

Memorandum 2013-18

**Deadly Weapons: Minor Clean-Up Issues
("Short-Barreled Rifle," "Short-Barreled Shotgun," "Silencer")**

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 three such definitions, which define the terms "short-barreled rifle," "short-barreled shotgun," and "silencer."

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*.

"SHORT-BARRELED RIFLE" AND "SHORT-BARRELED SHOTGUN"

The definitions of "short-barreled rifle" and "short-barreled shotgun" are analyzed together, because all of the provisions that use those terms use both of them in tandem, to regulate both types of weapons in the same way.

"Short-barreled rifle" is defined to mean any of the following objects:

- (a) A rifle having a barrel or barrels of less than 16 inches in length.
- (b) A rifle with an overall length of less than 26 inches.
- (c) Any weapon made from a rifle (whether by alteration, modification, or otherwise) if that weapon, as modified, has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length.
- (d) Any device that may be readily restored to fire a fixed cartridge which, when so restored, is a device defined in subdivisions (a) to (c), inclusive.
- (e) Any part, or combination of parts, designed and intended to convert a device into a device defined in subdivisions (a) to (c), inclusive, or any combination of parts from which a device defined

in subdivisions (a) to (c), inclusive, may be readily assembled if those parts are in the possession or under the control of the same person.

Section 17170.

Similarly, “short-barreled shotgun” is defined to mean any of the following objects:

(a) A firearm that is designed or redesigned to fire a fixed shotgun shell and has a barrel or barrels of less than 18 inches in length.

(b) A firearm that has an overall length of less than 26 inches and that is designed or redesigned to fire a fixed shotgun shell.

(c) Any weapon made from a shotgun (whether by alteration, modification, or otherwise) if that weapon, as modified, has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length.

(d) Any device that may be readily restored to fire a fixed shotgun shell, which, when so restored, is a device defined in subdivisions (a) to (c), inclusive.

(e) Any part, or combination of parts, designed and intended to convert a device into a device defined in subdivisions (a) to (c), inclusive, or any combination of parts from which a device defined in subdivisions (a) to (c), inclusive, can be readily assembled if those parts are in the possession or under the control of the same person.

Section 17180.

Both of those definitions have the same limited application. The provisions that use the terms and are governed by the definitions are discussed immediately below. That is followed by a discussion of the provisions that use the terms but are not governed by the definitions.

Defined Usage

There are 11 sections that use the terms short-barreled rifle and short-barreled shotgun and are governed by the definitions of those terms. Those provisions fall into three groups, which are discussed below.

Concealable Firearm Definitions

There are two related provisions that define specified types of concealable firearms.

Section 16530 defines the terms “firearm capable of being concealed upon the person,” “pistol,” and “revolver.” Section 16640 then defines “handgun” as “any pistol, revolver, or firearm capable of being concealed upon the person.”

Those definitions also provide:

Nothing shall prevent a device defined as a [pistol, revolver, handgun or firearm capable of being concealed upon the person] from also being found to be a short-barreled rifle or a short-barreled shotgun.

See Sections 16530(b), 16640(b).

Exemptions from General Prohibitions

For convenience of reference, Section 16590 defines the term “generally prohibited weapon” to include a long list of weapons that are specifically prohibited by statute (including short-barreled rifles and shotguns).

Sections 17700 to 17745 provide exemptions from the prohibitions listed in Section 16590.

Four of those exemptions do not cover a short-barreled rifle or shotgun. See Sections 17720 (weapon used by entertainment industry), 17725 (weapon manufactured or sold for use in entertainment industry or museums), 17730 (authorized use by law enforcement), 17740 (delivery of found weapon to law enforcement for disposal).

Regulation of Short-Barreled Rifles and Shotguns

Chapter 8 of Division 10 of Title 4 of Part 6 of the Penal Code is entitled “Short-Barreled Rifle or Short-Barreled Shotgun.” The chapter regulates the manufacture, sale, possession and use of those weapons.

Chapter 8 is divided into two articles. Article 1 provides restrictions on short-barreled rifles and shotguns (and exceptions to those restrictions). Article 2 provides rules for permitted use of rifles and shotguns in specified circumstances. The provisions of Article 1 are governed by the definitions. The provisions of Article 2 are not.

The first provision of Article 1, Section 33210, provides that

no person may manufacture, import into this state, keep for sale, offer for sale, give, lend, or possess any short-barreled rifle or short-barreled shotgun.

Section 33215 specifies the criminal penalty for a violation of Section 33210. See also Section 33290 (short-barreled rifle or short-barreled shotgun as nuisance).

However, there are exceptions to the prohibitions in Section 33210.

The first exempts the “sale to, purchase by, or possession of short-barreled rifles or short-barreled shotguns by” specified law enforcement agencies. Section 33220(a).

The second exempts the possession of short barreled rifles and shotguns by trained peace officers for authorized uses. Section 33220(b).

The third exemption provides:

Section 33215 does not apply to the manufacture, possession, transportation, or sale of a short-barreled rifle or short-barreled shotgun, when authorized by the Department of Justice pursuant to Article 2 (commencing with Section 33300) and not in violation of federal law.

For the discussion that follows, it is important to emphasize that the scope of the exemption provided in Section 33215 is governed by the rules set out in Article 2. *All of the provisions that use the terms “short-barreled rifle” and “short-barreled shotgun” without being governed by the statutory definitions are included in that article.*

Undefined Use

As noted above, Article 2 of the chapter on short-barreled rifles and shotguns contains all of the provisions that use the terms “short-barreled rifle” and “short-barreled shotgun” but are not governed by the definition.

The Article 2 provisions authorize the Department of Justice to issue permits for the manufacture, importation, possession, and use of short-barreled rifles and shotguns on a showing of good cause. Section 33000.

Good cause exists in only two circumstances:

- (1) Where the weapon will be used as a prop in the entertainment industry.
- (2) Where the weapon will be provided to law enforcement pursuant to the exemption provided in Section 33220.

Section 33000(b). See also Sections 33305 (application for permit), 33310 (where permit kept), 33315 (revocation), 33320 (periodic inspection).

Analysis

For the reasons discussed below, the staff believes that the provisions of Article 2 of Chapter 8 should be governed by the statutory definitions of “short-barreled rifle” and “short-barreled shotgun.”

Integrated Regulatory Scheme

As noted above, the chapter that regulates short-barreled rifles and shotguns is divided into two articles. Article 1 sets out criminal prohibitions and exceptions to those prohibitions. Article 2 then fleshes out the exceptions provided in Article 1. (While the scheme described above is accurate, it was not so tidily expressed prior to the Commission's reorganization of the deadly weapon provisions.)

Given that degree of interconnection between Article 1 and Article 2, it seems very likely that the terms "short-barreled rifle" and "short-barreled shotgun" were intended to have the same meaning in both articles. It would not make sense for the two articles to use the terms with different meanings.

For example, Section 33220 (in Article 1) provides an exception for possession of short-barreled rifles and shotguns by specified law enforcement entities. Section 33000(b)(2) (in Article 2) provides an exception for dealers who provide short-barreled rifles and shotguns to the law enforcement entities listed in Section 33220. It would be illogical if the exemption for *providing* the weapons did not govern the same weapons as the exemption for *possessing* them.

Legislative History

The terms "short-barreled rifle" and "short-barreled shotgun" did not exist in the Penal Code until 1988. Prior to 1988, the Legislature used the term "sawed-off shotgun." *See e.g.*, 1961 Cal. Stat. ch. 996, § 1 ("sawed-off shotgun"); 1973 Cal. Stat. ch. 732, § 1 *et seq.* ("sawed-off shotgun" defined to include rifles). But in 1988, the Legislature replaced all references to "sawed-off shotgun" with the terms "short-barreled rifle" and "short-barreled shotgun." 1988 Cal. Stat. ch. 163.

This wholesale and consistent terminological replacement, in a single bill, implies that the Legislature intended the term to have a uniform meaning.

Case Law

Staff could not locate any appellate cases that specifically address the meaning of the terms "short-barreled rifle" or "short-barreled shotgun" for the purposes of the sections that are not governed by the definition.

However, there is a case in which the California Supreme Court discussed short-barreled rifles, with references to both the Article 1 and Article 2 provisions discussed above, without any indication that those articles might govern different types of weapons. *People v. King*, 38 Cal. 4th 617, 620, 626 133 P.3d 636,

42 Cal. Rptr. 3d 743 (2006). In considering whether the defendant charged with prohibited possession of a sawed-off rifle must know that the weapon falls within the scope of the prohibition, the court noted “[e]ven sawed-off rifles have a lawful purpose, in certain limited circumstances....” *Id.* at 626. The court then cited the predecessor to the Article 2 provisions.

By discussing the Article 1 prohibition in connection with the uses permitted under Article 2, the Court likely presumed that the term “short-barreled rifle” had the same meaning in both.

Recommendation

Because of the closely integrated scheme set out in Article 1 and Article 2 of Chapter 8 (discussed above), it seems very likely that the terms “short-barreled rifle” and “short-barreled shotgun” were intended to have the same meaning throughout.

If the definitions were generalized to apply to all of Part 6, the only immediate effect would be to apply the definitions to the provisions of Article 2. That would not seem to be problematic. To the contrary, it would help to avoid any confusion as to the meaning of the term in closely related provisions.

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

“SILENCER”

The term “silencer” is defined, for the purposes of Chapter 9 of Division 10 of Title 4 only, as follows:

[A]ny device or attachment of any kind designed, used, or intended for use in silencing, diminishing, or muffling the report of a firearm. The term “silencer” also includes any combination of parts, designed or redesigned, and intended for use in assembling a silencer or fabricating a silencer and any part intended only for use in assembly or fabrication of a silencer.

Section 17210.

According to that definition, the term “silencer” encompasses two types of objects:

- (1) The device that attaches to a firearm to modify its report.
- (2) A piece of equipment used to make the first type of object.

There are two sections that use this term with its defined meaning, Sections 33410 and 33415. That usage is discussed below.

Defined Usage

There are two provisions that use the term “silencer” that are governed by the definition of that term.

Section 33410 makes it a felony to possess a silencer:

Any person, firm, or corporation who within this state possesses a silencer is guilty of a felony and upon conviction thereof shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 or by a fine not to exceed ten thousand dollars (\$10,000), or by both that fine and imprisonment.

Section 33410.

Section 33415 then provides exceptions to the crime established in Section 33410:

Section 33410 shall not apply to, or affect, any of the following:

(a) The sale to, purchase by, or possession of silencers by agencies listed in Section 830.1, or the military or naval forces of this state or of the United States, for use in the discharge of their official duties.

(b) The possession of silencers by regular, salaried, full-time peace officers who are employed by an agency listed in Section 830.1, or by the military or naval forces of this state or of the United States, when on duty and when the use of silencers is authorized by the agency and is within the course and scope of their duties.

(c) The manufacture, possession, transportation, or sale or other transfer of silencers to an entity described in subdivision (a) by dealers or manufacturers registered under Chapter 53 (commencing with Section 5801) of Title 26 of the United States Code and the regulations issued pursuant thereto.

Undefined Usage

Section 30515 defines “assault weapon” by reference to the functional characteristics of the weapon. (In contrast to Section 30510, which defines “assault weapon” by reference to specific weapon models).

One of the functional definitions of “assault weapon” is

A semiautomatic pistol that has the capacity to accept a detachable magazine and any of the following:

(A) A threaded barrel, capable of accepting a flash suppressor, forward handgrip, or *silencer*.

...

Section 30515(a)(4) (emphasis added). That provision is not governed by the definition of “silencer.”

Analysis

The California Legislature and Congress have both defined silencer, as have military and common dictionaries. Because all definitions reviewed by staff are substantively the same, applying the Legislature’s definition to Section 30515 would not cause a substantive change. A review of Section 30515’s legislative history, Department of Justice regulations and the common meaning of silencer, discussed below, support this conclusion.

Legislative History

The Legislature adopted Section 30515 (originally Section 12276.1) in 1999. See 1999 Cal. Stat. ch. 129, §7. When the Assembly Committee on Public Safety took up that bill, the committee’s analysis noted that the federal assault weapons law (18 U.S.C. § 921(a)(30)), had a similar “generic” definition for “assault weapon.” Assembly Committee on Public Safety Analysis of SB 23 (July 6, 1999), p. 5.

In 1999, the federal definition of “assault weapon” also included a definition of “firearm silencer.” The latter provided:

The terms “firearm silencer” and “firearm muffler” mean any device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for use in assembling or fabricating a firearm silencer or firearm muffler, and any part intended only for use in such assembly or fabrication.

18 U.S.C. § 921 (a) (24).

As it appears that Section 30515 was to some extent modeled after the federal assault weapons law, it is possible that the term “silencer” was intended to have a meaning similar to the federal definition of that term (which is itself similar to California’s definition).

Department of Justice Regulations

The Department of Justice is charged with adopting rules and regulations “to carry out the purposes and intent” of the chapter regulating assault weapons. Section 30520(c). In adopting those regulations, the Department defined some of the terms used in Section 30515. See 12.8 Cal. Code Regs. § 978.20.

The defined terms included “detachable magazine,” “flash suppressor,” “forward pistol grip,” “pistol grip that protrudes conspicuously beneath the action of the weapon,” and “thumbhole stock.” *Id.* The Department did *not* define “silencer.”

None of the five terms that were defined by regulation is defined in Part 6 of the Penal Code. Nor are those terms defined in Title 18 of the federal code. *See* 18 U.S.C. § 921. It is of particular note that the Department chose to define “flash suppressor” and “forward pistol grip” since both terms, or close approximations of each, appear in the same provision of Section 30515 that uses the term “silencer.” Section 30515(a)(4)

The fact that the Department defined closely related terms but not the term “silencer” in implementing Section 30515 suggests that the Department did not believe it was necessary to define “silencer.” The staff sees two reasons why that might be:

- (1) The Department erroneously assumed that the Penal Code definition would apply.
- (2) The Department assumed that generally accepted definitions of the term were sufficiently clear to obviate the need for a special statutory definition.

Generally Accepted Definitions

As noted above, the Department may not have seen a need to define the term “silencer” if it has a generally understood meaning.

One military dictionary defines silencer as “a device specifically designed to silence the explosive report caused by the discharge of cartridges by a small-arms weapon.” John Quick, *Dictionary of Weapons and Military Terms* (McGraw-Hill Book Co., 1973). More general dictionaries provide similar definitions. *See e.g.*, *Webster’s Third New International Dictionary* (1986) (“a silencing device for small arms that permits the exit of the projectile but reduces the noise...”); *Oxford American Dictionary* (1999) (“any of various devices for reducing the noise emitted by a gun, etc.”); *The American Heritage Illustrated Encyclopedic Dictionary* (1987) (“a device attached to the muzzle of a firearm to muffle the report”); *Funk & Wagnall’s New International Dictionary of the English Language* (1997) (“a tubular device attached to the muzzle of a firearm rendering the discharge noiseless”).

These definitions vary slightly, but generally describe the same object. Some specifically indicate the silencer is attached to a muzzle, while others do not.

Some suggest the device results in a noiseless firing, while others indicate the report is muffled. Regardless of these minor differences, every definition describes a device that when used with a firearm, results in a reduced report.

The dictionary definitions are functionally similar to the definition provided in the Penal Code and in the federal assault weapon statute. The staff could not find a definition that is materially different.

Recommendation

It seems likely that the term “silencer” in Section 30515 was intended to have the same meaning given that term in other Penal Code provisions (i.e., the defined meaning). That would be fundamentally consistent with the federal definition and with the dictionary definitions referenced above.

However, the staff could not find any direct evidence of that intention. Given the attention that the Legislature and other policymakers are currently giving to the regulation of assault weapons, it might be prudent to wait until the current reform efforts run their course, before recommending any change to the definition of “assault weapon.”

Respectfully submitted,

Alexander Rich
Legal Extern
UC Davis School of Law

Brian Hebert
Executive Director