

Memorandum 2013-17

**Deadly Weapons: Minor Clean-Up Issues
("Firearm Safety Device" and "Locked Container")**

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, which are limited in their scope, should be revised so that they apply to the entirety of Part 6 of the Penal Code. *Id.* at 265. This memorandum examines two such definitions, which define the terms "firearm safety device" and "locked container."

Except as otherwise indicated, all statutory references in this memorandum are to the Penal Code. In general, this memorandum examines the reorganized "new" Penal Code sections, rather than the "old" sections referenced in the recommendation on *Nonsubstantive Reorganization of Deadly Weapon Statutes*.

"FIREARM SAFETY DEVICE"

The term "firearm safety device" is defined as follows:

"Firearm safety device" means a device other than a gun safe that locks and is designed to prevent children and unauthorized users from firing a firearm. The device may be installed on a firearm, be incorporated into the design of the firearm, or prevent access to the firearm.

Section 16540. That definition only applies to Division 2 of Title 4 of Part 6 (Sections 23620-23690), which is entitled "Firearm Safety Devices, Gun Safes, and Related Warnings."

Defined Usage

A key section of Division 2 provides:

Any firearm sold or transferred in this state by a licensed firearms dealer, including a private transfer through a dealer, and any firearm manufactured in this state, shall include or be accompanied by a firearm safety device that is listed on the Department of Justice's roster of approved firearm safety devices

and that is identified as appropriate for that firearm by reference to either the manufacturer and model of the firearm, or to the physical characteristics of the firearm that match those listed on the roster for use with the device.

Section 23635(a). Other provisions state exceptions to that general requirement. See Sections 23630 (antique firearms), 23635(b) (purchaser owns gun safe), (c) (purchaser presents appropriate firearm safety device at time of transfer).

The Attorney General is required to develop regulations setting standards for firearm safety devices (Section 23650), certify laboratories to ensure that the standards are met (Section 23655(a)-(c)), maintain a roster of approved firearm safety devices (Section 23655(d)-(e)), and randomly test firearm safety devices (Section 23655(f)-(g)).

Firearm safety devices that are not listed on the Attorney General's roster cannot be sold or distributed. Section 23660.

Firearm safety devices that do not meet regulatory standards can be recalled by the Attorney General. Section 23680.

Undefined Usage

The term "firearm safety device" is also used in Sections 26850, 26853, 26856, 26859, and 26915, which are not governed by the statutory definition.

The staff did not find any nonstatutory authority to help interpret the meaning of the term in those provisions. Appellate courts have not construed the meaning of those provisions. Secondary sources, such as Department of Justice and National Rifle Association publications, shed no light on how the term is understood by the general public.

However, careful examination of the interrelationship between the defined and undefined usage of the term suggests that the term is intended to have the same meaning in all of the provisions that use it.

There are two types of provisions that use the term without definition. They are discussed separately below.

Safe Handling Demonstration

Section 26850(a) provides: "Except as authorized by the department, no firearms dealer may deliver a handgun unless the recipient performs a safe handling demonstration with that handgun."

Subdivision (b) of that section then describes the required safe handling demonstration. The safe handling demonstration must begin "with the handgun

unloaded and *locked with the firearm safety device with which it is required to be delivered, if applicable.*" *Id.* (emphasis added).

Paragraphs (b)(1)-(3) then specify, by cross-reference to other sections, special safe handling demonstration requirements for specific types of handguns:

- If the handgun is a semiautomatic pistol, the recipient must (among other things) "[r]emove the firearm safety device" and later "[a]pply the firearm safety device." Section 26853(d), (l).
- If the handgun is a double-action revolver, the recipient must (among other things) "[r]emove the firearm safety device" and later "[a]pply the firearm safety device." Section 26853(c), (h).
- If the handgun is a single-action revolver, the recipient must (among other things) "[r]emove the firearm safety device required to be sold with the handgun" and later "[a]pply the firearm safety device." Section 26853(c), (g).

Analysis of Safe Handling Demonstration Provisions

The firearm safety device that must be removed and reapplied as part of the safe handling demonstration is referred to in Section 26850(b) as the "firearm safety device with which [the handgun] *is required to be delivered.*" (Emphasis added.)

Section 23635 is the only provision of the Penal Code that requires that a firearm safety device be provided when a handgun is sold or transferred. Despite minor differences in wording (Section 23636 requires that a firearm be "accompanied by" a firearm safety device while Section 26850 refers to a requirement that a firearm be "delivered with" a firearm safety device), it seems very probable that the two sections are talking about the same object.

If that is correct, then all of the safe handling demonstration provisions should be governed by the same definition of "firearm safety device" that governs Section 23635.

Secured Firearm

If a licensed firearm dealer employs an agent who is prohibited from possessing firearms for specified statutory reasons, the licensee shall prohibit the agent "from coming into contact with any firearm that is not secured." Section 26915(e).

The meaning of "secured" is defined in Section 26915(g):

For purposes of this article, "secured" means a firearm that is made inoperable in one or more of the following ways:

(1) The firearm is inoperable because it is secured by a firearm safety device listed on the department's roster of approved firearm safety devices pursuant to subdivision (d) of Section 23655.

...

Analysis of Secured Firearm Provision

Section 26915(g) expressly uses the term "firearm safety device" with an express reference to the roster of approved firearm safety devices prepared by the Department of Justice pursuant to Section 23655. It therefore seems plain that Section 26915(g) is referring to the same class of objects as Section 23655. Because Section 23655 is governed by the statutory definition of "firearm safety device," Section 26915 should also be governed by that definition.

Recommendation

For the reasons discussed above, the staff believes that the existing definition of "firearm safety device" could be expanded to apply to the other provisions of Part 6 that currently use the term without definition. This could be done by expanding the definition to apply to all of Part 6.

Note that a pending bill, Senate Bill 108 (Yee), would add a new provision that uses the term "firearm safety device." The new provision would make it a crime to leave a firearm unsecured in your domicile. The bill would amend the definition of "firearm safety device" to make it applicable to the new provision. That amendment would not be necessary if the definition were revised to apply to the entirety of Part 6.

If the Commission agrees with the staff's recommendation, the material above will be held for eventual incorporation into a tentative recommendation addressing issues of this type.

"LOCKED CONTAINER"

The term "locked container" is defined, for the purposes of a number of specified Penal Code provisions, to mean the following:

[A] secure container that is fully enclosed and locked by a padlock, keylock, combination lock, or similar locking device. The term "locked container" does not include the utility or glove compartment of a motor vehicle.

Section 16850.

Defined Usage

There are two types of provisions that use the term “locked container” and are governed by the statutory definition. They are discussed separately below.

Criminal Storage of Firearm

Section 25100 establishes the crime of “criminal storage of a firearm.” The elements of the crime include a child accessing a firearm and causing injury with the firearm.

Section 25105 provides exceptions to Section 25100. One of those exceptions exists when a firearm is “kept in a locked container or in a location that a reasonable person would believe to be secure.” Section 25105(b).

Transport of Firearm

There are a number of provisions that govern the transportation of firearms. Many of those provisions have special rules for transportation of a firearm that is in a locked container.

Section 25400 generally prohibits individuals from carrying a concealed handgun within any vehicle that is under the person’s control. Sections 25505, 25515, and 25610 provide exceptions to that prohibition:

- Section 25505 provides that a person may transport a handgun between specified locations if the handgun is unloaded and in a “locked container” inside the vehicle.
- Section 25515 provides that a member of a club or organization formed for the lawful display or collection of handguns may lawfully transport a handgun in a vehicle to a meeting of the organization if the handgun is unloaded and in a “locked container.”
- Section 25610 provides that Section 25400 does not prohibit (among other things) carrying a handgun to and from a vehicle for a lawful purpose, if the handgun is carried in a “locked container.”

Section 26350 makes it a crime to openly carry a handgun under specified circumstances. 26389 provides an exemption to Section 26350 if the handgun is carried in the locked trunk of a motor vehicle or in a “locked container.”

Section 17740 regulates the transportation of a generally prohibited weapon to law enforcement for disposal. The weapon must be transported in a locked container.

Section 23925(d) provides a similar rule governing the delivery of an unmarked firearm to law enforcement. The firearm must be transported in a locked container.

Section 26405 is the last of the transportation sections. It provides that an unloaded firearm that is not a handgun may be transported, so long as it is in a “locked container” or is encased and the person is transporting it directly between places where a person is not prohibiting from possessing that firearm. (Section 26405(c).) Similar to previously discussed sections, the course of travel may only include those deviations between authorized locations as are “reasonably necessary under the circumstances.” *Id.*

Undefined Usage

There are two provisions that use the term “locked container” but are not governed by the statutory definition of that term, Sections 27540 and 27560. Those provisions are discussed separately below.

Personal Firearm Importer

Section 27560 imposes certain requirements on a personal firearm importer who brings a firearm into this state. The Department of Justice is required to conduct a public education and notification program to publicize the requirements of the section. Section 27560(d).

One element of the public education program requires that the Department make people aware that when transporting an imported handgun to law enforcement, pursuant to Section 27560(a), the handgun must be unloaded and in a locked container. Section 27560(3)(4)(D).

Analysis of Personal Firearm Importer Provision

Section 27560(e) describes the content of a public education program. It does not, on its face, seem to be establishing any new substantive rules of law. Instead, the provision appears to be describing existing requirements that are described elsewhere.

The requirement that the education program discuss the obligation to transport a firearm in a “locked container” appears to be a reference to the general transportation rules discussed earlier in the memorandum, all of which are governed by the definition of “locked container.”

That conclusion seems to be consistent with the educational program that the Department has on its website, in apparent compliance with Section 27560. See

www.oag.ca.gov/firearms/ab991. (Although that page does not specifically cite Section 27560, the inclusion of “ab991” in the page’s web address appears to be a reference to the bill that added Section 27560 (former Section 12072(f)). See 1997 Cal. Stat. ch. 462 (AB 991).)

That webpage states, without qualification: “Any person transporting handguns in California is required under California law to transport those handguns unloaded and in a locked container other than the glove compartment or utility compartment of a vehicle.” That seems to be a general statement of the rules governing transportation of a handgun.

If, as appears to be the case, the educational program required by Section 27560 is using the term “locked container” to refer to rules stated in provisions that are all governed by the definition of that term, then it seems very likely that Section 27560 is using the term with the same meaning. If so, then it should be governed by the definition.

Firearm Delivery

Section 27540 regulates how a licensed dealer may deliver a firearm. Each of its subdivisions establishes a requirement to ensure that the firearm is transferred under secure conditions. For instance, subdivision (d) prohibits the dealer from delivering the firearm to prohibited individuals, while subdivision (e) prohibits delivery unless the receiver has shown the dealer a handgun safety certificate.

Subdivision (b) provides that a dealer may not deliver a firearm “unless [the firearm is] unloaded and securely wrapped or unloaded and in a locked container.”

Analysis of Firearm Delivery Provision

There is nothing on the face of that provision to indicate whether it uses the term “locked container” to describe the same class of objects described in the statutory definition.

It is theoretically possible that Section 27540 might use the term with its commonly understood meaning: any “container” that is “locked.” If so, then the term might not completely match up with the statutory definition, which requires that the container be “secure” and “fully enclosed.” See Section 16850. One can imagine locked containers that would not meet those standards.

However, consider the context in which Section 27540 operates. When a licensed dealer delivers a firearm to a purchaser, that will often occur in the dealer's place of business. The purchaser must then necessarily transport the firearm to wherever the firearm will be stored. If other provisions require that the firearm be transported in a locked container, then it seems likely that the locked container that the dealer provides is the same object.

That inference is not conclusive though. Section 27540 also allows the firearm to be delivered "securely wrapped," as an alternative to delivery in a locked container. That breaks the logical chain discussed above, where the locked container delivered by the dealer is the same container used to transport the firearm.

However, that apparent disconnect might be explained in two ways. First, rifles and shotguns are not required to be transported in a locked container. Perhaps those are the firearms that the dealer "securely wraps." Second, it may be that Section 27540 anticipates that some purchasers will already own a locked container and will use that container to transport the firearm home, obviating the need for the dealer to deliver another locked container.

Recommendations

With regard to the DOJ educational program described in Section 27560, it seems reasonably clear that the statute is using the term "locked container" in the same sense as the transportation provisions that are governed by the statutory definition of the term. For that reason, it seems appropriate to extend the definition to govern Section 27560.

It also seems likely that the locked container that a dealer must provide to a purchaser under Section 27540 is the same object that the purchaser will use to transport the firearm after purchase. If so, then Section 27540 should probably also be governed by the statutory definition.

If both of those changes are made, the definition of "locked container" could be extended to the entirety of Part 6.

As discussed earlier, pending Senate Bill 108 (Yee) would add provision to make it a crime to leave a firearm unsecured in your domicile. That provision uses the term "locked container." It also amends the definition of "locked container" to make it applicable to the new provision. That amendment would not be necessary if the definition were revised to apply to the entirety of Part 6.

If the Commission agrees with the staff's recommendation, the material above will be held for eventual incorporation into a tentative recommendation addressing issues of this type.

Respectfully submitted,

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