

Memorandum 2014-16

Fish and Game Law: Firearms

The Commission is presently studying a proposed recodification¹ of the Fish and Game Code.² At its last meeting, the Commission approved a staff proposal to consider whether two provisions of the existing code should be continued in the Penal Code.³ For the reasons discussed below, after further analysis the staff believes the provisions should remain in their current context and be continued in the proposed Fish and Wildlife Code.

Unless otherwise indicated, all statutory references in this memorandum are to the Fish and Game Code.

BACKGROUND

Fish and Game Code Sections 2006 and 2007 regulate the use of firearms, using broad language that is not clearly limited to the context of hunting:

2006. (a) It is unlawful to possess a loaded rifle or shotgun in any vehicle or conveyance or its attachments which is standing on or along or is being driven on or along any public highway or other way open to the public.

(b) A rifle or shotgun shall be deemed to be loaded for the purposes of this section when there is an unexpended cartridge or shell in the firing chamber but not when the only cartridges or shells are in the magazine.

(c) The provisions of this section shall not apply to peace officers or members of the Armed Forces of this state or the United States, while on duty or going to or returning from duty.

1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

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. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

2. See Memorandum 2012-41.

3. Memorandum 2014-8, pp. 2-3; Minutes (Feb. 2014), p. 13.

2007. It is unlawful to set, cause to be set, or placed any trap gun.

A “trap gun” is a firearm loaded with other than blank cartridges and connected with a string or other contrivance contact with which will cause the firearm to be discharged.

By their terms, Sections 2006 and 2007 appear to apply generally. They do not contain any language that would limit their application to the context of hunting. They also appear to be mostly self-contained, without any obvious dependence on other provisions. (A significant exception is the fact that Sections 2006 and 2007 do not specify the penalty for a violation. Under the default rule in Section 12002(a), violation of either would be a misdemeanor.)

The staff’s suggestion to relocate Sections 2006 and 2007 was based on being able to add the provisions to the Penal Code without changing the substance of existing law, or creating significant new complications.

If that were the case, placing the two sections with similar provisions in the Penal Code would make them easier for firearms users and practitioners to find. It would also highlight the differences between the provisions and similar provisions in the Penal Code.⁴ That would make it easier for policymakers to assess whether the two sets of provisions should be harmonized.

However, after analyzing the statutory steps required to relocate the provisions, the staff discovered that the provisions are not as severable as their language suggests. As is discussed in more detail below, both have significant underlying connections to fish and game law that are probably best left undisturbed.

CONNECTIONS TO FISH AND GAME LAW

There are two ways in which Sections 2006 and 2007 are connected to fish and game law: (1) they are subject to several general enforcement rules in the Fish and Game Code, and (2) they may be intended by the Legislature to apply only in the context of hunting.

General Enforcement Rules

As noted above, the staff was aware that Sections 2006 and 2007 depend on Section 12002 to specify the penalty for a violation. That did not seem to be a

4. See, e.g., Penal Code §§ 20110 (boobytraps), 25850 (carrying loaded firearm in public), 26100 (allowing passenger to unlawfully carry loaded firearm in vehicle).

significant obstacle to moving the provisions to the Penal Code. The provisions could easily have been revised to incorporate the appropriate penalty language.

But that is not the only general enforcement rule that applies to Sections 2006 and 2007. For example, Section 12157 provides for the forfeiture of any device used to violate any provision of the Fish and Game Code, if the device can be used for hunting. Thus, a violation of Section 2006 or 2007 could result in the forfeiture of the firearm used to violate the section.

A firearm forfeited under Section 12157 can be sold, used, or destroyed by the Department of Fish and Wildlife,⁵ with the proceeds from any sale paid into the Fish and Game Preservation Fund.⁶ These are direct procedural connections to the Department's law enforcement responsibilities.

Similarly, Section 12158 provides for suspension or revocation of a hunting or sport fishing license for a violation of any provision of the Fish and Game Code related to sport hunting or fishing. Sections 2006 and 2007 would seem to have enough of a relation to hunting that a violation of either section could result in a suspension under Section 12158. Again, this appears to be a direct connection back to enforcement of fish and wildlife law.

There are several other general provisions in the Fish and Game Code that also apply to a violation of any other code provision, and so would apply to Sections 2006 and 2007.⁷

All of those rules could be carried forward into the Penal Code, if Sections 2006 and 2007 were relocated there. But doing so would not be simple. It might also be confusing to have rules that are clearly tied into the Department's enforcement responsibilities located outside of the proposed Fish and Wildlife Code.

Expected Application

By their terms, Sections 2006 and 2007 are not limited to hunting activity. Section 2006 makes it a crime to possess a loaded rifle or shotgun in a vehicle on a public way, whether or not doing so in order to hunt. Similarly, Section 2007 prohibits the use of a trap gun, whether used to shoot game or for home defense.

5. Section 12157(e).

6. Section 12157(f).

7. See Sections 2544 and 2546 (refusal to issue or revocation of guide license), 2586 (reward for information), 3218 (revocation of a domesticated game breeding license), 3033 (reduced hunting license fee), 4340 (forfeiture of deer tags), 4754 (forfeiture of bear tags), 8032.5(c)(2) (revocation of commercial fishing privileges), 12021 (additional penalty to finance department's secret witness program), 12300 (limited immunity).

However, there are some reasons to believe that the Legislature expected those provisions would be used to regulate hunting. First, both provisions have been located in the Fish and Game Code, grouped with other provisions that regulate hunting, for over 50 years. That placement is not dispositive as to the intended purpose of the provisions. Code sections sometimes wind up in unexpected locations. But it does at least suggest a connection to the regulation of hunting.

Second, as discussed above, both provisions are subject to general enforcement provisions that tie them directly into the Department's enforcement program. Firearms used in violation of Sections 2006 and 2007 can be forfeited to the Department, with the proceeds of any sale used to benefit Fish and Wildlife programs. A violation of either provision could result in suspension of the wrongdoer's hunting license. This suggests that policy makers perceive a material connection between Sections 2006 and 2007 and the regulation of hunting.

It is also worth noting that Section 2006 applies to rifles and shotguns, but not handguns. Rifles and shotguns are generally used as hunting weapons; handguns are not.

Finally, the staff can see plausible scenarios in which the sections could have been enacted to regulate hunting. Section 2006 could have been intended to address the problem of poachers carrying loaded guns as they drive on public highways, intending to shoot any game they find standing nearby. Section 2007 could have been intended to address the use of trap guns placed on game trails, set to shoot whatever game happens to pass by. Indeed, the California Supreme Court, in a case involving the use of a trap gun in a home, noted the possibility that the Legislature may have enacted Section 2007 "merely to regulate the taking of wild life."⁸

If it is correct that Sections 2006 and 2007 were intended to regulate hunting, without any expectation that the provisions would have broader application, moving them to the Penal Code could be problematic. Such a move would seem to concretely affirm that the provisions are *not* limited to hunting, which might be at odds with the unexpressed intentions of the Legislature.

8. See *People v Ceballos*, 12 Cal. 3d 470, at 476, n. 1, 526 P.2d 241, 116 Cal. Rptr. 233 (1974).

RECOMMENDATION

For the reasons discussed above, the staff recommends a more conservative treatment of Sections 2006 and 2007. It would be simplest and least disruptive of existing law to keep the sections in their current context, as part of the proposed Fish and Wildlife Code.

If the Commission agrees, the staff recommends that Sections 2006 and 2007 be recodified in the proposed Fish and Wildlife Code, with other hunting related provisions. That approach would avoid any complications that would arise from uprooting the provisions and transplanting them (with all of their existing entanglements) into the Penal Code.

It might also be helpful if the narrative portion of the Commission's final recommendation in this study were to note some of the differences between Sections 2006 and 2007, and two similar sections in the Penal Code.⁹ Doing so would alert the Legislature to the possible benefits of harmonizing the two sets of provisions.

How does the Commission wish to proceed?

Respectfully submitted,

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9. See Penal Code §§ 20110 (boobytraps), 25850 (carrying loaded firearm in public).