 8 • Section 12031(b)(7) refers to armored vehicle guards “as defined in Section  
9 7521 of the Business and Professions Code ....” The cross-reference to  
10 Business and Professions Code Section 7521 is incorrect. That section used  
11 to define “armored vehicle guard,” but now it only defines “private  
12 investigator.” The definition of “armored vehicle guard” has been relocated  
13 to Business and Professions Code Section 7582.1(d). The proposed law  
14 would correct this erroneous cross-reference.<sup>1</sup>
- 15 • Section 12031(d)(3) refers to private investigators and private patrol  
16 operators “who are licensed pursuant to Chapter 11.5 (commencing with  
17 Section 7512) of Division 3 of the Business and Professions Code ....”  
18 Similarly, Section 12031(d)(6) refers to uniformed employees of “private  
19 patrol operators and private investigators licensed pursuant to Chapter 11.5  
20 (commencing with Section 7512) of Division 3 of the Business and  
21 Professions Code ....” These cross-references are incorrect. Private  
22 investigators are now licensed pursuant to Chapter 11.3 (commencing with  
23 Section 7512) of Division 3 of the Business and Professions Code. Private  
24 patrol operators are licensed pursuant to Chapter 11.5 (commencing with  
25 Section 7580) of Division 3 of the Business and Professions Code. The  
26 proposed law would correct these erroneous cross-references.<sup>2</sup>
- 27 • Section 12070(b)(2) refers to “a person acting pursuant to subdivision (e) of  
28 Section 186.22a.” The cross-reference to subdivision (e) of Section 186.22a  
29 does not make sense, because that provision simply says: “Nothing in this  
30 chapter shall preclude any aggrieved person from seeking any other remedy  
31 provided by law.” The correct cross-reference is to subdivision (f) of the  
32 same section, which concerns confiscation of firearms, ammunition, and  
33 deadly weapons as a nuisance, and disposal of the items following  
34 confiscation. It was formerly labeled as subdivision (e). The proposed law  
35 would correct this erroneous cross-reference.<sup>3</sup>

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1. See proposed Section 26015 *infra*.

2. See proposed Section 26030 *infra*.

3. See proposed Section 26510 *infra*.

- 1 • Section 12072(f)(1)(B) says: “For every identification number request  
2 received pursuant to this section, the department shall determine whether the  
3 intended recipient is on the centralized list of firearms dealers *pursuant to*  
4 *this section ...*”<sup>4</sup> The italicized cross-reference is incorrect, because Section  
5 12072 does not provide for a centralized list of firearms dealers. That is  
6 done in Section 12071(e). The proposed law would correct this erroneous  
7 cross-reference.
- 8 • Section 12078(i)(2)(A) refers to “a levying officer as defined in Section  
9 481.140, 511.060, or 680.210 of the Code of Civil Procedure.” The  
10 reference to Code of Civil Procedure Section 680.210 is incorrect. That  
11 provision defines “general intangibles,” not “levying officer.” The definition  
12 of “levying officer” is in Code of Civil Procedure Section 680.260 instead.  
13 The proposed law would correct this erroneous cross-reference.<sup>5</sup>
- 14 • Section 12081(b)(5) says: “The Department of Justice shall review  
15 subsequent arrests ... to determine the continuing validity of the permit as  
16 specified in subdivision (d) for all entertainment firearms permit holders.”  
17 The cross-reference to subdivision (d) is obviously incorrect, because  
18 subdivision (d) does not relate to the continuing validity of an entertainment  
19 firearms permit. The correct cross-reference is to subdivision (f), which was  
20 originally labeled as subdivision (d) in the bill enacting Section 12081.<sup>6</sup>  
21 Apparently due to inadvertence, the cross-reference was not adjusted when  
22 the bill was amended and the subdivisions were relabeled. The proposed law  
23 would correct this erroneous cross-reference.<sup>7</sup>
- 24 • Section 12101(c)(1)(B) cross-refers to Section 12560. That provision existed  
25 when Section 12101 was added to the codes in 1988, but it has since been  
26 repealed.<sup>8</sup> Consequently, there is no need to continue the cross-reference.  
27 The proposed law would delete this obsolete cross-reference.<sup>9</sup>
- 28 • Section 12101(d) cross-refers to “Article 14 (commencing with Section 601)  
29 of Chapter 2 of Part 1 of the Welfare and Institutions Code.” That cross-  
30 reference is incomplete. The correct cross-reference is to “Article 1  
31 (commencing with Section 601) of Chapter 2 of Part 1 of *Division 2* of the  
32 Welfare and Institutions Code.” The proposed law would correct this  
33 incomplete cross-reference.<sup>10</sup>
- 34 • Section 12276.5 cross-refers to “Chapter 3.5 (commencing with Section  
35 11340) of Division 3 of Title 2 of the Government Code.” That cross-  
36 reference is incomplete. The correct cross-reference is to “Chapter 3.5

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4. Emphasis added.

5. See proposed Section 27920 *infra*.

6. See SB 231 (Scott & Murray), as amended Aug. 9, 2004.

7. See proposed Section 29520 *infra*.

8. See 1990 Cal. Stat. ch. 9, § 14.

9. See proposed Section 29700 *infra*.

10. See proposed Section 29705 *infra*.

- 1 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the  
2 Government Code. The proposed law would correct this incomplete cross-  
3 reference.<sup>11</sup>
- 4 • Section 12280(u)(3) refers to the “operative date of Section 12276.1, as  
5 specified in subdivision (d) of that section.” The cross-reference to  
6 subdivision (d) is incorrect. The operative date of January 1, 2000, was  
7 originally stated in subdivision (d), but it is now stated in subdivision (e)  
8 instead. The proposed law would correct this mistake by referring directly to  
9 the operative date of January 1, 2000.<sup>12</sup>
  - 10 • Section 12305 contains two references to a permit granted or issued  
11 pursuant to “this article.” Section 12305 is not part of an article. It is located  
12 in a chapter that is not divided into articles. The references to “this article”  
13 are plainly erroneous. In the proposed law, those references are replaced  
14 with references to a permit granted or issued pursuant to “this section.”<sup>13</sup>  
15 Section 12305 is the only section in its chapter that relates to the granting or  
16 issuance of a permit.
  - 17 • Section 12316(c) refers to “an armored vehicle guard, who is engaged in the  
18 performance of his or her duties, as defined in subdivision (e) of Section  
19 7521 of the Business and Professions Code ....” The cross-reference to  
20 Business and Professions Code Section 7521(e) is incorrect. That section  
21 used to define “armored vehicle guard,” but now it only defines “private  
22 investigator.” The definition of “armored vehicle guard” has been relocated  
23 to Business and Professions Code Section 7582.1(d). The proposed law  
24 would correct this erroneous cross-reference.<sup>14</sup>
  - 25 • Section 12403.8(a) refers to “paragraph (4) of subdivision (a) of Section  
26 12403.7,” which does not exist. The obvious intent is to refer to subdivision  
27 (d) of Section 12403.7, which used to be paragraph (4) of subdivision (a).<sup>15</sup>  
28 The proposed law would correct that error.<sup>16</sup>
  - 29 • Section 12403.8(b) refers to “paragraph (3) of subdivision (a) of Section  
30 12403.7,” which does not exist. The obvious intent is to refer to subdivision  
31 (c) of Section 12403.7, which used to be paragraph (3) of subdivision (a).<sup>17</sup>  
32 The proposed law would correct that error.<sup>18</sup>
  - 33 • Section 12403.5 refers to a “person holding a license as a private  
34 investigator or private patrol operator issued pursuant to Chapter 11  
35 (commencing with Section 7500), Division 3 of the Business and

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11. See proposed Section 30520 *infra*.

12. See proposed Section 30620(c) *infra*.

13. See proposed Sections 18905, 18910 *infra*.

14. See proposed Section 30310 *infra*.

15. See 1995 Cal. Stat. ch. 437, § 6.

16. See proposed Section 22815(a) *infra*.

17. See 1995 Cal. Stat. ch. 437, § 6.

18. See proposed Section 22815(b) *infra*.

1 Professions Code.” However, Chapter 11 (commencing with Section 7500)  
2 of Division 3 of the Business and Professions Code no longer relates to  
3 private investigators and private patrol operators. Instead, it relates to  
4 repossessioners. The provisions governing private investigators are now located  
5 in Chapter 11.3 (commencing with Section 7512) of Division 3 of the  
6 Business and Professions Code. The provisions governing private patrol  
7 operators are now located in Chapter 11.5 (commencing with Section 7580)  
8 of the same division. The proposed law would correct the erroneous cross-  
9 reference.<sup>19</sup>

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19. See proposed Section 22835 *infra*.