

Memorandum 2011-13

Deadly Weapons: Minor Clean-Up Issues
Bureau of Alcohol, Tobacco, and Firearms (Item #35)

The Commission's recommendation on *Nonsubstantive Reorganization of Deadly Weapon Statutes* includes a list of "Minor Clean-Up Issues for Possible Future Legislative Attention." See 38 Cal. L. Revision Comm'n Reports 217, 265-80 (2009). Item #35 on that list is:

Consider whether statutory references to "Bureau of Alcohol, Tobacco, and Firearms" should be replaced with "Bureau of Alcohol, Tobacco, Firearms, and Explosives."

This memorandum discusses that issue.

The Bureau of Alcohol, Tobacco, Firearms, and Explosives is part of the federal Department of Justice. See 28 U.S.C. § 599A. It was created in 2006, by transferring some (but not all) of the authorities, functions, personnel, and assets of a Treasury Department entity known as the Bureau of Alcohol, Tobacco, and Firearms. See *id.*; see also 26 U.S.C. § 7801. The Treasury Department retained "the authorities, functions, personnel, and assets of the Bureau of Alcohol, Tobacco and Firearms relating to the administration and enforcement of chapters 51 and 52 of the Internal Revenue Code of 1986, sections 4181 and 4182 of the Internal Revenue Code of 1986, and title 27, United States Code." See 6 U.S.C. § 531(c)(2). Within the Treasury Department, those authorities, functions, personnel, and assets are now administered by another new entity, the Tax and Trade Bureau. See 6 U.S.C. § 531(d).

In a number of places, California's Penal Code now refers to the Bureau of Alcohol, Tobacco, Firearms, and Explosives. Elsewhere, however, the Penal Code still refers to the now-defunct Bureau of Alcohol, Tobacco, and Firearms. In preparing its recommendation on *Nonsubstantive Reorganization of Deadly Weapon Statutes*, the Commission considered whether to replace those obsolete references

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The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting.

with references to the newly-established Bureau of Alcohol, Tobacco, Firearms, and Explosives. To avoid any risk of a substantive change, the Commission decided to leave those references intact in its reorganization proposal, and revisit the matter later. See Memorandum 2009-27, pp. 4-5; Minutes (June 2009), p. 4.

Since then, the Commission's reorganization proposal has been enacted, and is scheduled to become operative on January 1, 2012. See 2010 Cal. Stat. ch. 711; see also 2010 Cal. Stat. ch. 178.

Early this year, the Commission received a few weeks of volunteer assistance from Benjamin Lee, a third year student at the University of Virginia School of Law. Among other assignments, the staff asked Mr. Lee to determine the proper treatment of the Penal Code references to the Bureau of Alcohol, Tobacco, and Firearms. He examined each reference and assessed whether it should be changed to "Bureau of Alcohol, Tobacco, Firearms, and Explosives" or to "Tax and Trade Bureau." He then prepared a draft of a tentative recommendation, which the staff planned to edit and present to the Commission.

Shortly afterward, however, Assembly Member Wagner introduced this year's maintenance of the codes bill (AB 1023). That bill proposes to amend many provisions to replace "Bureau of Alcohol, Tobacco, and Firearms" with "Bureau of Alcohol, Tobacco, Firearms, and Explosives." See the bill's proposed amendments of Penal Code Sections 16880(c), 25650(a), 26020(a), 29010, 29065(c), 29115(a)(2), 29142(a)-(b), and 31910(b)(1).

The staff believes those proposed amendments are sound and are likely to be enacted. If so, that would essentially take care of Item #35 on the Commission's list of "Minor Clean-Up Issues for Possible Future Legislative Attention." Only two points still remain to be addressed:

- Penal Code Section 11108.9 contains a reference to the "Bureau of Alcohol, Tobacco, and Firearms" that would not be fixed by AB 1023.
- Penal Code Sections 28480 and 28490 refer to "the Bureau of Alcohol, Tobacco, Firearms, and Explosives." It might be helpful to refer instead to "the *federal* Bureau of Alcohol, Tobacco, Firearms, and Explosives."

Unless the Commission otherwise directs, **the staff will bring those points to the attention of the Office of Legislative Counsel**, for possible incorporation into AB 1023 or next year's maintenance of the codes bill. It does not seem

necessary for the Commission to do anything further. The staff does, however, want to express its appreciation for Mr. Lee's work on this project.

Respectfully submitted,

Barbara Gaal
Chief Deputy Counsel