

Memorandum 2011-19

**Deadly Weapons: Minor Clean-Up Issues
"Capacity to Accept More than 10 Rounds" (Item #1)**

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 #1 on that list is consideration of whether certain definitions should be expanded to apply to the entirety of new Part 6 of the Penal Code. This memorandum examines the term "capacity to accept more than 10 rounds."

All statutory references in this memorandum are to the Penal Code, except as otherwise indicated. This memorandum examines the existing "old" sections, rather than the reorganized "new" sections that are scheduled to replace them.

DEFINITION OF "CAPACITY TO ACCEPT MORE THAN 10 ROUNDS"

The term "capacity to accept more than 10 rounds" is defined, *for the purposes of Section 12276.1 only*, as follows:

(d) The following definitions shall apply under this section:

....
(2) "Capacity to accept more than 10 rounds" shall mean capable of accommodating more than 10 rounds, but shall not be construed to include a feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds.

Section 12276.1(d)(2).

The use of the defined term in Section 12276.1 is discussed below.

Section 12276.1

Section 12276.1 defines "assault weapon." Subdivision (a) describes types of firearms that would be considered an assault weapon. For example, subdivision (a)(3) defines an "assault weapon" as "[a] semiautomatic, centerfire rifle that has an overall length of less than 30 inches."

The term "capacity to accept more than 10 rounds" is used twice in subdivision (a) of Section 12276.1:

(a) Notwithstanding Section 12276, “assault weapon” shall also mean any of the following:

(1) A semiautomatic, centerfire rifle that has a fixed magazine with the *capacity to accept more than 10 rounds*.

...

(5) A semiautomatic pistol with a fixed magazine that has the *capacity to accept more than 10 rounds*.

Section 12276.1(a) (emphasis added).

Both paragraphs (1) and (5) use the term in describing types of firearms deemed “assault weapons.” In each instance, the term is used to refer to the number of rounds a magazine can accommodate at the present time or in the future, as distinguished from the number of rounds it may have been able to accommodate in the past.

UNDEFINED USAGE OF THE TERM “CAPACITY TO ACCEPT MORE THAN 10 ROUNDS”

Under Section 12276.1(d)(2), the definition of “capacity to accept more than 10 rounds” is expressly limited to the use of that term in Section 12276.1.

However, the term is also used, without definition, in one instance in Section 12020. That usage, and its compatibility with the existing definition of the term, is discussed below.

Section 12020

Section 12020 sets out a list of prohibitions on the manufacture, import, sale, gift, loan, or possession of certain weapons and explosives. The section also lists definitions specifically applicable to Section 12020. In one of these definitions, the term “capacity to accept more than 10 rounds” is used:

(c)(25) As used in this section, “large-capacity magazine” means any ammunition feeding device with the *capacity to accept more than 10 rounds*, but shall not be construed to include any of the following:

(A) A feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds.

(B) A .22 caliber tube ammunition feeding device.

(C) A tubular magazine that is contained in a lever-action firearm.

Section 12020(c)(25) (emphasis added).

In this context, the term serves as a descriptor in defining a “large-capacity magazine.” As used here, the phrase “capacity to accept more than 10 rounds”

seems to encompass both (1) a magazine that can accommodate more than 10 rounds at the present time or in the future, and (2) a magazine that has been permanently altered so that it cannot accommodate more than 10 rounds. Otherwise, it would not be necessary to include paragraph (A), which excludes a magazine that “has been permanently altered so that it cannot accommodate more than 10 rounds.” The phrase “capacity to accept more than 10 rounds” thus appears to be used more broadly in Section 12020(c)(25) (defining “large capacity magazine”) than it is in Section 12276.1 (defining “assault weapon”).

However, in defining “large capacity magazine,” the same substantive effect could be achieved by:

- Applying the more narrow definition of “capacity to accept more than 10 rounds” that is used in Section 12276.1, and
- Deleting the exclusion stated in paragraph (A). That exclusion would no longer have to be stated separately, because it would be incorporated in the narrow definition of “capacity to accept more than 10 rounds.”

This approach would simplify the law, because the term “capacity to accept more than 10 rounds” would then be used consistently throughout the deadly weapon statutes, instead of having different meanings in different places.

RECOMMENDATION

It appears appropriate to (1) apply Section 12276.1’s narrow definition of “capacity to accept more than 10 rounds” to all of new Part 6 of the Penal Code, and (2) revise the definition of “large capacity magazine” accordingly, as described above. Doing so would simplify the law, without making any substantive change.

If the Commission agrees, the staff will hold this material for eventual incorporation into a tentative recommendation addressing issues of this type.

Respectfully submitted,

Errol C. Daus
Legal Extern
UC Davis School of Law