

Memorandum 2015-43

Deadly Weapons: Minor Clean-Up Issues (Draft Tentative Recommendation)

The Commission's recommendation on *Nonsubstantive Reorganization of Deadly Weapon Statutes*¹ 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). In enacting that recommendation, the Legislature authorized the Commission to study the clean-up items included in the list.²

Memorandum 2015-37 presented proposed reforms for a number of items on the clean-up list. It also proposed some minor improvements pursuant to the Commission's general authority to "correct technical or minor substantive defects."³

At its August meeting, the Commission directed the staff to prepare a draft tentative recommendation based on the proposals in Memorandum 2015-37, with three specific instructions on how to prepare the draft:⁴

- In evaluating whether to make the proposed change to Penal Code Section 18405(b), look more closely at the distinction between "family violence" and "domestic violence."
- Adjust the proposed revision to Penal Code Section 18255 to refer to a *residential* address.
- Make a technical change to the proposed revision of Penal Code Section 26890 (strike out "Subdivision" and replace it with "Subdivisions").

The first of those bullet points is discussed further in this memorandum. The memorandum also notes one additional technical revision that the staff recommends be included in a tentative recommendation.

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. 2010 Cal. Stat. ch. 711, § 7.

3. Gov't Code § 8298.

4. Minutes (Aug. 2015), p. 6.

The staff has prepared a draft to implement the Commission's instructions. It is attached for the Commission's review. The Commission needs to decide whether to approve the draft as a tentative recommendation, for public distribution.

Except as otherwise indicated, all statutory references in this memorandum are to the Penal Code.

"FAMILY VIOLENCE" V. "DOMESTIC VIOLENCE"

Memorandum 2015-37 proposed revising Section 18405 to replace the term "family violence" with the defined term "domestic violence," consistent with that term's near-universal usage in the Penal Code.

At the August meeting, there was discussion of whether the terms "family violence" and "domestic violence" have substantively different meanings (with "domestic violence" limited to violence between persons in a sexual relationship, while "family violence" also includes violence against children, parents, and other family members). The Commission directed the staff to consider whether such a distinction would support retaining the term "family violence" in Section 18405.

The staff has analyzed the issue further and renews its recommendation that Section 18405 be revised to replace "family violence" with "domestic violence." The reasons for that recommendation are explained below.

Substantive Meaning

Penal Code Section 16490 defines "domestic violence" as follows:

As used in this part, "domestic violence" means abuse perpetrated against any of the following persons:

- (a) A spouse or former spouse.
- (b) A cohabitant or former cohabitant, as defined in Section 6209 of the Family Code.
- (c) A person with whom the respondent is having or has had a dating or engagement relationship.
- (d) A person with whom the respondent has had a child, where the presumption applies that the male parent is the father of the child of the female parent under the Uniform Parentage Act (Part 3 commencing with Section 7600) of Division 12 of the Family Code).
- (e) A child of a party or a child who is the subject of an action under the Uniform Parentage Act, where the presumption applies that the male parent is the father of the child to be protected.

(f) Any other person related by consanguinity or affinity within the second degree.

That definition is substantively identical to the definition of “domestic violence” in the Family Code.⁵ The staff did not find a definition of “family violence” in any code.

Importantly, the governing definition of “domestic violence” includes violence against cohabitants and relatives within the second degree of kinship (which includes children, grandchildren, parents, grandparents, and siblings). In other words, as used in Section 18405, “domestic violence” is *not* limited to violence against a sexual partner.

Legislative History

Sections 18250 through 18500 continue the substance of former Section 12028.5.

Prior to 1999, Section 12028.5 used the term “family violence” exclusively. At that time, the definition of “family violence”⁶ was broader than the definition of “domestic violence,”⁷ which it incorporated and then expanded by adding family members within the second degree of kinship.

Section 12028.5 was amended in 1999.⁸ The amendments removed the definition of “family violence” and all but one of the uses of that term. The amended bill included a definition of “domestic violence” and used that term in all but one instance. The former definition of “domestic violence” was substantively identical to the former definition of “family violence” (and it is substantively identical to the current definition of “domestic violence”).

The Legislative Counsel’s digest to the 1999 bill makes clear that the bill was intended to replace “family violence” with “domestic violence” throughout:

Existing law authorizes specified law enforcement officers who are at the scene of a family violence incident involving a threat to human life or physical assault, to take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual search. This provision also defines the terms “abuse,” “family violence,” and “family or household member.”

This bill instead would replace the term “family violence” with the term “domestic violence,” would delete the above-mentioned

5. Fam. Code § 6211.

6. See former Section 12028.5(a)(2)-(3); 1998 Cal. Stat. ch. 606, § 11.

7. See former Section 13700.

8. 1999 Cal. Stat. ch. 662, § 18.

definitions and would replace them with definitions of the terms “abuse” and “domestic violence” that track the definitions of those terms in the Family Code.⁹

Based on that history, it seems fairly clear that “family violence” and “domestic violence” were intended to have the same meaning. Moreover, it seems nearly certain that the retention of one use of the term “family violence” in Section 12028.5 was unintentional. The 1999 bill was intended to wholly replace “family violence” with the substantively identical term “domestic violence.”

ADDITIONAL TECHNICAL REVISION

The provisions that govern the written test that is administered as part of the firearm safety certification process¹⁰ use the term “test” in all but one instance. In that one case, the term “examination” is used. There is no evidence suggesting that the two terms were intended to have different meanings. The draft would replace “examination” with “test.”¹¹

CONCLUSION

The Commission needs to decide whether to approve the attached draft as a tentative recommendation, with or without changes, for public distribution.

Respectfully submitted,

Brian Hebert
Executive Director

9. *Id.*

10. See Sections 31640-31650.

11. See attached draft, pp. 3, 15.

CALIFORNIA LAW REVISION COMMISSION

STAFF DRAFT

TENTATIVE RECOMMENDATION

Deadly Weapons: Minor Clean-Up Issues (Part 2)

October 2015

The purpose of this tentative recommendation is to solicit public comment on the Commission's tentative conclusions. A comment submitted to the Commission will be part of the public record. The Commission will consider the comment at a public meeting when the Commission determines what, if any, recommendation it will make to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made to it.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN _____.

The Commission will often substantially revise a proposal in response to comment it receives. Thus this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

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SUMMARY OF TENTATIVE RECOMMENDATION

In June 2009, the Commission completed a recommendation on *Nonsubstantive Reorganization of Deadly Weapon Statutes*. The Legislature implemented the recommendation through its enactment of Chapters 178 and 711 of the Statutes of 2010. This legislation became operative on January 1, 2012.

In the course of its Deadly Weapons study, the Commission identified a number of minor problems that could not be addressed without potentially making a substantive change. Given the nonsubstantive nature of the Commission's initial study, these clean-up issues were not addressed in the June 2009 recommendation, but were instead identified and set aside for future work.

This tentative recommendation proposes amendments to address several of the minor clean-up issues. It also proposes some minor improvements that were not included in the 2009 list of clean-up issues.

This tentative recommendation was prepared pursuant to Section 7 of Chapter 711 of the Statutes of 2010 and Government Code Section 8298.

DEADLY WEAPONS: MINOR CLEAN-UP ISSUES

1 In 2006, the Legislature directed the Law Revision Commission to conduct a
2 study and recommend nonsubstantive changes to the statutes relating to control of
3 deadly weapons to simplify and provide better organization to this area of law.¹
4 The Commission was expressly directed not to make any change that would affect
5 the existing scope of criminal liability.²

6 In June 2009, the Commission submitted its recommendation on *Nonsubstantive*
7 *Reorganization of Deadly Weapons Statutes*³ (“Deadly Weapons
8 Recommendation”) to the Legislature. In 2010, the recommendation was enacted,
9 reorganizing the deadly weapons statutes into a new Part 6 of the Penal Code,⁴
10 structuring the provisions in a more user-friendly form and making conforming
11 revisions to the law.⁵

12 During the course of the study, the Commission found a number of minor issues
13 that could not be addressed without potentially effecting a substantive change.
14 Consistent with the Commission’s limited mandate, the Commission did not
15 address any of these minor issues in its Deadly Weapons Recommendation.
16 Instead, these minor issues were listed in Appendix B of the Deadly Weapons
17 Recommendation and set aside for possible future work. In the Deadly Weapons
18 Recommendation, the Commission requested authority to study these clean-up
19 issues. The Legislature granted the Commission authority to study and make
20 recommendations on the issues identified in Appendix B.⁶

21 Pursuant to that authority, the Law Revision Commission now recommends
22 minor clean-up amendments to address some of the issues identified in Appendix
23 B of the Deadly Weapons Recommendation.⁷ This tentative recommendation also
24 includes a few minor improvements that were not identified in Appendix B. They

1. ACR 73 (McCarthy), 2006 Cal. Stat. res. ch. 128.

2. *Id.*

3. *Nonsubstantive Reorganization of Deadly Weapon Statutes*, 38 Cal. L. Revision Comm’n Reports 217 (2009).

4. All references contained herein are to the Penal Code unless otherwise noted.

5. SB 1080 (Committee on Public Safety), 2010 Cal. Stat. ch. 711; SB 1115 (Committee on Public Safety), 2010 Cal. Stat. ch. 178. See also *Nonsubstantive Reorganization of Deadly Weapon Statutes: Clean-Up Legislation*, 41 Cal. L. Revision Comm’n Reports 135 (2011); 2011 Cal. Stat. ch. 285; 2012 Cal. Stat. ch. 162, §§ 12-14, 203, 207; 2013 Cal. Stat. ch. 76, §§ 145.5, 145.7, 147.3, 147.5, 153.5; 2013 Cal. Stat. ch. 291, § 52.

6. 2010 Cal. Stat. ch. 711, § 7 (SB 1080 (Committee on Public Safety)).

7. An earlier recommendation addressed some other issues identified in Appendix B of the Deadly Weapons Recommendation. See *Deadly Weapons: Minor Clean-Up Issues*, 43 Cal. L. Revision Comm’n Reports 63 (2013); 2014 Cal. Stat. ch. 103. Additional issues remain to be addressed in the future.

1 are proposed pursuant to the Commission’s general authority to recommend minor
2 technical and substantive reforms.⁸

3 The proposed reforms are described below.

4 STANDARDIZED TERMINOLOGY

5 This tentative recommendation addresses two Penal Code provisions that use
6 inconsistent terminology when referring to a single thing. Such inconsistency can
7 create uncertainty as to the meaning of the law, based on the assumption that
8 different terms must have been intended to have different meanings. The
9 Commission recommends that such terminology be standardized, as discussed
10 below.

11 **Written Firearm Safety Test**

12 Penal Code Section 31640 requires the Department of Justice to develop a
13 written firearm safety test to be administered by a certified instructor. The section
14 uses inconsistent terminology.

15 The word “test” is used in 17 of 18 references in Section 31640 and related
16 provisions.⁹ In only one instance, the word “examination” is used. The
17 Commission could find no evidence that the term “examination” was intended to
18 have a different meaning than “test.” The proposed law would replace
19 “examination” with “test.”

20 In three of four instances, Section 31640 speaks of a test being “administered.”
21 In one instance, the section refers to a test being “applied.” Again, the
22 Commission could find no evidence showing that this inconsistency was
23 intentional. The proposed law would replace “applied” with “administered.”

24 **Gun Show Producer Certificate of Eligibility**

25 Penal Code Sections 27200-27245 regulate gun shows and events. Section
26 27200(a) requires that a person possess a valid “certificate of eligibility” from the
27 Department of Justice before producing, promoting, sponsoring, operating, or
28 organizing a gun show or event. For the most part, Sections 27200-27245 are
29 consistent in using the term “certificate of eligibility” to refer to that document.

30 However, Section 27245 twice refers to a “gun show producer license.” The
31 Commission did not find any evidence indicating that this inconsistency was
32 intentional. To the contrary, there is good reason to believe that “gun show
33 producer license” was intended to mean the same thing as “certificate of

8. Gov’t Code § 8298.

9. Sections 31645-31650.

1 eligibility.”¹⁰ The proposed law would replace “gun show producer license” with
2 “certificate of eligibility.”

3 CLARIFYING REVISIONS

4 In two sections, the Commission recommends rewording an existing provision
5 to make its meaning easier to understand, without changing its meaning.

6 **Laboratory Testing of Firearms**

7 Penal Code Section 32010 requires that certain firearms be tested by an
8 independent laboratory to ensure that they meet applicable standards. Under
9 subdivision (b) of that section, the Department of Justice is charged with certifying
10 laboratories to perform that function. The proposed law would restate subdivision
11 (b) to make its meaning clearer, without changing its substance.

12 **Firearm Injury to a Child**

13 Penal Code Section 23685 requires law enforcement to report specified
14 information when a child sustains a firearm injury. The proposed law would
15 restate the section to make its meaning clearer, without changing its substance.

16 TECHNICAL ERRORS

17 The tentative recommendation would correct two clear drafting errors, as
18 explained below.

19 **Duplicated Language**

20 Penal Code Section 31700(b)(2) contains superfluous duplicated language (as
21 shown in italics below):

22 (b) The following persons who take title or possession of a firearm by operation
23 of law in a representative capacity, until or unless they transfer title ownership of
24 the firearm to themselves in a personal capacity, are exempted from the firearm
25 safety certificate requirement in subdivision (a) of Section 31615:

26 ...

27 (2) A secured creditor or an agent or employee thereof when the firearms are
28 possessed as collateral for, or as a result of, *or an agent or employee thereof when*
29 *the firearms are possessed as collateral for, or as a result of*, a default under a
30 security agreement under the Commercial Code.

31 The proposed law would delete the duplicated language.

10. See, e.g., Sections 16800 (“gun show producer” means person issued “certificate of eligibility”), 27200(e) (“licensed gun show producer” assessed fee to cover the cost of “certificate of eligibility”).

1 **Erroneous Cross-Reference**

2 Penal Code Section 25850 establishes the offense of carrying a loaded firearm
3 while in a public place.

4 Penal Code Section 26045 provides a defense to prosecution for that offense.
5 Section 26045 contains an erroneous cross-reference to a *different* provision,
6 Section 25400, which establishes a different firearm offense. The proposed law
7 would correct that error.

8 **Erroneous Use of “Or”**

9 Penal Code Section 26890 regulates the storage of firearms inventory when a
10 licensed dealer is not open for business.

11 Subdivision (a) of that section requires that the firearms be stored in a secure
12 facility that is part of the licensee’s business premises or that they be secured with
13 a steel rod and lock. Subdivision (b) allows the licensing authority of an
14 unincorporated area of a county or city to impose stricter security requirements
15 than those in subdivision (a).

16 Subdivision (d) of Section 26890 provides a limited exemption from the
17 requirements of subdivision (a) and (b) but erroneously refers to “subdivision (a)
18 *or* (b).” The proposed law would replace “or” with “and.”

19 **SEIZURE OF WEAPON AT DOMESTIC VIOLENCE INCIDENT**

20 Penal Code Sections 18250-18500 provide for the seizure of a firearm or other
21 deadly weapon at the scene of domestic violence. The Commission has identified
22 a number of problems with these provisions, as explained below.

23 **Terminology**

24 With one exception, the weapon seizure provisions use the defined term
25 “domestic violence.”¹¹ However, there is one provision, Section 18405(b), that
26 uses the term “family violence.”

27 The use of the term “family violence” appears to have been an accidental hold-
28 over from an earlier version of the section. Prior to 1999, former Section 12028.5
29 (which was recodified in Sections 18250-18500) consistently used the term
30 “family violence.” In 1999, that section was amended to replace “family violence”
31 with “domestic violence” throughout.¹² The Legislative Counsel’s Digest for that
32 bill explained:

33 Existing law authorizes specified law enforcement officers who are at the scene
34 of a family violence incident involving a threat to human life or physical assault,
35 to take temporary custody of any firearm or other deadly weapon in plain sight or

11. Section 16490 (“domestic violence” defined).

12. See 1999 Cal. Stat. ch. 662.

1 discovered pursuant to a consensual search. This provision also defines the terms
2 “abuse,” “family violence,” and “family or household member.”

3 This bill instead would replace the term “family violence” with the term
4 “domestic violence,” would delete the above-mentioned definitions and would
5 replace them with definitions of the terms “abuse” and “domestic violence” that
6 track the definitions of those terms in the Family Code.¹³

7 Despite that intention, the bill left one reference to “family violence”
8 unchanged. The proposed legislation would amend Section 18405 to correct that
9 oversight.

10 **Seizure of “Firearm or Other Deadly Weapon”**

11 In general, the weapon seizure provisions refer to the seizure of a “firearm or
12 other deadly weapon.” However, two of the sections are inconsistent on that point.
13 They initially refer to a “firearm or other deadly weapon,” but later refer only to a
14 “firearm.” That inconsistency could be confusing.

15 The Commission found no evidence that the inconsistent references were
16 intentional. To avoid any misunderstanding of the effect of the law, the
17 Commission recommends that Sections 18255 and 18260 be amended to
18 consistently include a reference to “other deadly weapons.”

19 **Mailing Address**

20 Section 18405 provides for notice to the owner of a seized weapon, if a petition
21 is filed with the court for forfeiture of the weapon. The notice must be sent to the
22 owner’s last known address. Under Section 18405(b), the last known address is
23 presumed to be the “address provided to the law enforcement officer by that
24 person at the time of the family violence incident.” However, there is nothing in
25 the statutory scheme that expressly provides an opportunity for law enforcement to
26 record the weapon owner’s address.

27 In order to avoid any confusion on this issue, the proposed law would amend
28 Section 18255 to fill that procedural gap — a police officer would take the weapon
29 owner’s residential mailing address when providing a receipt for a seized weapon.

30 REFERENCE TO “IMITATION FIREARM” 31 REGULATED BY FEDERAL LAW

32 Existing Penal Code Section 20155 makes it a California misdemeanor to fail to
33 comply with “any applicable federal law or regulation governing the marking of a
34 toy, look-alike, or imitation firearm, as defined by federal law or regulation.”

35 That provision is potentially confusing, because of a mismatch between federal
36 and state definitions of key terms. The governing federal statute defines the term

13. *Id.*

1 “look-alike firearm,” but does not define the term “imitation firearm.”¹⁴ California
2 law defines “imitation firearm,” but does not define “look-alike firearm.”

3 While the state and federal definitions are largely the same, the federal
4 definition of “look-alike firearm” is slightly narrower than the state definition of
5 “imitation firearm.” The federal definition excludes BB guns and certain types of
6 replicas. The state definition includes them. This could lead to confusion as to the
7 scope of the rule in Section 20155.

8 The purpose of Section 20155 is to provide a state penalty for a violation of
9 federal law. This means that the provision only has effect if federal law has been
10 violated. Consequently, the narrower federal definition should be controlling —
11 conduct involving an object that is excluded from the federal definition can never
12 be a violation of the federal statute.

13 The Commission recommends that Section 20155 be revised to make clear that
14 the federal terminology is controlling.

15 LIABILITY FOR MINOR’S USE OF TEAR GAS

16 Under existing Penal Code Section 22815, it is lawful to sell or furnish tear gas
17 or a tear gas weapon to a minor if the minor’s parent or guardian accompanies the
18 minor or has signed a written authorization. Any civil liability that results from the
19 minor’s use of the tear gas may be imposed on the “person, parent, or guardian”
20 who signed a written consent authorizing the minor’s acquisition of the tear gas.

21 The Commission recommends that Section 22815 be revised to make two
22 improvements:

- 23 (1) Under existing law, a person is only liable for injuries caused by a minor’s
24 use of tear gas if that person provided *written* authorization to provide tear
25 gas to the minor. The liability rule does not apply to a person who authorizes
26 the minor’s acquisition of tear gas by “accompanying” the minor. The
27 proposed law would extend the liability rule to cover the latter case.
- 28 (2) The reference to the “person, parent, or guardian” is potentially confusing,
29 because parents and guardians are also “persons.” The proposed law would
30 replace “person, parent, or guardian” with “parent, guardian, or other
31 person.”

14. 15 U.S.C. § 5001.

Contents

Penal Code § 18405 (amended). Notice of proposed forfeiture of seized weapon.....	9
Penal Code § 18255 (amended). Receipt for seized weapon	9
Penal Code § 18260 (amended). Seizure of weapon by community college or school district peace officer	10
Penal Code § 20155 (amended). Violation of federal law governing look-alike firearms	10
Penal Code § 22815 (amended). Providing tear gas weapon to minor	10
Penal Code § 23685 (amended). Firearm injury to child	11
Penal Code § 26045 (amended). Justification for carrying loaded firearm	11
Penal Code § 26890 (amended). Storage of inventory firearms	11
Penal Code § 27245 (amended). Penalty for noncompliance by gun show producer	12
Penal Code § 31640 (amended). Firearm safety test	13
Penal Code § 31700 (amended). Exemptions from firearm safety certificate requirement.....	14
Penal Code § 32010 (amended). Laboratory testing of firearm.....	15

PROPOSED LEGISLATION

1 **Penal Code § 18405 (amended). Notice of proposed forfeiture of seized weapon**

2 SEC. _____. Section 18405 of the Penal Code is amended to read:

3 18405. (a) If a petition is filed under Section 18400, the law enforcement agency
4 shall inform the owner or person who had lawful possession of the firearm or other
5 deadly weapon, at that person’s last known address, by registered mail, return
6 receipt requested, that the person has 30 days from the date of receipt of the notice
7 to respond to the court clerk to confirm the person’s desire for a hearing, and that
8 the failure to respond shall result in a default order forfeiting the confiscated
9 firearm or other deadly weapon.

10 (b) For purposes of this section, the person’s last known address shall be
11 presumed to be the address provided to the law enforcement officer by that person
12 at the time of the ~~family~~ domestic violence incident.

13 (c) In the event the person whose firearm or other deadly weapon was seized
14 does not reside at the last address provided to the agency, the agency shall make a
15 diligent, good faith effort to learn the whereabouts of the person and to comply
16 with these notification requirements.

17 **Comment.** Section 18405 is amended to replace an erroneous reference to “family violence”
18 with the defined term “domestic violence.” See Section 16490 (“domestic violence” defined).
19 This is a nonsubstantive change.

20 **Penal Code § 18255 (amended). Receipt for seized weapon**

21 SEC. _____. Section 18255 of the Penal Code is amended to read:

22 18255. (a) Upon taking custody of a firearm or other deadly weapon pursuant to
23 this division, the officer shall give the owner or person who possessed the firearm
24 or other deadly weapon a receipt.

25 (b) The receipt shall describe the firearm or other deadly weapon and list any
26 identification or serial number on the firearm.

27 (c) The receipt shall indicate where the firearm or other deadly weapon can be
28 recovered, the time limit for recovery as required by this division, and the date
29 after which the owner or possessor can recover the firearm or other deadly
30 weapon.

31 (d) The receipt shall include the name and residential mailing address of the
32 owner or person who possessed the firearm or other deadly weapon.

33 **Comment.** Section 18255(a) is amended to add an omitted reference to “other deadly
34 weapon.” This is a nonsubstantive change.

35 Subdivision (d) is new. It provides an opportunity for law enforcement to take the residential
36 mailing address of a person whose weapon is seized. This information is required for the purposes
37 of Section 18405(b).

1 **Penal Code § 18260 (amended). Seizure of weapon by community college or school district**
2 **peace officer**

3 SEC. ____ . Section 18260 of the Penal Code is amended to read:

4 18260. Any peace officer, as defined in subdivisions (a) and (b) of Section
5 830.32, who takes custody of a firearm or other deadly weapon pursuant to this
6 division, shall deliver the firearm or other deadly weapon within 24 hours to the
7 city police department or county sheriff's office in the jurisdiction where the
8 college or school is located.

9 **Comment.** Section 18260 is amended to add a reference to "other deadly weapon." This is a
10 nonsubstantive change.

11 **Penal Code § 20155 (amended). Violation of federal law governing look-alike firearms**

12 SEC. ____ . Section 20155 of the Penal Code is amended to read:

13 20155. Any manufacturer, importer, or distributor of ~~imitation~~ toy, look-alike, or
14 imitation firearms that fails to comply with any applicable federal law or
15 regulation governing the marking of a toy, look-alike, or imitation firearm, ~~as~~
16 ~~defined by federal law or regulation~~, is guilty of a misdemeanor. The definition of
17 "imitation firearm" provided in Section 16700 does not apply to this section.

18 **Comment.** Section 20155 is amended to make clear that it is governed by the terminology used
19 in the applicable federal law. See 15 U.S.C. § 5001(c) ("look-alike firearm" defined). This is a
20 nonsubstantive change.

21 **Penal Code § 22815 (amended). Providing tear gas weapon to minor**

22 SEC. ____ . Section 22815 of the Penal Code is amended to read:

23 22815. (a) Notwithstanding subdivision (d) of Section 22810, a minor who has
24 attained the age of 16 years may purchase and possess tear gas or a tear gas
25 weapon pursuant to this division if the minor is accompanied by a parent or
26 guardian, or has the written consent of a parent or guardian.

27 (b) Notwithstanding subdivision (c) of Section 22810, a person may sell or
28 furnish tear gas or a tear gas weapon to a minor who has attained the age of 16
29 years and who is accompanied by a parent or guardian, or who presents a
30 statement of consent signed by the minor's parent or guardian.

31 (c) Any civil liability of a minor arising out of the minor's use of tear gas or a
32 tear gas weapon other than for self-defense is imposed upon the ~~person, parent, or~~
33 guardian, or other person who signed the authorized the provision of tear gas to a
34 minor by signing a statement of consent or accompanying the minor, as specified
35 in subdivision (b). That ~~person, parent, or~~ guardian, or other person shall be jointly
36 and severally liable with the minor for any damages proximately resulting from
37 the negligent or wrongful act or omission of the minor in the use of the tear gas or
38 a tear gas weapon.

39 **Comment.** Section 22815 is amended to make clear that civil liability for a minor's use of tear
40 gas or a tear gas weapon may be imposed on any person who authorized the provision of the tear
41 gas or tear gas weapon to the minor.

1 **Penal Code § 23685 (amended). Firearm injury to child**

2 SEC. _____. Section 23685 of the Penal Code is amended to read:

3 23685. Each lead law enforcement agency investigating an incident shall report
4 to the State Department of Health Services any information obtained that
5 reasonably supports the conclusion ~~that:~~

6 ~~(a) A~~ that a child 18 years of age or younger suffered an unintentional or self-
7 inflicted gunshot wound inflicted by a firearm that was sold or transferred in this
8 state, or manufactured in this state. The report shall also indicate whether,

9 ~~(b) Whether~~ as a result of that incident the child died, suffered serious injury, or
10 was treated for an injury by a medical professional.

11 **Comment.** Section 23685 is amended for clarity. This is a nonsubstantive change.

12 **Penal Code § 26045 (amended). Justification for carrying loaded firearm**

13 SEC. _____. Section 26045 of the Penal Code is amended to read:

14 26045. (a) Nothing in Section 25850 is intended to preclude the carrying of any
15 loaded firearm, under circumstances where it would otherwise be lawful, by a
16 person who reasonably believes that any person or the property of any person is in
17 immediate, grave danger and that the carrying of the weapon is necessary for the
18 preservation of that person or property.

19 (b) A violation of Section 25850 is justifiable when a person who possesses a
20 firearm reasonably believes that person is in grave danger because of
21 circumstances forming the basis of a current restraining order issued by a court
22 against another person who has been found to pose a threat to the life or safety of
23 the person who possesses the firearm. This subdivision may not apply when the
24 circumstances involve a mutual restraining order issued pursuant to Division 10
25 (commencing with Section 6200) of the Family Code absent a factual finding of a
26 specific threat to the person's life or safety. It is not the intent of the Legislature to
27 limit, restrict, or narrow the application of current statutory or judicial authority to
28 apply this or other justifications to a defendant charged with violating Section
29 ~~25400~~ 25850 or committing another similar offense. Upon trial for violating
30 Section 25850, the trier of fact shall determine whether the defendant was acting
31 out of a reasonable belief that the defendant was in grave danger.

32 (c) As used in this section, "immediate" means the brief interval before and after
33 the local law enforcement agency, when reasonably possible, has been notified of
34 the danger and before the arrival of its assistance.

35 **Comment.** Section 26045 is amended to correct an erroneous cross-reference. This is a
36 nonsubstantive change.

37 **Penal Code § 26890 (amended). Storage of inventory firearms**

38 SEC. _____. Section 26890 of the Penal Code is amended to read:

39 26890. (a) Except as provided in subdivisions (b) and (c) of Section 26805, any
40 time when the licensee is not open for business, all inventory firearms shall be

1 stored in the licensed location. All firearms shall be secured using one of the
2 following methods as to each particular firearm:

3 (1) Store the firearm in a secure facility that is a part of, or that constitutes, the
4 licensee's business premises.

5 (2) Secure the firearm with a hardened steel rod or cable of at least one-eighth
6 inch in diameter through the trigger guard of the firearm. The steel rod or cable
7 shall be secured with a hardened steel lock that has a shackle. The lock and
8 shackle shall be protected or shielded from the use of a boltcutter and the rod or
9 cable shall be anchored in a manner that prevents the removal of the firearm from
10 the premises.

11 (3) Store the firearm in a locked fireproof safe or vault in the licensee's business
12 premises.

13 (b) The licensing authority in an unincorporated area of a county or within a city
14 may impose security requirements that are more strict or are at a higher standard
15 than those specified in subdivision (a).

16 (c) Upon written request from a licensee, the licensing authority may grant an
17 exemption from compliance with the requirements of subdivision (a) if the
18 licensee is unable to comply with those requirements because of local ordinances,
19 covenants, lease conditions, or similar circumstances not under the control of the
20 licensee.

21 ~~(d) Subdivision (a) or~~ Subdivisions (a) and (b) shall not apply to a licensee
22 organized as a nonprofit public benefit corporation pursuant to Part 2
23 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations
24 Code, or as a mutual benefit corporation pursuant to Part 3 (commencing with
25 Section 7110) of Division 2 of Title 1 of the Corporations Code, if both of the
26 following conditions are satisfied:

27 (1) The nonprofit public benefit or mutual benefit corporation obtained the
28 dealer's license solely and exclusively to assist that corporation or local chapters
29 of that corporation in conducting auctions or similar events at which firearms are
30 auctioned off to fund the activities of that corporation or the local chapters of the
31 corporation.

32 (2) The firearms are not handguns.

33 **Comment.** Section 26890(d) is amended to correct an erroneous use of "or." This is a
34 nonsubstantive change.

35 **Penal Code § 27245 (amended). Penalty for noncompliance by gun show producer**

36 SEC. _____. Section 27245 of the Penal Code is amended to read:

37 27245. (a) A willful failure by a gun show producer to comply with any of the
38 requirements of this article, except for the posting of required signs, shall be a
39 misdemeanor punishable by a fine not to exceed two thousand dollars (\$2,000),
40 and shall render the producer ineligible for a ~~gun show producer license~~ certificate
41 of eligibility for one year from the date of the conviction.

1 (b) A willful failure of a gun show producer to post signs as required by this
2 article shall be a misdemeanor punishable by a fine not to exceed one thousand
3 dollars (\$1,000) for the first offense and not to exceed two thousand dollars
4 (\$2,000) for the second or subsequent offense, and with respect to the second or
5 subsequent offense, shall render the producer ineligible for a ~~gun show producer~~
6 license certificate of eligibility for one year from the date of the conviction.

7 (c) Multiple violations charged pursuant to subdivision (a) arising from more
8 than one gun show or event shall be grounds for suspension of a producer's
9 certificate of eligibility pending adjudication of the violations.

10 **Comment.** Section 27245 is amended to use consistent terminology. This is a nonsubstantive
11 change.

12 **Penal Code § 31640 (amended). Firearm safety test**

13 SEC. ____ . Section 31640 of the Penal Code is amended to read:

14 31640. (a) The department shall develop a written objective test, in English and
15 in Spanish, and prescribe its content, form, and manner, to be administered by an
16 instructor certified by the department.

17 (b) If the person taking the test is unable to read, the ~~examination~~ test shall be
18 administered orally. If the person taking the test is unable to read English or
19 Spanish, the test may be ~~applied~~ administered orally by a translator.

20 (c) The test shall cover, but not be limited to, all of the following:

21 (1) The laws applicable to carrying and handling firearms, particularly
22 handguns.

23 (2) The responsibilities of ownership of firearms, particularly handguns.

24 (3) Current law as it relates to the private sale and transfer of firearms.

25 (4) Current law as it relates to the permissible use of lethal force.

26 (5) What constitutes safe firearm storage.

27 (6) Issues associated with bringing a firearm into the home.

28 (7) Prevention strategies to address issues associated with bringing firearms into
29 the home.

30 (d) The department shall update test materials related to this article every five
31 years.

32 (e) If a dealer licensed pursuant to Sections 26700 to 26915, inclusive, or his or
33 her employee, or where the managing officer or partner is certified as an instructor
34 pursuant to this article, he or she shall also designate a separate room or
35 partitioned area for a person to take the objective test, and maintain adequate
36 supervision to ensure that no acts of collusion occur while the objective test is
37 being administered.

38 (f) This section shall become operative on January 1, 2015.

39 **Comment.** Section 31640 is amended to use consistent terminology. This is a nonsubstantive
40 change.

1 **Penal Code § 31700 (amended). Exemptions from firearm safety certificate requirement**

2 SEC. ____ . Section 31700 of the Penal Code is amended to read:

3 31700. (a) The following persons, properly identified, are exempted from the
4 firearm safety certificate requirement in subdivision (a) of Section 31615:

5 (1) Any active or honorably retired peace officer, as defined in Chapter 4.5
6 (commencing with Section 830) of Title 3 of Part 2.

7 (2) Any active or honorably retired federal officer or law enforcement agent.

8 (3) Any reserve peace officer, as defined in Section 832.6.

9 (4) Any person who has successfully completed the course of training specified
10 in Section 832.

11 (5) A firearms dealer licensed pursuant to Sections 26700 to 26915, inclusive,
12 who is acting in the course and scope of that person's activities as a person
13 licensed pursuant to Sections 26700 to 26915, inclusive.

14 (6) A federally licensed collector who is acquiring or being loaned a firearm that
15 is a curio or relic, as defined in Section 478.11 of Title 27 of the Code of Federal
16 Regulations, who has a current certificate of eligibility issued by the department
17 pursuant to Section 26710.

18 (7) A person to whom a firearm is being returned, where the person receiving
19 the firearm is the owner of the firearm.

20 (8) A family member of a peace officer or deputy sheriff from a local agency
21 who receives a firearm pursuant to Section 50081 of the Government Code.

22 (9) Any individual who has a valid concealed weapons permit issued pursuant to
23 Chapter 4 (commencing with Section 26150) of Division 5.

24 (10) An active or honorably retired member of the United States Armed Forces,
25 the National Guard, the Air National Guard, or the active reserve components of
26 the United States, where individuals in those organizations are properly identified.
27 For purposes of this section, proper identification includes the Armed Forces
28 Identification Card or other written documentation certifying that the individual is
29 an active or honorably retired member.

30 (11) Any person who is authorized to carry loaded firearms pursuant to Section
31 26025 or 26030.

32 (12) Persons who are the holders of a special weapons permit issued by the
33 department pursuant to Section 32650 or 33300, pursuant to Article 3
34 (commencing with Section 18900) of Chapter 1 of Division 5 of Title 2, or
35 pursuant to Article 4 (commencing with Section 32700) of Chapter 6 of this
36 division.

37 (b) The following persons who take title or possession of a firearm by operation
38 of law in a representative capacity, until or unless they transfer title ownership of
39 the firearm to themselves in a personal capacity, are exempted from the firearm
40 safety certificate requirement in subdivision (a) of Section 31615:

41 (1) The executor or administrator of an estate.

42 (2) A secured creditor or an agent or employee thereof when the firearms are
43 possessed as collateral for, or as a result of, ~~or an agent or employee thereof when~~

1 ~~the firearms are possessed as collateral for, or as a result of,~~ a default under a
2 security agreement under the Commercial Code.

3 (3) A levying officer, as defined in Section 481.140, 511.060, or 680.260 of the
4 Code of Civil Procedure.

5 (4) A receiver performing the functions of a receiver.

6 (5) A trustee in bankruptcy performing the duties of a trustee.

7 (6) An assignee for the benefit of creditors performing the functions of an
8 assignee.

9 (c) A person, validly identified, who has been issued a valid hunting license that
10 is unexpired or that was issued for the hunting season immediately preceding the
11 calendar year in which the person takes title of possession of a firearm is exempt
12 from the firearm safety certificate requirement in subdivision (a) of Section 31615,
13 except as to handguns.

14 (d) This section shall become operative on January 1, 2015.

15 **Comment.** Section 31700(b)(2) is amended to delete duplicative language. This is a
16 nonsubstantive change.

17 **Penal Code § 32010 (amended). Laboratory testing of firearm**

18 SEC. ____ . Section 32010 of the Penal Code is amended to read:

19 32010. (a) Any pistol, revolver, or other firearm capable of being concealed
20 upon the person manufactured in this state, imported into the state for sale, kept
21 for sale, or offered or exposed for sale, shall be tested within a reasonable period
22 of time by an independent laboratory certified pursuant to subdivision (b) to
23 determine whether that pistol, revolver, or other firearm capable of being
24 concealed upon the person meets or exceeds the standards defined in Section
25 31910.

26 (b) On or before October 1, 2000, the Department of Justice shall certify
27 laboratories to verify compliance with the standards defined in Section 31910. The
28 department may charge ~~any a fee to certify a laboratory that is seeking~~
29 ~~certification~~ to test any pistol, revolver, or other firearm capable of being
30 concealed upon the person pursuant to Sections 31900 to 32110, inclusive, ~~a fee~~
31 ~~not exceeding~~ The fee shall not exceed the costs of certification.

32 (c) The certified testing laboratory shall, at the manufacturer's or importer's
33 expense, test the firearm and submit a copy of the final test report directly to the
34 Department of Justice along with a prototype of the weapon to be retained by the
35 department. The department shall notify the manufacturer or importer of its receipt
36 of the final test report and the department's determination as to whether the
37 firearm tested may be sold in this state.

38 (d) (1) Commencing January 1, 2006, no center-fire semiautomatic pistol may
39 be submitted for testing pursuant to Sections 31900 to 32110, inclusive, if it does
40 not have either a chamber load indicator, or a magazine disconnect mechanism if it
41 has a detachable magazine.

1 (2) Commencing January 1, 2007, no center-fire semiautomatic pistol may be
2 submitted for testing pursuant to Sections 31900 to 32110, inclusive, if it does not
3 have both a chamber load indicator and a magazine disconnect mechanism.

4 (3) Commencing January 1, 2006, no rimfire semiautomatic pistol may be
5 submitted for testing pursuant to Sections 31900 to 32110, inclusive, if it has a
6 detachable magazine, and does not have a magazine disconnect mechanism.

7 **Comment.** Section 32010(b) is amended for clarity. This is a nonsubstantive change.