

## Memorandum 2009-27

**Nonsubstantive Reorganization of Deadly Weapon Statutes  
(Comments on Tentative Recommendation)**

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The tentative recommendation on *Nonsubstantive Reorganization of Deadly Weapon Statutes (Feb. 2009)* has been circulated for comment. During the comment period, the staff did a thorough citecheck of the 461-page proposal. This memorandum discusses the results of those efforts. Attached are:

- (1) A list of corrections and staff suggestions for improvement.
- (2) A new draft of the preliminary part.
- (3) A new draft of *Appendix A: Corrected Cross-References*.
- (4) A new draft of *Appendix B: Minor Clean-Up Issues for Possible Future Legislative Attention*.

The statutory deadline for this study is July 1, 2009. See 2006 Cal. Stat. res. ch. 128. To meet that deadline, **the Commission will need to approve a final recommendation at the upcoming June 10 meeting.**

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

## COMMENTS ON THE TENTATIVE RECOMMENDATION

The tentative recommendation was circulated to a wide variety of groups and individuals, with a press-release explaining:

Comments can be submitted in any format and by whatever means of delivery is most convenient for the person or organization submitting comments.

The Commission recognizes that the tentative recommendation is lengthy and will be time-consuming to review. Comments of any nature are encouraged: A single sentence evaluation of the concept of the proposed reform, a detailed section-by-section analysis of the proposed legislation, or any other expression of views on the tentative recommendation. It is just as important to provide positive comments as negative comments.

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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](http://www.clrc.ca.gov)). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The comment deadline was May 1, 2009.

Despite a post-deadline reminder indicating that comments could still be submitted, the Commission has not yet received any written comments on the tentative recommendation.

The staff is not sure what to make of this situation. We have received informal oral feedback on the tentative recommendation from several sources, and it has all been positive. It is the height of the legislative session, and there are many pending bills relating to firearms and other deadly weapons, as well as major lawsuits on these subjects pending in a number of different courts. It is possible that the interested parties have been focusing on these matters and have not had sufficient time to review the tentative recommendation. It is also possible that some groups are waiting to present their views orally at the Commission meeting, as has been typical in the course of this study. Still other groups might not consider it necessary to develop an official position and voice their views until after the proposal is introduced in the Legislature. There may also be a variety of other explanations for the lack of written comments to date.

In any event, **comments continue to be welcome and encouraged.** Any comments submitted before the June meeting will be presented in a supplement to this memorandum.

**Unless there is significant negative input, the staff recommends that the Commission approve a final recommendation that is generally similar to the tentative recommendation.** The need for a nonsubstantive reform to make the deadly weapons laws more understandable was clearly articulated in connection with the resolution directing this study and the veto message that prompted the resolution. The importance of such a reform has been repeatedly reinforced by input during this study. Despite the lack of comments on the tentative recommendation, the staff is convinced that this is a worthwhile project. As discussed below, however, **we recommend that the Commission make a number of revisions in its proposal.**

#### CORRECTIONS AND STAFF SUGGESTIONS FOR IMPROVEMENT

While the tentative recommendation was circulating for comment, the staff completed a thorough citecheck, scouring the tentative recommendation for mistakes and places that could be improved. Attached is a list of "Corrections and Staff Suggestions for Improvement," which describes various revisions we

recommend and states the reasons for making these revisions. The staff considers these matters relatively straightforward. Absent input or other developments, we do not plan to present any of them for discussion at the upcoming meeting. **If anyone has concerns about a particular point on the list of “Corrections and Staff Suggestions for Improvement,” please plan to raise the point for discussion and bring your concerns to the Commission’s attention.** Because the matters on the list seem relatively straightforward, **the staff intends to make the recommended revisions unless the Commission otherwise directs.**

In addition to the matters on the list of “Corrections and Staff Suggestions for Improvement,” a few more points came to the staff’s attention while citechecking the tentative recommendation. Those points are discussed below, roughly in the order they arise in the tentative recommendation.

#### **Word Count and Section Count (p. 10, n. 29)**

Footnote 29 at page 10 of the tentative recommendation states:

Title 2 of Part 4 of the Penal Code consists of 230 sections, with about 95,000 words of text. The proposed legislation (including all material derived from Title 2 of Part 4, whether placed in the title on “Sentence Enhancements,” in proposed Part 6, or elsewhere) *would consist of 857 sections, with about 115,000 words of text.* The increase in word count is due to ....

(Emphasis added.) In the attached new draft of the preliminary part, the staff left the italicized portion of footnote 29 intact, even though the staff is recommending various revisions of the Commission’s proposal that might affect the word count and section count. **We will adjust those figures in footnote 29 after the Commission determines what revisions to make in the proposed legislation.**

#### **Joint Informational Hearing (p. 9, lines 7-11)**

At page 9, lines 7-11, the tentative recommendation says “the Commission *intends to request* that a joint informational hearing be held by the Public Safety Committees of the Senate and Assembly, to invite further public review and comment on the proposed law, before the introduction of any legislation.” (Emphasis added.) The staff deleted this statement in preparing the attached new draft of the preliminary part.

As the Commission’s recommendation progresses towards legislation, a joint informational hearing might or might not prove advisable. Remaining silent on

the matter, instead of committing to request a joint informational hearing, will leave the Commission's options open. **Is that approach acceptable to the Commission?**

### **Additions to Clean-Up List (Appendix B)**

In citechecking the tentative recommendation, the staff found several matters that appear suited for addition to the Commission's list of "Minor Clean-Up Issues for Possible Future Legislative Attention." One of them is discussed in the attached list of "Corrections and Staff Suggestions for Improvement" (see the entry for proposed Section 18275). The others are discussed below.

#### *References to the Bureau of Alcohol, Tobacco, and Firearms*

Some provisions in Title 2 of Part 4 of the Penal Code refer to the "Bureau of Alcohol, Tobacco, and Firearms." See Sections 12027(i), 12031(b)(8), 12085(c), 12086(c)(3)(B), (e) & (g)(1), 12126(b)(1), 12200. Other provisions in the same title refer to the "Bureau of Alcohol, Tobacco, Firearms, and Explosives." See Sections 12076(b)(2) & (c)(3), 12083(f) & (h).

The Bureau of Alcohol, Tobacco, Firearms, and Explosives is part of the federal Department of Justice. See 28 U.S.C. § 599A. That Bureau was created in 2006; the Bureau of Alcohol, Tobacco, and Firearms existed earlier. Thus, the staff was initially inclined to replace each reference to the "Bureau of Alcohol, Tobacco, and Firearms" with a reference to the "Bureau of Alcohol, Tobacco, Firearms, and Explosives."

But the situation is not that simple. Not all of the functions of the Bureau of Alcohol, Tobacco, and Firearms were transferred to the Department of Justice. See 6 U.S.C. § 531. Further, the Bureau of Alcohol, Tobacco, and Firearms was to be "maintained as a distinct entity within the Department of Justice." See 28 U.S.C. § 599A(c)(1).

To avoid any risk of a substantive change, **the staff recommends leaving the references to the "Bureau of Alcohol, Tobacco, and Firearms" intact in recodifying Title 2 of Part 4.** The tentative recommendation took that approach, because the staff simply recodified existing law without focusing on the distinction between the Bureau of Alcohol, Tobacco, and Firearms and the Bureau of Alcohol, Tobacco, Firearms, and Explosives. See proposed Sections 16880(c), 25650(a), 26020(a), 29010(c), 29065(c), 29115(a)(2), 29142(a)-(b), 31910(b)(1); see also proposed Sections 28210(c)(3), 28215(c)(3), 28480(b), 28490. **The staff recommends that the Commission leave those sections as is and add**

**this matter to its list of “Minor Clean-Up Issues for Possible Future Legislative Attention.”**

*Terminology Relating to Preparation of Minutes*

Several provisions in Title 2 of Part 4 of the Penal Code direct a court to enter certain information “on the minutes.” See Sections 12021.1(d), 12025(e), 12031(a)(6). The staff finds this terminology odd. We think the court should be directed to enter the information “in the minutes” instead of “on the minutes.”

In perhaps an excess of caution, we stuck with the existing terminology in drafting the tentative recommendation. See proposed Sections 25400(e), 25850(d), 29900(c). **Does the Commission wish to add this matter to its list of “Minor Clean-Up Issues for Possible Future Legislative Attention”?**

*Target Shooting (proposed Sections 26545, 27135, 27735, 27910, 28100, 31765, 31800)*

Some of the existing provisions relating to target shooting consist of one long, cumbersome sentence. For example, Section 12078(h) reads:

(h) Subdivision (d) of Section 12072 and subdivision (b) of Section 12801 shall not apply to the loan of a firearm to a person 18 years of age or older for the purposes of shooting at targets if the loan occurs on the premises of a target facility that holds a business or regulatory license or on the premises of any club or organization organized for the purposes of practicing shooting at targets upon established ranges, whether public or private, if the firearm is at all times kept within the premises of the target range or on the premises of the club or organization.

See also Sections 12070(b)(9), 12073(b)(7), 12078(k)(6).

In the tentative recommendation, these provisions are divided into shorter, simpler sentences. For example, proposed Section 27910 would recodify Section 12078(h), as it pertains to Section 12072(d), as follows:

27910. (a) Section 27545 does not apply to the loan of a firearm to a person 18 years of age or older for the purposes of shooting at targets if either of the following conditions is satisfied:

(a) The loan occurs on the premises of a target facility that holds a business or regulatory license and the firearm is at all times kept within the premises of the target range.

(b) The loan occurs on the premises of any club or organization organized for the purposes of practicing shooting at targets upon established ranges, whether public or private, and the firearm is at all times kept on the premises of the club or organization.

**Comment.** Section 27910 continues former Section 12078(h) without substantive change, as that provision applied to former Section 12072(d).

See Section 16520 (“firearm”).

See also proposed Sections 26545, 27135, 27735, 28100(a)(8)-(9), 31765, 31800.

In citechecking the tentative recommendation, the staff began to worry about the rewording of these provisions and whether we correctly understood and re-expressed the meaning of existing law. In particular, it is ambiguous what the last clause of each existing provision (“if the firearm is at all times kept within the premises of the target range or on the premises of the club or organization”) is meant to modify. On reflection, instead of revising the provisions as shown in the tentative recommendation, we believe it would be safer to: **(1) stick more closely to the existing cumbersome language, and (2) add the possibility of eliminating the cumbersome language to the Commission’s list of “Minor Clean-Up Issues for Possible Future Legislative Attention.”**

Thus, we recommend that the Commission **replace the versions of proposed Sections 26545, 27135, 27735, 27910, 28100(a)(8)-(9), 31765, and 31800 in the tentative recommendation with the following new versions:**

**§ 26545. Exception for loan made for purpose of target shooting**

26545. Section 26500 does not include the loan of a firearm for the purposes of shooting at targets, if the loan occurs on the premises of a target facility that holds a business or regulatory license or on the premises of any club or organization organized for the purposes of practicing shooting at targets upon established ranges, whether public or private, if the firearm is at all times kept within the premises of the target range or on the premises of the club or organization.

**§ 27135. Exception for loan of unloaded firearm under specified circumstances by dealer to person at target facility or at premises of target shooting club or organization**

27135. Article 1 (commencing with Section 26700) and Article 2 (commencing with Section 26800) do not apply to the loan of an unloaded firearm by a dealer who also operates a target facility that holds a business or regulatory license on the premises of the building designated in the license or whose building designated in the license is on the premises of any club or organization organized for the purposes of practicing shooting at targets upon established ranges, whether public or private, to a person at that target facility or that club or organization, if the firearm is at all times kept within

the premises of the target range or on the premises of the club or organization.

**§ 27735. Exception for loan of unloaded firearm under specified circumstances by dealer to person at target facility or at premises of target shooting club or organization**

27735. Section 27540 does not apply to the loan of an unloaded firearm by a dealer who also operates a target facility that holds a business or regulatory license on the premises of the building designated in the license or whose building designated in the license is on the premises of any club or organization organized for the purposes of practicing shooting at targets upon established ranges, whether public or private, to a person at that target facility or that club or organization, if the firearm is at all times kept within the premises of the target range or on the premises of the club or organization.

**§ 27910. Exception for loan of firearm to person 18 or older for target shooting under specified circumstances**

27910. Section 27545 does not apply to the loan of a firearm to a person 18 years of age or older for the purposes of shooting at targets if the loan occurs on the premises of a target facility that holds a business or regulatory license or on the premises of any club or organization organized for the purposes of practicing shooting at targets upon established ranges, whether public or private, if the firearm is at all times kept within the premises of the target range or on the premises of the club or organization.

**§ 28100. Register or record of electronic or telephonic transfer**

28100. ....

(b) This section shall not apply to any of the following transactions:

....

(8) The loan of an unloaded firearm by a dealer who also operates a target facility which holds a business or regulatory license on the premises of the building designated in the license or whose building designated in the license is on the premises of any club or organization organized for the purpose of practicing shooting at targets upon established ranges, whether public or private, to a person at that target facility or club or organization, if the firearm is kept at all times within the premises of the target range or on the premises of the club or organization.

(9) The loan of an unloaded firearm by a dealer to a consultant-evaluator, if the loan does not exceed 45 days from the date of delivery of the firearm by the dealer to the consultant-evaluator.

(10) The return of an unloaded firearm to the owner of that firearm by a dealer, if the owner initially delivered the firearm to the dealer for service or repair.

(11) The sale, delivery, or transfer of an unloaded firearm by a dealer to a person licensed as an importer or manufacturer pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and any regulations issued pursuant thereto.

(c) A violation of this section is a misdemeanor.

**§ 31765. Exception for loan of firearm to person 18 or older for target shooting under specified circumstances**

31765. Subdivision (a) of Section 31615 does not apply to the loan of a firearm to a person 18 years of age or older for the purposes of shooting at targets if the loan occurs on the premises of a target facility that holds a business or regulatory license or on the premises of any club or organization organized for the purposes of practicing shooting at targets upon established ranges, whether public or private, if the firearm is at all times kept within the premises of the target range or on the premises of the club or organization.

**§ 31800. Exception for loan of unloaded firearm under specified circumstances by dealer to person at target facility or at premises of target shooting club or organization**

31800. Subdivision (a) of Section 31615 does not apply to the loan of an unloaded firearm by a dealer who also operates a target facility that holds a business or regulatory license on the premises of the building designated in the license or whose building designated in the license is on the premises of any club or organization organized for the purposes of practicing shooting at targets upon established ranges, whether public or private, to a person at that target facility or that club or organization, if the firearm is at all times kept within the premises of the target range or on the premises of the club or organization.

**Deletion From Clean-Up List (Appendix B & proposed Section 26210)**

In citechecking the tentative recommendation, the staff also found one matter that the Commission should perhaps delete from its list of “Minor Clean-Up Issues for Possible Future Legislative Attention.”

Existing Section 12050(f) specifies rules that apply when a person licensed to carry a firearm moves to a new address. When the Commission began this study, Section 12050(f)(4)(B) provided:

(B) If the license is one to carry concealed a pistol, revolver, or other firearm capable of being concealed upon the person, then it may not be revoked solely because the licensee changes his or her place of residence to another county if the licensee has not breached any conditions or restrictions set forth in the license *or* has not

fallen into a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code. However, any license issued pursuant to subparagraph (A) or (B) of paragraph (1) of subdivision (a) shall expire 90 days after the licensee moves from the county of issuance if the licensee's place of residence was the basis for issuance of the license.

(Emphasis added.)

In analyzing how to recodify this provision, the staff noted that it was awkwardly worded:

Instead of stating all of the conditions at the beginning of the first sentence, one condition is stated at the beginning of the sentence ("If the license is one to carry concealed ...") and other conditions are stated at the end ("if the licensee has not breached any ...").

Memorandum 2008-39, Attachment p. 54. The staff considered revising the first sentence to improve its structure. But we noticed a possible error in that sentence:

Specifically, the sentence says that a license to carry a handgun may not be revoked solely due to a change in county of residence "if the licensee has not breached any conditions or restrictions set forth in the license *or* has not fallen into a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code." (Emphasis added.) The use of "or" suggests that the two requirements are alternatives: It is enough to satisfy one or the other; it is not necessary to fulfill both.

We suspect, however, that the actual intent is otherwise. In other words, to avoid having a license to carry a concealed handgun revoked due to a change in county of residence, *both* of the following must be true: (1) the licensee must not have breached any conditions or restrictions set forth in the license, *and* (2) the licensee must not have fallen into a prohibited class.

*Id.*

Because of this apparent error, it would have been risky to try to rewrite the sentence to make it less awkward. Rather than risking a substantive change, the staff left the sentence intact in drafting proposed Section 26210(c), which would continue Section 12050(f)(4)(B). See Memorandum 2008-54, Attachment pp. 53-55. The matter was included on the Commission's list of "Minor Clean-Up Issues for Possible Future Legislative Attention." See Item #74 on p. 32 of Appendix B in the tentative recommendation (which is the same as Item #75 in the attached new version of Appendix B).

After we prepared the initial draft of proposed Section 26210, the Legislature amended Section 12050(f)(4)(B). See 2008 Cal. Stat. ch. 698, § 14. The staff incorporated most of the newly enacted language in the version of proposed Section 26210 that is in the tentative recommendation. But we overlooked that the Legislature changed the problematic “or” to “and.”

To correct that oversight, the Commission could simply revise subdivision (c) of proposed Section 26210 as follows:

(c) If the license is one to carry concealed a pistol, revolver, or other firearm capable of being concealed upon the person, then it may not be revoked solely because the licensee changes his or her place of residence to another county if the licensee has not breached any conditions or restrictions set forth in the license ~~or~~ and has not become prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm. However, any license issued pursuant to Section 26150 or 26155 shall expire 90 days after the licensee moves from the county of issuance if the licensee’s place of residence was the basis for issuance of the license.

Alternatively, now that the problematic “or” in Section 12050(f)(4)(B) has been corrected, the Commission could rephrase subdivision (c) of proposed Section 26210 to make it less awkward. Specifically, the Commission could replace it with new subdivisions (c) and (d) as shown below:

(c) If both of the following conditions are satisfied, a license to carry a concealed handgun may not be revoked solely because the licensee’s place of residence has changed to another county:

(1) The licensee has not breached any of the conditions or restrictions set forth in the license.

(2) The licensee has not become prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm.

(d) Notwithstanding subdivision (c), if a licensee’s place of residence was the basis for issuance of a license, any license issued pursuant to Section 26150 or 26155 shall expire 90 days after the licensee moves from the county of issuance.

The staff believes this would be a significant improvement, without effecting any substantive change. The staff further recommends that the matter be deleted from the Commission’s list of “Minor Clean-Up Issues for Possible Future Legislative Attention.” **Does the Commission agree with these two recommendations?**

## Statements of Legislative Intent (proposed Sections 16005-16025)

The tentative recommendation includes several provisions that are intended to underscore that the proposed recodification is purely nonsubstantive. See proposed Sections 16005-16025 & the discussion at pp. 7-9 of the tentative recommendation.

On re-reading these provisions while the tentative recommendation was circulating, the staff realized that they could be strengthened to make the intent even more clear. Specifically, **we recommend that proposed Sections 16005-16025 be revised as shown in strikeout and underscore below:**

### § 16005. Nonsubstantive reform

16005. Nothing in the Deadly Weapons Recodification Act of 2012 is intended to substantively change the law relating to deadly weapons. The act is intended to be entirely nonsubstantive in effect. Every provision of ~~the~~ this part, of Title 2 (commencing with Section 12001) of Part 4, and every other provision of this act, including, without limitation, every cross-reference in every provision of the act, shall be interpreted consistent with the nonsubstantive intent of the act.

**Comment.** Section 16005 makes clear that the Deadly Weapons Recodification Act of 2012 has no substantive impact. The act is intended solely to make the provisions governing control of deadly weapons more user-friendly. For background, see *Nonsubstantive Reorganization of Deadly Weapon Statutes*, \_\_ Cal. L. Revision Comm'n Reports \_\_ (2009).

### § 16010. Continuation of existing law

16010. (a) A provision of this part or of Title 2 (commencing with Section 12001) of Part 4, or any other provision of the Deadly Weapons Recodification Act of 2012, insofar as it is substantially the same as a previously existing provision relating to the same subject matter, shall be considered as a restatement and continuation thereof and not as a new enactment.

(b) A reference in a statute to a previously existing provision that is restated and continued in this part or in Title 2 (commencing with Section 12001) of Part 4, or in any other provision of the Deadly Weapons Recodification Act of 2012, shall, unless a contrary intent appears, be deemed a reference to the restatement and continuation.

(c) A reference in a statute to a provision of this part ~~that~~ or of Title 2 (commencing with Section 12001) of Part 4, or any other provision of the Deadly Weapons Recodification Act of 2012, which is substantially the same as a previously existing provision, shall, unless a contrary intent appears, be deemed to include a reference to the previously existing provision.

**Comment.** Subdivision (a) of Section 16010 is similar to Section 5, which is a standard provision found in many codes. See, e.g., Bus. & Prof. Code § 2; Corp. Code § 2; Fam. Code § 2; Prob. Code § 2(a); Veh. Code § 2.

Subdivision (b) is drawn from Government Code Section 9604.

Subdivision (c) is drawn from Family Code Section 2. For a specific illustration of the general principle stated in this subdivision, see Section 16015 (determining existence of prior conviction).

### **§ 16015. Determining existence of prior conviction**

16015. If a previously existing provision is restated and continued in this part, or in Title 2 (commencing with Section 12001) of Part 4, or in any other provision of the Deadly Weapons Recodification Act of 2012, a conviction under that previously existing provision shall, unless a contrary intent appears, be treated as a prior conviction under the restatement and continuation of that provision.

**Comment.** Section 16015 makes clear that in determining the existence of a prior conviction that affects the severity of punishment for an offense, a conviction under a former provision that has been restated and continued in ~~this part~~ the Deadly Weapons Recodification Act of 2012 counts as a prior conviction under the corresponding new provision.

For example, Section 20170 prohibits open display of an imitation firearm in a public place. A first violation of that provision is punishable by a \$100 fine, and a second violation is punishable by a \$300 fine. See Section 20180. In determining whether to impose a \$100 fine or a \$300 fine, a violation of the predecessor of Section 20170 (former Section 12256(a)) counts as a prior violation of Section 20170.

### **§ 16020. Judicial decision interpreting former law**

16020. (a) A judicial decision interpreting a previously existing provision is relevant in interpreting a any provision of this part of Title 2 (commencing with Section 12001) of Part 4, or any other provision of the Deadly Weapons Recodification Act of 2012, which ~~that~~ restates and continues that previously existing provision.

(b) However, in enacting the Deadly Weapons Recodification Act of 2012, the Legislature has not evaluated the correctness of any judicial decision interpreting a provision affected by the act.

(c) The Deadly Weapons Recodification Act of 2012 is not intended to, and does not, reflect any assessment of any judicial decision interpreting any provision affected by the act.

**Comment.** Subdivision (a) of Section 16020 makes clear that case law construing a predecessor provision is relevant in construing its successor in ~~this part~~ the Deadly Weapons Recodification Act of 2012.

Subdivisions (b) and (c) make clear that in recodifying former Sections 12000-12809, the Legislature has not taken any position on any case interpreting any of those provisions.

**§ 16025. Constitutionality**

16025. (a) A judicial decision determining the constitutionality of a previously existing provision is relevant in determining the constitutionality of a any provision of this part, of Title 2 (commencing with Section 12001) of Part 4, or any other provision of the Deadly Weapons Recodification Act of 2012, which that restates and continues that previously existing provision.

(b) However, in enacting the Deadly Weapons Recodification Act of 2012, the Legislature has not evaluated the constitutionality of any provision affected by the act, or the correctness of any judicial decision determining the constitutionality of any provision affected by the act.

(c) The Deadly Weapons Recodification Act of 2012 is not intended to, and does not, reflect any determination of the constitutionality of any provision affected by the act.

**Comment.** Subdivision (a) of Section 16025 makes clear that case law determining the constitutionality of a predecessor provision is relevant in determining the constitutionality of its successor in this part the Deadly Weapons Recodification Act of 2012.

Subdivisions (b) and (c) make clear that in recodifying former Sections 12000-12809, the Legislature has not taken any position on the constitutionality of any of those provisions.

In preparing the attached new draft of the preliminary part, the staff has assumed that the Commission will approve these revised versions of proposed Sections 16005-16025. We will make adjustments as necessary if that assumption proves incorrect.

**Organization of and Leadlines for Article 3 (commencing with Section 25500) of Chapter 2 of Division 5 of Title 4 of Proposed Part 6**

Chapter 2 (commencing with Section 25400) of Division 5 of proposed new Part 6 relates to carrying a concealed firearm. The chapter is organized into five different articles:

- Article 1. Crime of Carrying a Concealed Firearm
- Article 2. Peace Office Exemption
- Article 3. Conditional Exemptions
- Article 4. Other Exemptions
- Article 5. Concealed Carrying of Firearm as a Nuisance

On re-reading the tentative recommendation, the staff began to wonder whether “Article 3. Conditional Exemptions” is organized in the most useful manner. That article (proposed Sections 25500-25585) contains the substance of existing Section 12026.2, except the definition of “locked container.”

The article begins with a provision that restricts the effect of the article:

**§ 25500. Effect of article**

25500. This article does not prohibit or limit the otherwise lawful carrying or transportation of any pistol, revolver, or other firearm capable of being concealed upon the person in accordance with the provisions listed in Section 16580.

Next, there is a provision stating certain conditions that must be satisfied in order for a firearm to be exempted under the article:

**§ 25505. Conditions for exemption to apply**

25505. In order for a firearm to be exempted under this article, while being transported to or from a place, the firearm shall be unloaded and kept in a locked container, and the course of travel shall include only those deviations between authorized locations as are reasonably necessary under the circumstances.

The remainder of the article consists of various exemptions to the crime of carrying a concealed firearm (proposed Section 25400). In the tentative recommendation, the headlines for these exemptions do not indicate that they pertain to an exemption. Each headline simply summarizes the subject matter of the exemption that follows (e.g., “Motion picture, television, video production, or entertainment event”).

Because “Article 3. Conditional Exemptions” contains a mixture of exemptions and other provisions, **the staff recommends that the headline for each exemption in the article be revised to indicate that it pertains to an exemption.** For example, the headline for proposed Section 25510 could be revised to read: “Exemption for motion picture, television, video production, or entertainment event.” Although the headlines will not be law, this might help to make the Commission’s report readily understandable.

**The staff further recommends that the provision restricting the effect of the article (proposed Section 25500) be relocated to the end of the article.** Proposed Section 25505 would then become the first provision in the article, so the article would begin by stating the conditions that must be satisfied in order for a firearm to be exempted under it. That would help to draw attention to the

required conditions. Further, because the exemptions would be immediately adjacent to proposed Section 25505, the meaning of that provision would become more obvious than before. Finally, it would be logical to end the article by indicating the restrictions on its effect.

### **References to Former Law as Opposed to the Proposed Law (proposed Sections 30635, 30640, 30735)**

In figuring out how to recodify the material relating to assault weapons and .50 BMG rifles, the staff struggled with where to refer to former law and where to refer to a recodified provision. See Memorandum 2009-4.

For example, Penal Code Section 12276(d) provides:

12276. As used in this chapter, "assault weapon" shall mean the following designated semiautomatic firearms:

....  
(d) Any firearm declared by the court pursuant to *Section 12276.5* to be an assault weapon that is specified as an assault weapon in a list promulgated pursuant to *Section 12276.5*.  
....

(Emphasis added.) In recodifying this provision, it is necessary to decide how to conform the italicized statutory references.

Possibilities include the following:

- "Any firearm declared by the court pursuant to *Section 30520* to be an assault weapon that is specified as an assault weapon in a list promulgated pursuant to *Section 30520*."
- "Any firearm declared by the court pursuant to *former Section 12276.5* to be an assault weapon that is specified as an assault weapon in a list promulgated pursuant to *former Section 12276.5*."
- "Any firearm declared by the court pursuant to *former Section 12276.5* to be an assault weapon that is specified as an assault weapon in a list promulgated pursuant to *former Section 12276.5, which is continued in Section 30520*."
- "Any firearm declared by the court pursuant to *Section 30520 or former Section 12276.5* to be an assault weapon that is specified as an assault weapon in a list promulgated pursuant to *Section 30520 or former Section 12276.5*."

In deciding among these possibilities, the staff found that different approaches seemed to work better in different situations. Sometimes, it seemed helpful to refer to both a provision being recodified (e.g., Section 12276, which would become "former Section 12276") and its recodification (e.g., proposed

Section 30510, which would become “Section 30510”). Elsewhere, that approach would have cluttered up the statute and impeded readability. In some such places, we referred only to the recodification, which will be more readily accessible than its predecessor. Still elsewhere, we referred only to the predecessor, because that appeared appropriate in context. For example, citing to the predecessor might be the best solution where a statute refers to a situation that clearly predates the recodification.

In making these drafting decisions, we relied in part on proposed Penal Code Section 16010, which makes clear that

- A provision that is substantially the same as a previously existing provision is to be considered a restatement and continuation of the previously existing provision.
- A reference in a statute to a previously existing provision is to be deemed a reference to its restatement and continuation, and vice versa.

Where this provision appeared particularly relevant, we cited to it in the Comment. In some places, we also included background information or an explanation in the Comment. For example, if a proposed provision would refer to “former Section 12276,” the Comment would explain which new provision continues former Section 12276.

For the most part, the staff is satisfied with the way these matters were handled in the tentative recommendation. In a few instances, however, we recommend that the Commission change its approach.

In particular, proposed Sections 30635 and 30640 concern events that necessarily occurred in the past. For that reason, the staff recommends that they be revised to refer to what will become “former Chapter 2.3 (commencing with Section 12275) of Title 2 of Part 4,” instead of to the proposed recodification of that chapter. More specifically, **we recommend that proposed Sections 30635 and 30640 and the corresponding Comments be revised as shown in ~~strikeout~~ and underscore below:**

**§ 30635. Exemption applicable during period soon after weapon was classified as assault weapon**

30635. Section 30605 shall not apply to the possession of an assault weapon during the 90-day period immediately after the date it was specified as an assault weapon pursuant to former Section 12276.5, or during the one-year period after the date it was

defined as an assault weapon pursuant to former Section 12276.1, if all of the following are applicable:

(a) At the time of the possession in question, the person was eligible under ~~this chapter~~ former Chapter 2.3 (commencing with Section 12275) of Title 2 of Part 4 to register the particular assault weapon.

(b) The person lawfully possessed the particular assault weapon prior to the date it was specified as an assault weapon pursuant to former Section 12276.5, or prior to the date it was defined as an assault weapon pursuant to former Section 12276.1.

(c) At the time of the possession in question, the person was otherwise in compliance with ~~this chapter~~ former Chapter 2.3 (commencing with Section 12275) of Title 2 of Part 4.

**Comment.** Section 30635 continues former Section 12280(g) without substantive change.

The introductory clause and subdivision (b) refer to the date that a weapon “was specified as an assault weapon pursuant to *former Section 12276.5.*” (Emphasis added.) In the past, that section (1) prescribed a procedure by which a court could classify a weapon as an assault weapon, and (2) directed the Attorney General to promulgate a list of the weapons classified as assault weapons by statute or by a court. See 1991 Cal. Stat. ch. 954, § 3; 1990 Cal. Stat. ch. 874, § 1; 1989 Cal. Stat. ch. 19, § 3. Those procedures were discontinued as of January 1, 2007. See 2006 Cal. Stat. ch. 793, § 1. As so amended, former Section 12276.5 is continued in Section 30520 (duties of Attorney General).

The introductory clause and subdivision (b) also refer to the date that a weapon “was defined as an assault weapon pursuant to *former Section 12276.1.*” (Emphasis added.) That section became operative on January 1, 2000. As subsequently amended to exempt certain weapons, it is continued in Section 30515 (further clarification of “assault weapon”).

Subdivisions (a) and (c) refer to former Chapter 2.3 of Title 2 of Part 4 (former Sections 12275-12290). That former chapter is continued in this chapter (Sections 30500-31115).

See Sections 16970 (“person”), 30510 (“assault weapon”), 30515 (further clarification of “assault weapon”). See also Section 16010 (continuation of existing law).

#### **§ 30640. Exemption for possession of .50 BMG rifle, not classified as assault weapon, before May 1, 2006**

30640. Section 30610 shall not apply to the possession of a .50 BMG rifle, which was not defined or specified as an assault weapon pursuant to ~~this chapter~~ former Chapter 2.3 (commencing with Section 12275) of Title 2 of Part 4, by any person prior to May 1, 2006, if all of the following are applicable:

(a) At the time of the possession in question, the person was eligible under ~~this chapter~~ former Chapter 2.3 (commencing with Section 12275) of Title 2 of Part 4 to register that .50 BMG rifle.

(b) The person lawfully possessed the .50 BMG rifle prior to January 1, 2005.

(c) At the time of the possession in question, the person was otherwise in compliance with ~~this chapter~~ former Chapter 2.3 (commencing with Section 12275) of Title 2 of Part 4.

**Comment.** Section 30640 continues former Section 12280(s) without substantive change.

The introductory clause and subdivisions (a) and (c) refer to former Chapter 2.3 of Title 2 of Part 4 (former Sections 12275-12290). That former chapter is continued in this chapter (Sections 30500-31115).

See Sections 16970 (“person”), 30510 (“assault weapon”), 30515 (further clarification of “assault weapon”), 30530 (“.50 BMG rifle”). See also Section 16010 (continuation of existing law).

**Similarly, we recommend that proposed Section 30735 be revised as shown in ~~strikeout~~ and underscore below:**

#### **§ 30735. Duties of Department of Justice**

30735. (a) The Department of Justice shall notify all district attorneys on or before January 31, 1999, of the provisions of ~~this article~~ former Section 12281.

(b) The department shall identify all criminal prosecutions in the state for conduct related to SKS rifles on or before April 1, 1999. In all cases so identified by the Attorney General, the district attorneys shall inform defense counsel, or the defendant if the defendant is in propria persona, in writing, of the provisions of ~~this article~~ former Section 12281 on or before May 1, 1999.

(c) The department shall conduct a public education and notification program as described in ~~Section 31115~~ former Section 12289, commencing no later than January 1, 1999.

**Comment.** Subdivisions (a) and (b) of Section 30735 ~~continues~~ continue former Section 12281(e) without substantive change. Both subdivisions refer to former Section 12281, which is continued in this article (Sections 30710-30735).

Subdivision (c) continues former Section 12281(f)(4) without substantive change. Subdivision (c) refers to former Section 12289, which is continued in Section 31115.

See Section 30710 (“SKS rifle”). See also Section 16010 (continuation of existing law).

## **Continuing Review of the Proposal**

The staff already citechecked the entire tentative recommendation, but we are still doing further checks for typographical errors or other mistakes. We will continue to scrutinize the proposal throughout the legislative process, making corrections as necessary. **Please notify the Commission if at any time you become aware of a problem we have not already noted.**

### APPROVAL OF A FINAL RECOMMENDATION

The Commission's report is due on July 1, 2009. To meet that deadline, the Commission needs to approve a final recommendation at the June 10 meeting. The staff recommends that the Commission **approve the tentative recommendation as its final recommendation, subject to the revisions discussed in this memorandum, in the attached list of "Corrections and Staff Suggestions for Improvement," and in any supplement to this memorandum.**

Respectfully submitted,

Barbara Gaal  
Chief Deputy Counsel

**TENTATIVE RECOMMENDATION ON NONSUBSTANTIVE  
REORGANIZATION OF DEADLY WEAPON STATUTES:  
CORRECTIONS AND STAFF SUGGESTIONS FOR IMPROVEMENT**

 **Note.** Unless otherwise indicated, all statutory references in this document are to the Penal Code.

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**Preliminary Part (pp. 1-20)**

Recommended Revisions: See new draft attached to this memorandum

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**Appendix A (pp. 21-24)**

Recommended Revisions: See new draft attached to this memorandum

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**Appendix B (pp. 25-34)**

Recommended Revisions: See new draft attached to this memorandum

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**Page 35, Table of Contents Entry #26**

Recommended Revision: Replace “34730” with “34370”

Reason: Transposition error

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**Page 41, Table of Contents Entry for Proposed Section 22210**

Recommended Revision:

Replace “Prohibition on manufacture, import, sale, gift, loan, or possession of leaded cane, blackjack, slungshot, billy, sandclub, sap, or sandbag” with “Prohibition relating to leaded cane or to instrument or weapon of kind commonly known as billy, blackjack, sandbag, sandclub, sap, or slungshot”

Reasons:

The revised description puts the list of weapons in alphabetical order and tracks the weapon description in the statute more closely than the original description.

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**Page 41, Table of Contents Entry for Proposed Section 22290**

Recommended Revision:

Replace “Leaded cane, blackjack, slungshot, billy, sandclub, sap, or sandbag constituting nuisance” with “Nuisance created by leaded cane or by instrument or weapon of kind commonly known as billy, blackjack, sandbag, sandclub, sap, or slungshot”

Reasons:

The revised description puts the list of weapons in alphabetical order and tracks the weapon description in the statute more closely than the original description.

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**Page 62, after Line 21 (Comment to Proposed Section 12003)**

Recommended Revision:

Insert the following new paragraph at the end of the Comment:

See also Section 23505, to the same effect as this provision.

Reason:

Proposed Sections 12003 and 23505 would be parallel provisions, both derived from existing Section 12003. It may be helpful to provide a cross-reference to proposed Section 23505 in the Comment to proposed Section 12003.

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**Page 65, Lines 3-4 (Comment to proposed Section 12022)**

Recommended Revision:

Replace “cross reference” with “cross-reference”

Reason:

Stylistic consistency

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**Page 74, Line 11 (Leadline for addition of proposed new Part 6)**

Recommended Revision: Replace “34730” with “34370”

Reason: Transposition error

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**Page 77, Lines 10-11 (proposed Section 16150)**

Recommended Revision:

Replace “As used in subdivisions (a) and (b) of Section 30305, ‘ammunition’ includes ....” with “As used in subdivision (a) of Section 30305, ‘ammunition’ includes ....”

Reason:

The term “ammunition” is not used subdivision (b) of proposed Section 30305.

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**Page 78, Lines 14-17 (proposed Section 16190)**

Recommended Revision:

Replace “As used in Article 1 (commencing with Section 26700) and Article 2 (commencing with Section 26800) ....” with “As used in Article 2 (commencing with Section 26800) ....”

Reason:

The defined term (“application to purchase”) is not used in proposed Article 1 (commencing with Section 26700) of Chapter 2 of Division 6 of Title 4.

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**Page 79, Line 14 (proposed Section 16260)**

Recommended Revision:

Replace “As used in this part, ‘belt buckle knife’ is a knife which is made ....” with “As used in this part, ‘belt buckle knife’ is a knife that is made ....”

Reason:

Stylistic convention regarding use of “that” and “which”

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**Page 80, Line 38 (proposed Section 16350)**

Recommended Revision:

Replace “used in 30515” with “used in Section 30515”

Reason:

Inadvertent omission

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**Page 81, Line 23 (Comment to proposed Section 16380)**

Recommended Revision:

Replace “Section 12130(d)-(2)” with “Section 12130(d)(1)-(2)”

Reason:

Typographical error

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**Page 83, Line 7 (proposed Section 16460)**

Recommended Revision: Replace “CO2” with “CO<sub>2</sub>”

Reason: Formatting improvement

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**Page 83, Lines 14-15 (Comment to proposed Section 16460)**

Recommended Revision:

Replace “the first sentence of former Section 12030(d)” with “the fourth sentence of former Section 12030(d)”

Reason:

Correction

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**Page 83, Line 18 (Comment to proposed Section 16460)**

Recommended Revision:

Revise the last sentence of the Comment to proposed Section 16460, as shown in underscore below:

See Sections 16160 (“antique cannon”), 16180 (“antique rifle”), 16490 (“explosive”).

Reason:

The term “explosive” is used in proposed Section 16460 and its meaning is governed by the definition of “explosive” in proposed Section 16490. That definition should therefore be cited in the Comment to proposed Section 16460.

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**Page 84, Lines 15-16 (proposed Section 16510)**

Recommended Revision:

Revise the first sentence of proposed Section 16510, as shown in underscore below:

16510. As used in subdivision (a) of Section 16460 and Chapter 1 (commencing with Section 18710) of Division 5 of Title 2, “explosive” means ....

Reason:

Proposed Section 16510 would continue the existing definition of “explosive,” which is in Section 12301(b). That definition only applies to Chapter 2.5 of Title 2 of Part 4 (Sections 12301-12316). The definition cannot be expanded more broadly without risk of substantive change, because “explosive” is used without definition elsewhere in Title 2 of Part 4 (including the second sentence of the second paragraph of Section 12020(a)(4), which would be continued in proposed Section 16460(b)). Subdivision (a) of proposed Section 16460 contains material from Chapter 2.5, but subdivision (b) does not. Consequently, the definition in Section 16510 should only apply to subdivision (a) of proposed Section 16460, not to subdivision (b).

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**Page 88, Lines 3-37 (proposed Section 16575)**

Recommended Revision:

Revise proposed Section 16575(a), as shown in strikeout and underscore below:

16575. (a) Except as stated in subdivision (c), the following provisions were formerly included in Article 4 (commencing with Section 12070) of Chapter 1 of Title 2 of Part 4, which was entitled “Licenses to Sell Firearms”:

(1) Section 16130.

(2) Subdivision (b) of Section 16170, to the extent that it continues ~~subdivision (e) of former Section~~ former Sections 12078 and 12085.

(3) Section 16230.

~~(3)~~ (4) Section 16400.

(4) ~~(5)~~ Section 16450, to the extent that it continues subdivision (a) of former Section 12086.

~~(5)~~ (6) Subdivisions (b) and (d) of Section 16520, to the extent that they continue subdivision (e) of former Section 12085.

~~(6)~~ (7) Subdivision (g) of Section 16520.

~~(7)~~ (8) Section 16550.

~~(8)~~ (9) Section 16620.

- ~~(9)~~ (10) Section 16720.  
~~(10)~~ (11) Section 16730.  
~~(11)~~ (12) Section 16740, to the extent that it continues subdivision  
(b) of former Section 12079.  
~~(12)~~ (13) Section 16800.  
~~(13)~~ (14) Section 16810.  
~~(14)~~ (15) Section 16960.  
~~(15)~~ (16) Section 16990.  
~~(16)~~ (17) Section 17110.  
~~(17)~~ (18) Section 17310.  
~~(18)~~ (19) Sections 26500 to 26585, inclusive.  
~~(19)~~ (20) Sections 26600 to ~~28940~~ 29150, inclusive.  
~~(20)~~ Chapter 2 (commencing with Section 29030) of Division 7 of Title 4.  
~~(21)~~ (21) Chapter 2 (commencing with Section 29500) of Division 8 of Title 4.  
~~(22)~~ Section 29010.  
~~(23)~~ (22) Section 30105.  
~~(24)~~ (23) Sections 30150 to 30165, inclusive.  
~~(25)~~ (24) Sections 31705 to 31830, inclusive.  
~~(26)~~ (25) Section 32315.  
~~(27)~~ (26) Section 34205.  
~~(28)~~ (27) Sections 34350 to 34370, inclusive.

Reasons:

Corrections, simplification, renumbering

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**Page 89, Line 17 (proposed Section 16580)**

Recommended Revision:

On page 39, line 17, replace “continues to former” with “continues former”

Reason:

Correction

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**Page 90, Line 8 (proposed Section 16580)**

Recommended Revision:

On page 90, line 8, replace “21590” with “21790”

Reason:

Correction

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**Page 90, Lines 26-41, and Page 91, Lines 1-11 & 14 (proposed Section 16585)**

Recommended Revision #1:

Revise proposed Section 16585(a), as shown in strikeout and underscore below:

(a) Except as stated in subdivision (e), the following provisions were included in former Section 12078, as that section read in Section 20 of Chapter 698 of the Statutes of 2008:

(1) Subdivision (b) of Section 16170, as it pertains to former Section 12078.

(2) Section 16720.

(3) Subdivision (a) of Section 16730, as it pertains to former Section 12078.

(4) Subdivision (b) of Section 16730.

(5) Section 16990.

(6) Sections 26600 to 26615, inclusive.

(7) Sections 26950 to 27140, inclusive.

(8) Sections 27400 to 27415, inclusive.

(9) Subdivision (b) of Section 27505, as it pertains to former Section 12078.

(10) Sections 27600 to 28000, inclusive.

~~(10)~~ (11) Sections 28400 to 28415, inclusive.

~~(11)~~ (12) Sections 30150 to 30165, inclusive.

~~(12)~~ (13) Sections 31705 to 31830, inclusive.

~~(13)~~ (14) Sections 34355 to 34370, inclusive.

Recommended Revision #2:

Revise proposed Section 16585(c), as shown in strikeout and underscore below:

(c) Except as stated in subdivision (e), the following provisions were included in subdivision (a) of former Section 12078, as that section read in Section 20 of Chapter 698 of the Statutes of 2008:

(1) Sections 26600 to 26615, inclusive.

(2) Section 26950.

(3) Sections 27050 to 27065, inclusive.

~~(3)~~ (4) Sections 27400 to 27415, inclusive.

~~(4)~~ (5) Sections 27600 to 27615, inclusive.

(6) Section 27650.

(7) Sections 27850 to 27860, inclusive.

~~(5)~~ (8) Sections 28400 to 28415, inclusive.

~~(6)~~ (9) Sections 30150 to 30165, inclusive.

~~(7)~~ (10) Sections 31705 to ~~31720~~ 31735, inclusive.

~~(8)~~ (11) Sections 34355 to 34370, inclusive.

Recommended Revision #3:

On page 91, at line 14, replace “(d)” with (“e”)

Reasons:

Corrections and renumbering

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**Page 97, Lines 16-17 (Comment to proposed Section 16770)**

Recommended Revision:

Revise the last paragraph of the Comment to proposed Section 16770, as shown in strikeout and underscore below:

See Sections 16520 (“firearm”), 16530 (“firearm capable of being concealed upon the person,” “pistol,” and “revolver”), 16780 (“less lethal weapon”), ~~17010 (“pistol”), 17080 (“revolver”)~~.

Reason:

The actual definition of “pistol” and “revolver” is in proposed Section 16530 (“firearm capable of being concealed upon the person,” “pistol,” and “revolver”). Proposed Sections 17010 (“pistol”) and 17080 (“revolver”) are just guidepost provisions. It would be better to refer to the actual definition than to the guidepost provisions.

---

**Page 98, Lines 29-32 (proposed Section 16810)**

Recommended Revision:

Revise proposed Section 16810 as shown in strikeout below:

16810. As used in ~~Section 17110 and in~~ Article 1 (commencing with Section 26700) and Article 2 (commencing with Section 26800) of Chapter 2 of Division 6 of Title 4, “licensed premises,” “licensee’s business premises,” or “licensee’s place of business” means the building designated in the license.

Reason:

The reference to proposed Section 17110 is unnecessary. That provision does not use any of the three terms defined in proposed Section 16810 (“licensed premises,” “licensee’s business premises,” and “licensee’s place of business”).

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**Page 99, Line 27 (Proposed Section 16840)**

Recommended Revision:

Replace “Sections 25850 to 26060, inclusive” with “Sections 25850 to 26055, inclusive”

Reason:

Correction. Among other things, proposed Section 16840(b) would continue existing Section 12031(g), which specifies when a firearm is deemed loaded “for purposes of this section” — i.e., for purposes of Section 12031. Section 12031 would be continued in Sections 25850-26055 and in some definitions (Sections 16750(b) and 16840(b)), which do not need to be cross-referenced in proposed Section 16840. Consequently, proposed Section 16840 should cross-refer to “Sections 25850 to 26055, inclusive,” not to “Sections 25850 to 26060, inclusive.”

---

**Page 99, Line 39 (Comment to proposed Section 16840)**

Recommended Revision:

Insert the following sentence at the end of the Comment to proposed Section 16840:

See also Fish & Game Code § 2006 (“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.”).

Reason:

Proposed Section 16840 gives two different definitions of “loaded,” which apply to different statutes in the Penal Code. Fish and Game Code Section 2006 gives a third definition of “loaded,” which applies for purposes of that section. It may be helpful to alert persons to this third definition by referring to it in the Comment to proposed Section 16840.

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**Page 100, Line 3 (Proposed Section 16850)**

Recommended Revision:

Replace “Article 3 (commencing with Section 25500)” with “Article 2 (commencing with Section 25500)”

Reason:

Correction

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**Page 100, Lines 27-29 (Comment to proposed Section 16870)**

Recommended Revision:

Revise the first paragraph of the Comment to proposed Section 16870, as shown in ~~strikeout~~ and underscore below:

**Comment.** Section 16870 continues former Section 12087.6(c) without substantive change. See also former Section 12071(b)(20)(G)(ii)(II), which ~~used~~ appears to have been subject to the same definition of “long-gun safe.” safe” (due to the requirement that the long-gun safe “mee[t] the standards for department-approved gun safes set forth in Section 12088.2”).

Reason:

The revised description of former Section 12071(b)(20)(G)(ii)(II) is more precise than the description used in the tentative recommendation.

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**Page 102, Line 3 (Proposed Section 16940)**

Recommended Revision:

Insert a comma after “bars” in the phrase “sticks, clubs, bars or rods”

Reason:

Stylistic convention for a series of three or more terms with a single conjunction

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**Page 103, Line 13 (proposed Section 16990)**

Recommended Revision:

Replace “any provision listed in Section 16585” with “any provision listed in subdivision (a) of Section 16585”

Reason:

Proposed Section 16585 contains two lists of provisions, one in subdivision (a) and another in subdivision (c). But all of the provisions listed in subdivision (c) are also listed in subdivision (a). Directing readers specifically to subdivision (a) of proposed Section 16585 would not change the meaning of proposed Section 16990, but would spare readers from unnecessarily examining the list in subdivision (c).

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**Page 107, Lines 1-2 (Comment to proposed Section 17140)**

Recommended Revision:

Revise the second paragraph of the Comment to proposed Section 17140, as shown in ~~strikeout~~ and underscore below:

See ~~Sections~~ Section 16530 (“firearm capable of being concealed upon the person,” “pistol,” and “revolver”), ~~17010 (“pistol”).~~

Reason:

The actual definition of “pistol” is in proposed Section 16530 (“firearm capable of being concealed upon the person,” “pistol,” and “revolver”). Proposed Section 17010 (“pistol”) is just a guidepost provision, so the citation to it is unnecessary.

---

**Page 108, Lines 16-23 (proposed Section 17190)**

Recommended Revision:

Revise proposed Section 17190 as shown in underscore below:

17190. As used in Sections 16530, 16640, 16870, and 17180, Sections 17720 to 17730, inclusive, Section 17740, subdivision (f) of Section 27555, Section 30215, and Article 1 (commencing with Section 33210) of Chapter 8 of Division 10 of Title 4, “shotgun” means

Reason:

Proposed Section 17190 would continue existing Section 12020(c)(21), which defines “shotgun” for purposes of that section. The term “shotgun” is used in multiple places in existing Section 12020, including subdivision (b)(6). That subdivision would be continued in proposed Section 30215. Consequently, the definition of shotgun in proposed Section 17190 should apply to proposed Section 30215.

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**Page 110, Lines 9-10 (Comment to proposed Section 17270)**

Recommended Revision:

Revise the second paragraph of the Comment to proposed Section 17270, as shown in strikeout and underscore below:

See Sections 16520 (“firearm”), ~~17010 (“pistol”)~~ 16530 (“firearm capable of being concealed upon the person,” “pistol,” and “revolver”).

Reason:

The actual definition of “pistol” is in proposed Section 16530 (“firearm capable of being concealed upon the person,” “pistol,” and “revolver”). Proposed Section 17010 (“pistol”) is just a guidepost provision. It would be better to refer to the actual definition than to the guidepost provision.

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**Page 113, Line 20 (proposed Section 17510)**

Recommended Revision:

Revise proposed Section 17510(c)(1) as shown in underscore below:

(1) Article 2 (commencing with Section 25450) of Chapter 2 of Division 5 of Title 4.

Reason:

The cross-reference is incomplete unless revised as indicated.

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**Page 116, Lines 28-30 (proposed Section 17735)**

Recommended Revision:

Revise proposed Section 17735(a) as shown in underscore below:

(a) The person is not prohibited from possessing firearms or ammunition under subdivision (a) of Section 30305 or Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of Title 4 of this part ....

Reason:

Statutory drafting convention

 **Note.** Similar revisions should be made in the following places:

- **Page 117, Line 8**
- **Page 178, Line 18**
- **Page 183, Line 26**
- **Page 187, Line 32**
- **Page 188, Line 1**
- **Page 193, Lines 1 & 38**
- **Page 238, Line 12**
- **Page 258, Lines 25 & 30**
- **Page 268, Line 16**
- **Page 308, Line 5**
- **Page 321, Lines 6 & 7**
- **Page 342, Line 16**
- **Page 344, Line 28**
- **Page 358, Line 23**
- **Page 410, Lines 2 & 3**

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**Page 119, Lines 43-44 (proposed Section 18010)**

Recommended Revision:

Replace “Section 22290, relating to a blackjack, billy, leaded cane, sandclub, sandbag, sap, and slungshot” with “Section 22290, relating to a leaded cane or an instrument or weapon of the kind commonly known as a billy, blackjack, sandbag, sandclub, sap, or slungshot”

Reasons:

The revised description puts the list of weapons in alphabetical order and tracks the text of Section 22290 more closely than the original description.

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**Page 122, Line 34 (proposed Section 18265)**

Recommended Revision:

Replace “Except as provided in 18400” with “Except as provided in Section 18400”

Reason:

Inadvertent omission

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**Page 122, Lines 42-43 (proposed Section 18265)**

Recommended Revision:

Replace “the return of firearms or ammunition or other deadly weapon” with “the return of any firearm, ammunition, or other deadly weapon”

Reason:

Grammatical improvement

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**Page 124, Line 2 (proposed Section 18275)**

Recommended Revision:

In proposed Section 18275(a), replace “sold or destroyed as provided in Section 18005” with “sold or destroyed as provided in subdivisions (a) and (b) of Section 18000 and subdivisions (a) and (b) of Section 18005.”

Reason:

The existing cross-reference is to “subdivision (c) of Section 12028,” which would be continued in proposed Section 18000(a)-(b) and

proposed Section 18005(a)-(b). The revision shown above would properly reflect that disposition.

As a substantive matter, it might be better to refer to the entirety of Sections 18000 and 18005 than to refer only to subdivisions (a)-(b) of each section. For example, the authority to destroy a weapon would be in subdivision (c) of Section 18005, not in Section 18000(a)-(b) or Section 18005(a)-(b). It does not make sense to refer to *destroying* a weapon “as provided in subdivisions (a) and (b) of Section 18000 and subdivisions (a) and (b) of Section 18005.”

The staff recommends that this matter be included in the Commission’s list of “Minor Clean-up Issues for Possible Future Legislative Attention.” See Item #57 in the new draft of Appendix B attached to this memorandum.

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**Page 126, Lines 26-27 (proposed Section 18415)**

Recommended Revision:

Replace “dispose of the firearm or other deadly weapon as provided in Section 18005” with “dispose of the firearm or other deadly weapon as provided in Sections 18000 and 18005.”

Reason:

The existing cross-reference is to Section 12028. The portions of Section 12028 that most directly address disposal of weapons would be continued in proposed Section 18005. But the weapon surrender procedures that would be continued in proposed Section 18000 might also be pertinent. It would be safest to refer to both sections in proposed Section 18415, not just to proposed Section 18005.

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**Page 127, Lines 8-9 (proposed Section 18420)**

Recommended Revision:

Replace “the firearm or other deadly weapon may be disposed of as provided in Section 18005” with “the firearm or other deadly weapon may be disposed of as provided in Sections 18000 and 18005.”

Reason:

The existing cross-reference is to Section 12028. The portions of Section 12028 that most directly address disposal of weapons would be continued in proposed Section 18005. But the weapon surrender procedures that would be continued in proposed Section 18000 might also be pertinent. It would be safest to refer to both sections in proposed Section 18420, not just to proposed Section 18005.

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**Page 130, Line 6 (proposed Section 18750)**

Recommended Revision: Replace “a person” with “any person”

Reason: Existing law uses the phrase “any person,” not “a person”

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**Page 134, Line 31 (proposed Section 19405)**

Recommended Revision:

Replace “Any person who sells a less lethal weapon, as defined in Section 12601....” with “Any person who sells a less lethal weapon ....”

Reason:

Existing Section 12655 refers to “a less lethal weapon, as defined in Section 12601.” In drafting proposed Section 19405, the staff incorporated that language verbatim. At a minimum, however, we should have revised the cross-reference to Section 12601 to reflect the numbering scheme of proposed new Part 6.

Instead of revising the cross-reference, we recommend deleting it. That would further the Legislature’s directive to “[a]void unnecessary use of cross-references” while “[n]either expand[ing] nor contract[ing] the scope of criminal liability under current provisions.” 2006 Cal. Stat. res. ch. 128. The Comment already refers to the definition of “less lethal weapon” and states that “Section 19405 continues former Section 12655 without substantive change.” Because courts give great weight to the Commission’s comments, we think this would be sufficient to preserve the substance of Section 12655. See 2006-2007 Annual Report, 36 Cal. L. Revision Comm’n Reports 1, 18-24 (2006).

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**Page 135, Line 13 (proposed Section 19915)**

Recommended Revision:

Replace “any of the following” with “either of the following”

Reason:

“Either” is more appropriate than “any” because only two alternatives follow, not more than two.

---

**Page 145, Line 37 (Comment to proposed Section 21710)**

Recommended Revision:

Revise the Comment to proposed Section 21710, as shown in strikeout and underscore below:

See Section 16680 (“hard plastic ~~knuckles~~”), ~~16680~~ (“hard knuckles” or “hard wooden knuckles”).

Reason:

Correction

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**Page 147, Lines 19-34 (Proposed Section 22210 & Comment)**

Recommended Revision #1:

At lines 19-20, replace “Prohibition on manufacture, import, sale, gift, loan, or possession of leaded cane, blackjack, slungshot, billy, sandclub, sap, or sandbag” with “Prohibition relating to leaded cane or to instrument or weapon of kind commonly known as billy, blackjack, sandbag, sandclub, sap, or slungshot”

Recommended Revision #2:

At lines 25-26, replace “blackjack, slungshot, billy, sandclub, sap, or sandbag” with “billy, blackjack, sandbag, sandclub, sap, or slungshot”

Recommended Revision #3:

At line 34, replace “leaded cane, blackjack, slungshot, billy, sandclub, sap, or sandbag constituting nuisance” with “nuisance created by leaded cane or by instrument or weapon of kind commonly known as billy, blackjack, sandbag, sandclub, sap, or slungshot”

Reasons:

All three revisions would put the list of weapons in alphabetical order, which may be helpful. The revised leadline (Revision #1) would track the weapon description in proposed Section 22210 more closely than the original leadline. The revised parenthetical (Revision #3) would track the weapon description in proposed Section 22290 more closely than the original parenthetical.

---

**Page 148, Lines 5-14 (Proposed Section 22290)**

Recommended Revision #1:

At lines 5-6, replace “Leaded cane, blackjack, slungshot, billy, sandclub, sap, or sandbag constituting nuisance” with “Nuisance

created by leaded cane or by instrument or weapon of kind commonly known as billy, blackjack, sandbag, sandclub, sap, or slungshot”

Recommended Revision #2:

At lines 9-10, replace “blackjack, slungshot, billy, sandclub, sap, or sandbag” with “billy, blackjack, sandbag, sandclub, sap, or slungshot”

Reasons:

Both revisions would put the list of weapons in alphabetical order, which may be helpful. The revised leadline (Revision #1) would track the weapon description in proposed Section 22290 more closely than the original leadline.

---

**Page 148, Line 7 (Proposed Section 22290)**

Recommended Revision:

Replace “Except as provided in Section 22210 ....” with “Except as provided in Section 22215 ....”

Reason:

The exception is stated in Section 22215, not in Section 22210.

---

**Page 153, Lines 15-19 (Proposed Section 22835)**

Recommended Revision:

Revise the first sentence of proposed Section 22835 as shown in underscore below:

22835. Notwithstanding any other provision of law, a person holding a license as a private investigator pursuant to Chapter 11.3 (commencing with Section 7512) of Division 3 of the Business and Professions Code, or as a private patrol operator pursuant to Chapter 11.5 (commencing with Section 7580) of Division 3 of the Business and Professions Code ....

Reason:

Grammatical improvement

---

**Page 154, Line 12 (Proposed Section 22905)**

Recommended Revision:

Insert a comma after “transported” in the phrase “sold, transported or possessed”

Reason:

Stylistic convention for a series of three or more terms with a single conjunction

---

**Page 154, Line 18 (Proposed Section 22910)**

Recommended Revision:

Insert a comma after “removes” in the phrase “changes, alters, removes or obliterates”

Reason:

Stylistic convention for a series of three or more terms with a single conjunction

---

**Page 157, Line 8 (Proposed Section 23510)**

Recommended Revision:

Replace “Sections 31610 to 31700, inclusive” with “Section 31615”

Reason:

Correction. Proposed Section 23510 would continue existing Section 12001(k). Among other things, Section 12001(k) cross-refers to Section 12801. Section 12801 would be continued in Section 31615 and in some definitions (Sections 16170(b), 16370, and 16450), which do not need to be cross-referenced in proposed Section 23510. Consequently, proposed Section 23510 should cross-refer to “Section 31615,” not to “Sections 31610 to 31700, inclusive.”

---

**Page 161, Lines 19-20 (Proposed Section 23640)**

Recommended Revision:

Delete the comma after “Title 16” in the phrase “consistent with Part 1500.121 of Title 16, of the Code of Federal Regulations ....”

Reason:

The comma is in existing law but appears to be unnecessary.

---

**Page 164, Line 30 (Comment to Proposed Section 23670)**

Recommended Revision:

Revise the third paragraph of the Comment to proposed Section 23670 as shown in underscore below:

A violation of the predecessor of Section 23660 (former Section 12088.15(a)-(b)) ....

Reason:

Proposed Section 23660 would continue subdivisions (a) and (b) of Section 12088.15, not just subdivision (a).

---

**Page 173, Line 42 (Comment to Proposed Section 25125)**

Recommended Revision:

Insert a close quote after “child

Reason:

Correction

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**Page 176, Line 28 (Comment to Proposed Section 25220)**

Recommended Revision:

Insert a close quote after “child

Reason:

Correction

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**Page 183, Lines 37-39 (Comment to proposed Section 25525)**

Recommended Revision:

Revise the first and second paragraphs of the Comment to proposed Section 25525 as shown in underscore below:

Subdivision (a) of Section 25525 continues former Section 12026.2(a)(4) without substantive change. Former Section 12026.2(a)(4) referred to “a person listed in Section 12026” and “the places mentioned in Section 12026.” To make subdivision (a) of Section 25525 readily understandable, those references have been replaced with the pertinent language from former Section 12026, which is continued in Section 25605.

Subdivision (b) continues former Section 12026.2(a)(6) without substantive change. Former Section 12026.2(a)(6) referred to “a person listed in Section 12026.” To make subdivision (b) of Section 25525 readily understandable, that reference has been replaced with a reference to “a person listed in subdivision (a).” This is equivalent to the previous reference, because subdivision (a) includes the pertinent language from former Section 12026.

Reason:

The expanded Comment would help a reader to understand the source of the language in proposed Section 25525 and to confirm that there has been no substantive change. The expanded Comment would also provide an explanation for why the section was drafted that way.

---

**Page 184, Line 5 (Proposed Section 25530)**

Recommended Revision:

Replace “transfer, sale, or loan” with “sale, loan, or transfer”

Reason:

Stylistic consistency. Provisions that use the phrase “sale, loan, or transfer” include proposed Sections 27545, 27590, 27820, 27965, 28050, 28055, 28060, 28150, 28170, 28200, and 32110. See also the leadline for proposed Section 32405.

---

**Page 184, Lines 35-40 (proposed Section 25545)**

Recommended Revision:

Revise proposed Section 25545 as shown in strikeout and underscore below:

25545. Section 25400 does not apply to, or affect, the transportation of a firearm by a person when going directly to, or coming directly from, a place designated by a person authorized to issue licenses pursuant to Section 26150, 26155, ~~or 26170,~~ or 26215, when done at the request of the issuing agency so that the issuing agency can determine whether or not a license should be issued to that person to carry that firearm.

Reason:

Proposed Section 25545 would continue Section 12026.2(a)(10), which refers to “a person authorized to issue licenses pursuant to Section 12050.” Of the provisions that would continue Section 12050 the three already cross-referenced in proposed Section 25545 (proposed Sections 26150, 26155, and 26170) are the only ones that provide authority to issue a license in the first instance. But proposed Section 26215 provides authority to issue an amended license. It should therefore be cross-referenced in proposed Section 25545, along with the three other provisions.

---

**Page 186, Lines 1-2 (Comment to proposed Section 25565)**

Recommended Revision:

Revise the first paragraph of the Comment to proposed Section 25565, as shown in underscore below:

Section 25565 continues former Section 12026.2(a)(15) without substantive change. Former Section 12026.2(a)(15) referred to “transportation of a firearm by a person in order to utilize paragraph (6) of subdivision (a) of Section 12078 as it pertains to that firearm.” To make Section 25565 readily understandable, that reference has been replaced by pertinent language from former Section 12078(a)(6) and cross-references to Sections 27850 and 31725, which continue former Section 12078(a)(6).

Reason:

The expanded Comment would help a reader to understand the source of the language in proposed Section 25565 and to confirm that there has been no substantive change. The expanded Comment would also provide an explanation for why the section was drafted that way.

---

**Page 186, Lines 38-39 (Comment to proposed Section 25580)**

Recommended Revision:

Revise the first paragraph of the Comment to proposed Section 25580, as shown in underscore below:

Section 25580 continues former Section 12026.2(a)(19) without substantive change. Former Section 12026.2(a)(19) referred to “transportation of a firearm by a person in order to comply with paragraph (3) of subdivision (f) of Section 12072.” To make Section 25580 readily understandable, that reference has been replaced by key language from former Section 12072(f)(3) and a cross-reference to Sections 27565, which continues former Section 12072(f)(3).

Reason:

The expanded Comment would help a reader to understand the source of the language in proposed Section 25580 and to confirm that there has been no substantive change. The expanded Comment would also provide an explanation for why the section was drafted that way.

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**Page 192, Lines 11-13 (Comment to proposed Section 25800)**

Recommended Revision:

Revise the second paragraph of the Comment to proposed Section 25800, as shown in underscore below:

The definition of “loaded” for armed criminal action differs from the definition of “loaded” for the crime of carrying a loaded firearm in public. See Section 16840 (“loaded” and “loaded firearm”). For yet another definition of “loaded,” see Fish & Game Code § 2006 (“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.”).

Reason:

The Comment to proposed Section 25800 already points out that the definition of “loaded” applicable to that section differs from the definition of “loaded” for purposes of the crime of carrying a loaded firearm in public. Fish and Game Code Section 2006 gives a third definition of “loaded,” which applies for purposes of that section. It may be helpful to alert persons to this third definition by referring to it in the Comment to proposed Section 25800.

---

**Page 194, Lines 27-29 (Comment to proposed Section 25850)**

Recommended Revision:

Revise the ninth paragraph of the Comment to proposed Section 25850, as shown in underscore below:

The definition of “loaded” for the crime of carrying a loaded firearm in public differs from the definition of “loaded” for armed criminal action. See Section 16840 (“loaded” and “loaded firearm”). For yet another definition of “loaded,” see Fish & Game Code § 2006 (“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.”).

Reason:

The Comment to proposed Section 25850 already points out that the definition of “loaded” applicable to that section differs from the definition of “loaded” for purposes of armed criminal action. Fish and Game Code Section 2006 gives a third definition of “loaded,” which applies for purposes of that section. It may be helpful to alert persons

to this third definition by referring to it in the Comment to proposed Section 25850.

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**Page 195, Line 7**

Recommended Revision: Replace “16020” with “26020”

Reason: Typographical error

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**Page 196, Line 36**

Recommended Revision:

Replace “shall be responsible for eligibility” with “shall be responsible for maintaining eligibility”

Reason:

Inadvertent omission. The revised version tracks existing law.

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**Page 209, Line 19**

Recommended Revision:

Replace “is prohibited from owning or purchasing” with “is prohibited by state or federal law from owning or purchasing”

Reason:

Inadvertent omission. The revised version tracks existing law.

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**Page 217, Lines 25-28 (proposed Section 26540)**

Recommended Revision:

Revise proposed Section 26540 as shown in strikeout and underscore below:

26540. Section 26500 does not include deliveries and transfers of firearms made pursuant to Sections 18000 and 18005, pursuant to Division 4 (commencing with Section 18250) of Title 2, or pursuant to ~~Chapter 11 (commencing with Section 34000) of Division 11 of this title~~ Sections 34005 and 34010.

Reason:

The existing cross-reference is to Section 12030, which would be continued in proposed Sections 34005 and 34010. The revision shown above would properly reflect that disposition. The deleted language would be inappropriate because the chapter in question includes not

only proposed Sections 34005 and 34010, but also other material that might mistakenly be construed as pertinent.

---

**Page 218, Lines 39-40 (proposed Section 26565)**

Recommended Revision:

Delete the comma after “Code” in the phrase “Chapter 44 (commencing with Section 921) of Title 18 of the United States Code, and the regulations issued pursuant thereto.”

Reason:

Stylistic consistency. The comma is in existing law but it appears to be unnecessary. The same phrase appears in many other provisions without the comma.

---

**Page 226, Lines 8-9 (proposed Section 26805)**

Recommended Revision:

Replace “Sections 27655, 27900, 27905, and 27955” with “Sections 26955, 27655, 27900, and 27905”

Reason:

Typographical error (“27955” instead of “26955”), necessitating correction and reordering of sections

---

**Page 227, Line 41, to Page 228, Line 10 (proposed Section 26830)**

Recommended Revision:

Revise proposed Section 26830, as shown in strikeout and underscore below:

26830. A licensee shall comply with all of the following:

- (a) ~~Section 27500~~ Sections 27500 to 27535, inclusive.
- (b) ~~Section 27505.~~
- (c) ~~Section 27510.~~
- (d) ~~Section 27515.~~
- (e) ~~Section 27520.~~
- (f) ~~Section 27525.~~
- (g) ~~Section 27530.~~
- (h) ~~Section 27535.~~
- (i) (b) Section 27555.
- (j) (c) Section 28100.
- (k) (d) Article 2 (commencing with Section 28150) of Chapter 6.
- (l) (e) Article 3 (commencing with Section 28200) of Chapter 6.

~~(m)~~ (f) Section 30300.

Reason:

Simplification without any change in meaning

---

**Page 235, Lines 28-31 (proposed Section 26890)**

Recommended Revision:

Revise proposed Section 26890(d), as shown in strikeout and underscore below:

(d) Subdivision (a) or (b) shall not apply to a licensee organized as a nonprofit public benefit ~~or mutual benefit~~ corporation pursuant to Part 2 (commencing with Section 5110) ~~or Part 3 (commencing with Section 7110)~~ of Division 2 of the Corporations Code, or as a mutual benefit corporation pursuant to Part 3 (commencing with Section 7110) of Division 2 of the Corporations Code, if both of the following conditions ....

Reason:

Improved clarity without any change in meaning

---

**Page 236, Line 5 (Comment to Proposed Section 26890)**

Recommended Revision:

Replace the period before “16810” with a comma

Reason:

Correction

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**Page 245, Lines 33-34 (Comment to proposed Section 27120)**

Recommended Revision:

Revise the second paragraph of the Comment to proposed Section 27120, as shown in strikeout and underscore below:

See Sections 16520 (“firearm”), 17340 (“wholesaler”), 26700 (“dealer,” “licensee,” or “person licensed pursuant to Sections 26700 to 26915, inclusive”), ~~17340 (“wholesaler”)~~.

Reason:

The revision puts the sections in proper numerical order.

**Note.** The same revision should be made in the following places:

- **Page 274, Lines 32-33**
- **Page 391, Lines 13-14**

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**Page 247, Line 31 (Comment to Proposed Section 27140)**

Recommended Revision:

Insert a comma after “(‘zip gun’)”

Reason:

Correction

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**Page 251, Line 35 (proposed Section 27235)**

Recommended Revision:

Replace “The producer of a gun show or event” with “Every producer of a gun show or event”

Reason:

Existing law refers to “[a]ll producers.” The singular equivalent is “every producer,” not “the producer.”

---

**Page 255, Line 39, to Page 256, Line 1 (Comment to proposed Section 27340)**

Recommended Revision:

Revise the Comment to proposed Section 27340 as shown in strikeout and underscore below:

**Comment.** Subdivision (a) of Section 27340 continues former Section 12071.4(i) without substantive change.

Subdivision (b) continues former Section 12071.4(j) without substantive change.

~~See Section 16520 (“firearm”).~~

For exceptions to provisions in this article and Article 1 (commencing with Section 27200), see Article 3 (commencing with Section 27400).

For the consequences of violating this article, see Section 27350 (punishment).

See Section 16520 (“firearm”).

Reason:

Placement correction

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**Page 258, Lines 23-24 (proposed Section 27500)**

Recommended Revision:

In proposed Section 27500(a), replace “supply, deliver, sell, or give possession or control of ....” with “sell, supply, deliver, or give possession or control of ....”

Reason:

Stylistic consistency. See proposed Section 27500(b), which already uses the phrase “sell, supply, deliver, or give possession or control of ....” In addition, numerous provisions in proposed new Part 6 use the phrase “sale, delivery, or transfer.” It would be anomalous to put “sell” after “deliver” in proposed Section 27500(a).

---

**Page 260, Line 13 (proposed Section 27510)**

Recommended Revision:

Replace “supply, sell, deliver, or give possession or control of ....” with “sell, supply, deliver, or give possession or control of ....”

Reason:

Stylistic consistency. See proposed Section 27500(b), which already uses the phrase “sell, supply, deliver, or give possession or control of ....”

---

**Page 260, Line 24 (proposed Section 27515)**

Recommended Revision:

Replace “anyone whom the person, corporation, or dealer has cause to believe ....” with “anyone whom the person, corporation, or dealer knows or has cause to believe ....”

Reason:

Inadvertent omission. The revised version tracks existing law.

---

**Page 260, Lines 28 & 30 (proposed Section 27515)**

Recommended Revision:

On page 260, at line 28 and again at line 30, replace “loaned, sold, or transferred” with “sold, loaned, or transferred”

Reason:

Stylistic consistency. See the introductory clause of proposed Section 27515, which uses the phrase “sell, loan, or transfer.” In addition, numerous provisions in proposed new Part 6 use the phrase “sale, loan, or transfer.” It would be anomalous to put “sold” after “loaned” in proposed Section 27515(a)-(b).

---

**Page 260, Line 41 (proposed Section 27520)**

Recommended Revision:

Replace “selling, transferring, or loaning” with “selling, loaning, or transferring”

Reason:

Stylistic consistency. Numerous provisions in proposed new Part 6 use the phrase “sale, loan, or transfer.” It would be anomalous to put “loaning” after “transferring” in proposed Section 27520.

---

**Page 262, Lines 8-10 (proposed Section 27535)**

Recommended Revision:

Revise proposed Section 27535(b)(7) as shown in underscore below:

(7) Any person who may, pursuant to Article 2 (commencing with Section 27600), Article 3 (commencing with Section 27650), or Article 4 (commencing with Section 27700), claim ....

Reason:

Statutory drafting convention

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**Page 268, Line 26 (proposed Section 27590)**

Recommended Revision: Replace “27525” with “27515”

Reason: Typographical error

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**Page 268, Lines 39 & 40-41 (proposed Section 27590)**

Recommended Revision:

In proposed Section 27590(d)(1) and again in proposed Section 27590(d)(2), replace “subdivision (a) of Section 27500” with “subdivision (b) of Section 27500”

Reason:

Correction. The existing cross-reference is to “paragraph (2) of subdivision (a)” of Section 12072. That provision would be continued in subdivision (b) of proposed Section 27500, not in subdivision (a) of proposed Section 27500.

---

**Page 269, Lines 10-11 (Comment to proposed Section 27590)**

Recommended Revision:

Revise the second paragraph of the Comment to proposed Section 27590, as shown in strikeout and underscore below:

For guidance in applying paragraphs ~~(b)(1)~~, (b)(2), (b)(3), (e)(2), and (e)(3), see Section 16015 (determining existence of prior conviction).

Reason:

Correction. Paragraph (b)(3) of proposed Section 27590 refers to a prior conviction under statutes the Commission is proposing to recodify; paragraph (b)(1) does not.

---

**Page 283, Line 28 (proposed Section 27885)**

Recommended Revision:

Insert a comma after “owning” in the phrase “possessing, receiving, owning or purchasing”

Reason:

Stylistic convention for a series of three or more terms with a single conjunction

---

**Page 286, Line 13 (proposed Section 27920)**

Recommended Revision:

Replace “subdivision (g)” with “subdivision (j)”

Reason:

Correction. The existing cross-reference is to “subparagraph (J) of paragraph (2) of subdivision (u)” of Section 12078. That provision would be continued in subdivision (j) of proposed Section 16990, not subdivision (g) of proposed Section 16990.

---

**Page 288, Line 12 (Comment to proposed Section 27940)**

Recommended Revision:

Italicize the “o” in “former Section 12078(o)”

Reason:

Statutory drafting convention

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**Page 291, Lines 33-34 (proposed § 28055)**

Recommended Revision:

Replace “Article 3 (commencing with Section 28100) of Chapter 6” with “Article 3 (commencing with Section 28200) of Chapter 6”

Reason:

Typographical error. Article 3 of Chapter 6 of Division 6 of proposed new Part 6 commences with Section 28200, not Section 28100.

---

**Page 295, Line 36 (proposed Section 28160)**

Recommended Revision:

In proposed Section 28160(a)(4), replace “Sections 26900 and 27760” with “Sections 26960 and 27660”

Reason:

The dealer waiting period exemption referenced in proposed Section 28160(a)(4) is currently codified in Section 12078(n). That provision would be continued in proposed Sections 26960 and 27660, not proposed Sections 26900 and 27760.

---

**Page 296, Line 1, to Page 297, Line 11 (proposed Section 28160)**

Recommended Revisions:

Delete proposed Section 28160(a)(7), which refers to “[c]urio and relic waiting period exemption pursuant to Sections 27820 and 27965.”  
Renummer subsequent provisions in proposed Section 28160(a).

Reason:

Existing law refers to the “curio and relic waiting period exemption pursuant to subdivision (t) of Section 12078.” Subdivision (t) of Section 12078 consists of two paragraphs. Paragraph (1) contains a curio and relic waiting period exemption, which would be continued in proposed Sections 26970 and 27670 and cross-referenced in proposed

Section 28160(a)(6). Paragraph (2) of Section 12078(t) would be continued in proposed Sections 27820 and 27965, but it does not contain a curio and relic waiting period exemption. Consequently, proposed Section 28160(a) should not cross-refer to “[c]urio and relic waiting period exemption pursuant to Sections 27820 and 27965.”

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**Page 305, Line 5 (proposed Section 28225)**

Recommended Revision: Replace “28215.1” with “28215.”

Reason: Typographical error

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**Page 306, Lines 17-19 (proposed Section 28230)**

Recommended Revision:

Revise proposed Section 28230(b), as shown in strikeout and underscore below:

(b) If the department charges a fee pursuant to paragraph (2) of subdivision (a), it shall be charged in the same amount to all categories of transaction that are within ~~subdivision (a)~~ that paragraph.

Reason:

Proposed Section 28230(b) would continue existing Section 12076(f)(2), which provides: “If the department charges a fee pursuant to *subparagraph (B) of paragraph (1) of this subdivision*, it shall be charged in the same amount to all categories of transaction that are within *that subparagraph*.” (Emphasis added.) The cross-reference at the beginning of that provision (“subparagraph (B) of paragraph (1) of this subdivision”) is identical to the cross-reference at the end (“that subparagraph”). The same should therefore be true of proposed Section 28230(b): The cross-reference at the beginning of that provision (“paragraph (2) of subdivision (a)”) should be identical to the cross-reference at the end (“that paragraph”).

---

**Page 308, Lines 16-17 (Comment to proposed Section 28250)**

Recommended Revision:

Revise the first paragraph of the Comment to proposed Section 28250, as shown in underscore below:

**Comment.** Section 28250 continues the third sentence of former Section 12076(b)(1) and the third sentence of former Section 12076(c)(1) without substantive change. An erroneous reference to “the register” in former Section 12076(c)(1) has been replaced with a reference to “the electronic or telephonic transfer.”

Reason:

Section 12076(c)(1) contains an erroneous reference to “the register.” That reference would be corrected in proposed Section 28250, which would continue the pertinent part of Section 12076(c)(1). The correction is already explained in footnote 62 of the preliminary part, but it should also be noted in the Comment to proposed Section 28250.

---

**Page 308, Line 33 (proposed Section 28300)**

Recommended Revision:

Insert a comma after “maintenance” in the phrase “establishment, maintenance and upgrading”

Reason:

Stylistic convention for a series of three or more terms with a single conjunction

---

**Page 315, Lines 3-4 (proposed Section 29050)**

Recommended Revision:

Revise proposed Section 29050(a)(2), as shown in strikeout below:

(2) Any regulatory or business license, ~~or licenses~~, required by local government.

Reason:

The reference to “licenses” is in existing law, but it is unnecessary. See Section 7 (singular includes plural and vice versa).

---

**Page 317, Line 12 (Comment to proposed Section 29105)**

Recommended Revision:

Revise the first paragraph of the Comment to proposed Section 29105, as shown in underscore below:

See Section 29030 (“licensee”). See also Section 29100 (compliance with prohibitions and requirements).

Reason:

It might be helpful to alert readers to proposed Section 29100. That provision is located at the beginning of Article 3 (commencing with Section 29100) of Chapter 2 of Division 7 of Title 4 of proposed Part 6, and is pertinent to the other substantive provisions in that article.

 **Note.** Similar revisions should be made in the Comments to proposed Sections 29110-29140 and 29150, in the following locations:

- **Page 317, Line 17**
- **Page 317, Line 34**
- **Page 318, Line 4**
- **Page 318, Line 16**
- **Page 318, Line 28**
- **Page 318, Line 38**
- **Page 319, Line 7**
- **Page 320, Line 37**

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**Page 328, Line 40 (proposed Section 29810)**

Recommended Revision:

Insert a comma after “possessing” in the phrase “owning, purchasing, receiving, possessing or having under custody or control ....”

Reason:

Stylistic convention for a series of three or more terms with a single conjunction

---

**Page 329, Line 1 (Comment to proposed Section 29810)**

Recommended Revision: Replace “12020(d)(2)” with “12021(d)(2)”

Reason: Typographical error

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**Page 341, Line 13 (Proposed Section 30290)**

Recommended Revision:

Replace “Except as provided in Section 30210 ....” with “Except as provided in Section 30215 ....”

Reason:

The exception is stated in Section 30215, not in Section 30210.

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**Page 342, Line 11 (Comment to proposed Section 30300)**

Recommended Revision: Replace “29705” with “29750”

Reason: Transposition error

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**Page 343, after Line 33 (Comment to proposed Section 30310)**

Recommended Revision:

After the second paragraph of the Comment to proposed Section 30310, insert the following new paragraph:

For other provisions relating to weapons on school grounds, see Sections 626.9 (Gun-Free School Zone Act), 626.10 (miscellaneous weapons on school grounds).

Reason:

Proposed Section 30310 generally prohibits the carrying of ammunition or reloaded ammunition on school grounds. In the Comment to that provision, it might be helpful to alert readers to Sections 626.9 and 626.10, which restrict certain weapons on school grounds. The suggested new paragraph would serve that purpose.

---

**Page 343, Lines 40-41 (proposed Section 30315)**

Recommended Revision:

Replace “such fine and imprisonment” with “that fine and imprisonment”

Reason:

Legislative Counsel rule regarding use of “such” in statutory text

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**Page 344, Lines 12-13 (proposed Section 30320)**

Recommended Revision:

Replace “such fine and imprisonment” with “that fine and imprisonment”

Reason:

Legislative Counsel rule regarding use of “such” in statutory text

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**Page 346, Lines 7-9 (proposed Section 30510)**

Recommended Revision:

Revise the introductory clause of proposed Section 30510, as shown in ~~strikeout~~ and underscore below:

30510. As used in this chapter, and in Sections 16780, 17000, and 27555, and 30530, and in subdivision (a) of Section 30005, “assault weapon” means the following designated semiautomatic firearms:

Reason:

The cross-reference to Section 30530 is not necessary because that section is already encompassed by the cross-reference to “this chapter.” The cross-reference to subdivision (a) of Section 30005 is inappropriate because (1) that provision would continue Section 12011(a), and (2) the reference to “assault weapon” in Section 12011(a) is not expressly subject to the definition of “assault weapon” that would be continued in proposed Section 30510.

---

**Page 350, Line 39, to Page 351, Line 3 (proposed Section 30530 & Comment)**

Recommended Revision #1:

In proposed Section 30530(b), replace “Section 178.11 of Title 27 of the Code of Federal Regulations” with “Section 478.11 of Title 27 of the Code of Federal Regulations”

Recommended Revision #2:

Revise the first paragraph of the Comment to proposed Section 30530, as shown in underscore below:

**Comment.** Subdivision (a) of Section 30530 continues former Section 12278(a) without substantive change. A cross-reference to nonexistent Section 178.11 of Title 27 of the Code of Federal Regulations has been replaced with a cross-reference to Section 478.11 of the Code of Federal Regulations. See Sections 16880 (“machinegun”), 30510 (“assault weapon”), 30515 (further clarification of “assault weapon”), 30525 (“.50 BMG cartridge”).

Reasons:

The cross-reference to “Section 178.11 of Title 27 of the Code of Federal Regulations” is in existing law, but it is obviously incorrect because there is no such provision. The correct reference is to “Section 478.11 of Title 27 of the Code of Federal Regulations.” Rather than perpetuating an obviously incorrect cross-reference, the Commission should make the correction and note it in the Comment to proposed Section 30530 and in the new version of Appendix A attached to this memorandum (see the bulletpoint for Section 12278(a), which would be continued in proposed Section 30530).

The term “.50 BMG cartridge” is used in proposed Section 30530 and its meaning is governed by the definition of “.50 BMG cartridge” in proposed Section 30525. That definition should therefore be cited in the Comment to proposed Section 30530.

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**Page 353, Lines 4-5 (Comment to proposed Section 30610)**

Recommended Revision:

Revise the first paragraph of the Comment to proposed Section 30610, as shown in strikeout and underscore below:

**Comment.** See Sections 16520 (“firearm”), 16970 (“person”), 30530 (“.50 BMG rifle”). See also Section 16010 (continuation of existing law), ~~30530 (“.50 BMG rifle”)~~.

Reason:

Placement correction

**Note.** The same revision should be made in the following place:

- **Page 364, Lines 31-32**

---

**Page 353, Lines 32-33 (Comment to proposed Section 30620)**

Recommended Revision:

Revise the third paragraph of the Comment to proposed Section 30620, as shown in underscore below:

Subdivision (c) refers to the operative date of former Section 12276.1 (i.e., January 1, 2000). As subsequently amended to exempt certain weapons ....

Reason:

The phrase “[a]s subsequently amended” in the second sentence of the Comment would be more clear if juxtaposed with the date “January 1, 2000.”

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**Page 354, Lines 11-12 & 34-35 (proposed Section 30630)**

Recommended Revision:

In paragraph (b)(1) and subdivision (c) of proposed Section 30630, replace “delivery, transfer, or sale” with “sale, delivery, or transfer.”

Reason:

Stylistic consistency. Numerous provisions in proposed new Part 6 use the phrase “sale, delivery, or transfer.” It would be anomalous to use the phrase “delivery, transfer, or sale” in proposed Section 30630.

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**Page 360, Lines 22-23 (Comment to proposed Section 30715)**

Recommended Revision:

Revise the third paragraph of the Comment to proposed Section 30715, as shown in strikeout below:

See Sections 16970 (“person”), 30710 (“SKS rifle”). See also Section 16010 (continuation of existing law). ~~See also Section 16010 (continuation of existing law).~~

Reason:

Accidental repetition

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**Page 365, Lines 8-9 & 27-28 (Comments to proposed Sections 30925 & 30920)**

Recommended Revision #1:

Revise the first paragraph of the Comment to proposed Section 30915, as shown in strikeout and underscore below:

**Comment.** In combination with Section 30920(a), Section 30915 continues the second ~~and third sentences~~ sentence of former Section 12285(b)(1) without substantive change.

Recommended Revision #2:

Revise the first paragraph of the Comment to proposed Section 30920, as shown in strikeout and underscore below:

**Comment.** In combination with Section 30915, subdivision (a) of Section 30920 continues the second ~~and third sentences~~ sentence of former Section 12285(b)(1) without substantive change. Subdivision (b) continues the third sentence of former Section 12285(b)(1) without substantive change.

Reason:

The revised Comments would describe the disposition of the second and third sentences of Section 12285(b)(1) more precisely than the original versions of those Comments.

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**Page 370, Lines 7-13 (proposed Section 31005)**

Recommended Revision:

Revise proposed Section 31005(a)(3)-(6), as shown in strikeout and underscore below:

~~(3) Entities outside the state who have, in effect, a federal firearms dealer's license solely for the purpose of distribution to an entity listed in paragraphs (4) to (6), inclusive.~~

~~(4) Federal law enforcement and military agencies.~~

~~(5) (4) Law enforcement and military agencies of other states.~~

~~(6) (5) Foreign governments and agencies approved by the United States State Department.~~

(6) Entities outside the state who have, in effect, a federal firearms dealer's license solely for the purpose of distribution to an entity listed in paragraphs (3) to (5), inclusive.

Reason:

The revisions would simply change the order in which the items are listed. The revised order would be parallel to proposed Sections 30645 and 30650.

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**Page 374, Lines 25-32 (proposed Section 31340)**

Recommended Revision:

Revise proposed Section 31340, as shown in strikeout and underscore below:

31340. The Department of Justice shall issue an order revoking certification of a body armor if, after due notice to the applicant, the department finds any of the following:

(a) ~~That the~~ The experience or additional testing show that the body armor does not comply with the department's ballistic performance standards.

(b) ~~That the~~ The application contains any misrepresentation of a material fact.

(c) The body armor must be retested for certification under new department standards.

Reason:

Grammatical improvement

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**Page 379, Line 20 (Comment to proposed Section 31630)**

Recommended Revision:

At page 379, line 20, replace "31655" with "31665"

Reason:

Typographical error

 **Note.** The same revision should be made in the following places:

- **Page 380, Line 8**

- Page 381, Line 4
  - Page 382, Line 29
- 

**Page 392, Line 26 (Comment to proposed Section 31805)**

Recommended Revision:

In the first paragraph of the Comment to proposed Section 31805, replace “former Section 12072(d)” with “former Section 12801(b)”

Reason:

Correction

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**Page 398, Lines 21-25 (Comment to proposed Section 31910)**

Recommended Revision:

Revise the Comment to proposed Section 31910, as shown in strikeout and underscore below:

See Sections 16380 (“chamber load indicator”), ~~16500 (“drop safety requirement for handguns”)~~, 16520 (“firearm”), 16530 (“firearm capable of being concealed upon the person,” “pistol,” and “revolver”), ~~16560 (“firing requirement for handguns”)~~, 16640 (“handgun”), 16900 (“magazine disconnect mechanism”), ~~17010 (“pistol”)~~, ~~17080 (“revolver”)~~, 17140 (“semiautomatic pistol”), 31900 (“drop safety requirement for handguns”), 31905 (“firing requirement for handguns”).

Reasons:

The citations to the definitions of “drop safety requirement for handguns” and “firing requirement for handguns” need to be corrected to reflect relocation of those definitions in the course of this study.

The actual definitions of “pistol” and “revolver” are in proposed Section 16530 (“firearm capable of being concealed upon the person,” “pistol,” and “revolver”). Proposed Sections 17010 (“pistol”) and 17080 (“revolver”) are just guidepost provisions, so the citations to those sections are unnecessary.

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**Page 404, Lines 17-18 (proposed Section 32100)**

Recommended Revision:

Revise proposed Section 32100(a), as shown in strikeout and underscore below:

(a) ~~Articles~~ Article 4 (commencing with Section 31900) and Article 5 (commencing with Section 32000) shall ....

Reason:

Statutory drafting convention

☞ **Note.** Similar revisions should be made in the following places:

- **Page 404, Line 30**
- **Page 405, Line 5**
- **Page 406, Line 24**
- **Page 407, Line 7**

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**Page 405, Line 9, to Page 406, Line 21 (proposed Section 32105)**

Recommended Revision:

Single-space the list of weapons, instead of double-spacing

Reason:

Formatting improvement

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**Page 412, Lines 2-3 (proposed Section 32450)**

Recommended Revision:

On page 412, line 2, delete the paragraph return after “Section”

Reason:

Typographical error

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**Page 421, Line 23 (Comment to proposed Section 33600)**

Recommended Revision:

In the third paragraph of the Comment to proposed Section 33600, replace “32990 (zip gun constituting nuisance)” with “32690 (zip gun constituting nuisance)”

Reason:

Correction. The provision on a zip gun constituting a nuisance is proposed Section 32690, not proposed Section 32990.

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**Page 422, Lines 12-13 (Comment to proposed Section 33800)**

Recommended Revision:

Revise the last sentence of the second paragraph of the Comment to proposed Section 33800, as shown in underscore below:

For rules governing disposal of firearms that are unclaimed, abandoned, or subject to destruction, see Sections 34000-34010.

Reason:

Inadvertent omission

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**Page 423, Lines 1-2 (proposed Section 33850)**

Recommended Revision:

In proposed Section 33850(a)(7), replace “pursuant to paragraph (4) of this subdivision” with “pursuant to paragraph (4)”

Reason:

The phrase “of this subdivision” is unnecessary. Including it would be inconsistent with statutory drafting convention.

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**Page 423, Line 21 (Comment to proposed Section 33850)**

Recommended Revision:

On page 423, at line 21, replace “27390” with “27930”

Reason:

Transposition error

 **Note.** The same revision should be made in the following places:

- **Page 424, Line 8**
  - **Page 425, Lines 14 & 38**
- 

**Page 436, Entry for “12020(a)(1) (re flechette dart)”**

Recommended Revision:

The entry for “12020(a)(1) (re flechette dart)” should be placed after the entry for “12010(a)(1) (re firearm not immediately recognizable as firearm)”

Reason:

The entries should be placed in proper alphabetical order

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**Page 436, Entry for “12020(a)(1) (re billy, blackjack, sandbag, sandclub, sap, or slungshot)”**

Recommended Revision:

The entry for “12020(a)(1) (re billy, blackjack, sandbag, sandclub, sap, or slungshot)” should be placed after the entry for “12010(a)(1) (re belt buckle knife)”

Reason:

The entries should be placed in proper alphabetical order

---

**Page 441, Entry for “12029, 1st sent., 1st-2d cl. (re blackjack, slungshot, ...)”**

Recommended Revision:

Replace “blackjack, slungshot, billy, sandclub & sandbag” with “billy, blackjack, sandbag, sandclub, and slungshot”

Reason:

The list of weapons should be placed in alphabetical order

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**Page 444, Entry for “12036(d)”**

Recommended Revision: Replace “25200(d)” with “25200(c)”

Reason: Correction

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**Page 454, Entry for “12086(c)(9)”**

Recommended Revision: Replace “29145” with “29150”

Reason: Correction

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**Page 454, Entry for “12088.1(b)”**

Recommended Revision: Replace “23635(d)” with “23635(e)”

Reason: Correction

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**Page 454, Entry for “12088.1(c)”**

Recommended Revision: Replace “23635(e)” with “23635(d)”

Reason: Correction

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**Page 454, Entry for “12088.1(d)”**

Recommended Revision: Replace “23635(c)” with “23635(b)”

Reason: Correction

---

**Page 454, Entry for “12088.1(e)”**

Recommended Revision: Replace “23635(b)” with “23635(c)”

Reason: Correction

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**Page 457, Entry for “12285(b)(1), 2d & 3d sent.”**

Recommended Revision:

Replace this entry with two new entries, as follows:

12285(b)(1), 2d sent. .... 30915, 30920(a)

12285(b)(1), 3d sent. .... 30920(b)

Reason:

The new entries would reflect the disposition of the second and third sentences of Section 12285(b)(1) more precisely than the original entry.

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**Page 458, Entry for “12289”**

Recommended Revision: Replace “31110” with “31115”

Reason: Correction

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**Page 458, Entry for “12289.5”**

Recommended Revision: Replace “31115” with “31110”

Reason: Correction

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**Page 459, Entry for “12360”**

Recommended Revision: Replace “31300” with “31310”

Reason: Correction

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#M-300

STATE OF CALIFORNIA

# CALIFORNIA LAW REVISION COMMISSION

**STAFF DRAFT**

RECOMMENDATION

Nonsubstantive Reorganization  
of Deadly Weapon Statutes

May 2009

California Law Revision Commission  
4000 Middlefield Road, Room D-2  
Palo Alto, CA 94303-4739  
650-494-1335  
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## SUMMARY OF RECOMMENDATION

The Legislature has directed the Law Revision Commission to “study, report on, and prepare recommended legislation by July 1, 2009, concerning the revision of the portions of the Penal Code relating to the control of deadly weapons....” 2006 Cal. Stat. res. ch. 128. The general purpose of the study is to improve the organization and accessibility of the deadly weapons statutes, without making any change to criminal liability under those statutes.

This recommendation was prepared pursuant to that direction. In drafting the proposed law, the Commission took extreme care to ensure that it would not cause any substantive change in the law.

## ACKNOWLEDGMENTS

Comments from knowledgeable persons are invaluable in the Commission's study process. In this study, the Commission is especially grateful to Jason Davis and Lindsay Nichols, who faithfully attended the Commission's meetings to represent the views of gun owners and gun control advocates, respectively. In addition, the Commission is deeply grateful to the Office of Legislative Counsel for providing advance guidance on drafting issues relating to the study. The Commission would also like to express its appreciation to the other individuals and organizations who have taken the time to participate in this study.

Inclusion of the name of an individual or organization should not be taken as an indication of the individual's opinion or the organization's position on any aspect of this recommendation. The Commission regrets any errors or omissions that may have been made in compiling these acknowledgments.

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## NONSUBSTANTIVE REORGANIZATION OF DEADLY WEAPON STATUTES

1 In 2006, the Legislature enacted Assembly Concurrent Resolution 73  
2 (McCarthy) (hereafter “ACR 73”), which directed the Law Revision Commission  
3 to “study, report on, and prepare recommended legislation by July 1, 2009,  
4 concerning the revision of the portions of the Penal Code relating to the control of  
5 deadly weapons ....” The resolution states:

6 WHEREAS, Title 2 (commencing with Section 12000) of Part 4 of the Penal  
7 Code, relating to the control of deadly weapons, is lengthy and complex, and  
8 could be simplified; and

9 WHEREAS, It is the intent of the Legislature that the firearms laws be  
10 simplified and reorganized; now, therefore, be it

11 *Resolved by the Assembly of the State of California, the Senate thereof*  
12 *concurring*, That the Legislature authorizes and requests that the California Law  
13 Revision Commission study, report on, and prepare recommended legislation by  
14 July 1, 2009, concerning the revision of the portions of the Penal Code relating to  
15 the control of deadly weapons, and that this legislation shall accomplish the  
16 following objectives:

17 (a) Reduce the length and complexity of current sections.

18 (b) Avoid unnecessary use of cross-references.

19 (c) Neither expand nor contract the scope of criminal liability under current  
20 provisions. In the event that the commission’s draft changes the scope of criminal  
21 liability under the current provisions, this shall be made explicit in the  
22 commission’s draft or any commentary related to the draft.

23 (d) To the extent compatible with objective (c), use common definitions of  
24 terms.

25 (e) Organize existing provisions in such a way that similar provisions are  
26 located in close proximity to each other.

27 (f) Eliminate duplicative provisions; and be it further

28 *Resolved*, That nothing in this resolution shall be construed to prevent the  
29 Legislature, prior to receipt of the commission’s recommendations, from enacting  
30 any measure related to the Penal Code sections under review by the California  
31 Law Revision Commission; and be it further

32 *Resolved*, That the Chief Clerk of the Assembly transmit copies of this  
33 resolution to the California Law Revision Commission and to the author for  
34 appropriate distribution.<sup>1</sup>

35 The impetus for this study appears to have been a veto message by Governor  
36 Schwarzenegger, in which he stated:

37 Before a government exercises its power to take away one’s liberty, it should be  
38 clear to every person what actions will cause them to forfeit their freedom. Instead  
39 of adding to the lengthy and complex area of firearm laws, a reorganization of the

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1. ACR 73 (McCarthy); 2006 Cal. Stat. res. ch. 128 (emphasis in original).

1 current laws should be undertaken to ensure that statutes that impose criminal  
2 penalties are easily understandable.<sup>2</sup>

3 This recommendation presents draft legislation consistent with the direction  
4 provided in ACR 73. The objectives of the proposed law and the methods used in  
5 preparing it are discussed more fully below.

## 6 SCOPE OF STUDY

7 ACR 73 directs the Commission to study, report on, and prepare legislation  
8 “concerning the revision of the portions of the Penal Code relating to the control  
9 of deadly weapons ....” By itself, this directive seems clear, but reading it together  
10 with other portions of ACR 73 raises some issues regarding the intended scope of  
11 the Commission’s study. Those issues are discussed below.

### 12 **Type of Weapons**

13 An initial issue is whether the Commission’s study should focus exclusively on  
14 provisions relating to firearms, or should also encompass provisions relating to  
15 other types of deadly weapons.

16 The preamble to ACR 73 states that it “is the intent of the Legislature that the  
17 firearms laws be simplified and reorganized.” However, the preamble further  
18 states that “Title 2 (commencing with Section 12000) of Part 4 of the Penal Code,  
19 relating to the control of deadly weapons, is lengthy and complex, and could be  
20 simplified ....” These statements are arguably in conflict, but ACR 73 specifically  
21 directs the Commission to study, report on, and prepare legislation “concerning  
22 the revision of the portions of the Penal Code relating to the control of deadly  
23 weapons ....”

24 As introduced, ACR 73 referred only to “firearms.”<sup>3</sup> Significantly, the resolution  
25 was later revised to refer to “deadly weapons.”<sup>4</sup>

26 In light of the language of the resolution and its history, the Commission  
27 believes that the study should encompass all deadly weapons. That is the scope of  
28 the legislation proposed in this recommendation.

### 29 **Relevant Code Sections**

30 A second issue is whether the Commission’s study should focus on a specific  
31 portion of the Penal Code, or instead encompass any Penal Code provision that  
32 relates to the “control of deadly weapons.”

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2. As introduced on June 13, 2005, ACR 73 cited the Governor’s statement as a basis for the resolution. The cited language is from the Governor’s veto message on SB 1140 (Scott) (2004), which would have made changes to provisions regulating the storage of firearms. See also Senate Committee on Judiciary Analysis of ACR 73 (August 24, 2006).

3. See ACR 73 (McCarthy) (as introduced on June 13, 2005).

4. *Id.* (as amended July 12, 2005).

1 The preamble to ACR 73 refers specifically to “Title 2 (commencing with  
2 Section 12000) of Part 4 of the Penal Code, relating to the control of deadly  
3 weapons ....” The resolution then directs the Commission to study “the portions of  
4 the Penal Code relating to the control of deadly weapons ....” It is unclear whether  
5 this directive refers back to Title 2, or is meant to include all provisions in the  
6 Penal Code relating to the control of deadly weapons, regardless of where they are  
7 located.

8 To determine the intent, the Commission examined the analyses and different  
9 versions of ACR 73, and discussed the matter with legislative staff. Although  
10 other interpretations are possible, the Commission concluded that this study  
11 should focus on Title 2 of Part 4 of the Penal Code.<sup>5</sup> The language of ACR 73 is  
12 broad enough to permit revision of other provisions relating to deadly weapons if  
13 needed, but the bulk of such provisions are in Title 2 and these appear to be the  
14 provisions that the Legislature considered in need of attention. That is the  
15 approach taken in the proposed law.<sup>6</sup>

#### 16 **Sentence Enhancements**

17 There are some provisions in Title 2 of Part 4 of the Penal Code that do not  
18 relate directly to the control of deadly weapons. These provisions establish  
19 “sentence enhancements.”<sup>7</sup> A sentence enhancement is a provision that imposes an  
20 additional and consecutive term to the base term of punishment for a crime when  
21 specified conditions are met.

22 Many of the sentence enhancements in Title 2 of Part 4 of the Penal Code do not  
23 involve deadly weapons at all.<sup>8</sup> Others include the use or possession of a deadly  
24 weapon as a condition for imposing a sentence enhancement, but do not relate to  
25 the ownership, transfer, sale, or storage of deadly weapons.<sup>9</sup>

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5. Penal Code §§ 12000-12809. Unless otherwise indicated, all further statutory references are to the Penal Code.

6. There is one exception. Section 653k, which is located outside of Title 2, is included within the scope of the proposed law. Section 653k regulates the ownership, sale, and transfer of switchblade knives. It is currently located in a chapter on miscellaneous offenses, which contains a variety of unrelated provisions. ACR 73 directs the Commission to: “Organize existing provisions in such a way that similar provisions are located in close proximity to each other.” In accord with that direction, the proposed law would move the substance of Section 653k to the same location as other provisions regulating knives. See proposed Sections 16965, 17235, 21510 *infra*.

7. Sections 12021.5-12022.95.

8. See Sections 12022.1 (secondary offense), 12022.6 (taking or damaging property), 12022.7 (great bodily injury), 12022.75 (administration of controlled substance), 12022.8 (infliction of great bodily injury in committing sexual offense), 12022.85 (sexual offense by person with AIDS), 12022.9 (crime causing termination of pregnancy), 12022.95 (injury to child).

9. See Sections 12021.5 (street gang crimes), 12022 (possession or use of firearm or dangerous weapon), 12022.2 (armor piercing ammunition or body vest), 12022.3 (sexual offenses), 12022.4 (furnishing firearm used in crime), 12022.5(a) (personal use of firearm in commission of felony), 12022.53

1 The proposed law would leave these sentence enhancement provisions  
2 unchanged, in their current location in the Penal Code.<sup>10</sup> They would not be  
3 included within the reorganized body of statutes governing the control of deadly  
4 weapons.

5 There are two reasons for this approach. First, the sentence enhancement  
6 provisions do not primarily concern the control of deadly weapons. Second, it is  
7 preferable not to change the section numbers of provisions that are used in  
8 calculating criminal sentences. Judges and attorneys rely on a number of tools to  
9 assist in calculating sentences. Those tools would need to be updated if the section  
10 numbers of the sentence enhancement provisions were changed.

## 11 STUDY OBJECTIVES

### 12 **Improve Accessibility of the Law**

13 The primary purpose of this study is to simplify and improve the organization of  
14 the statutes governing control of deadly weapons, to make them more  
15 understandable and useable, without making any substantive changes to that law.  
16 The author of ACR 73, Assembly Member Kevin McCarthy, described the need  
17 for simplification of the law as follows:

18 These areas of the law are not for legal experts only. Firearms owners, licensed  
19 dealers, and law enforcement need to be able to interpret these provisions in order  
20 to comply with the law and avoid criminal liability. Ambiguity and confusion do  
21 not promote the public policy goals that those laws were designed to accomplish.

22 ....

23 Gun owners shouldn't have to consult an attorney specializing in firearms law  
24 just to find out what they need to do to avoid committing a crime. Law  
25 enforcement should have clear, bright line, easily understandable guidelines on  
26 how to enforce these laws. This resolution is offered in the hope that an  
27 independent, expert body of legal experts can offer up some helpful suggestions  
28 on ways that these laws can be clarified so that our citizens will be able to  
29 determine, with relative ease, what the law requires and prohibits in the area of  
30 firearms regulation.<sup>11</sup>

31 In addition to the benefits described by Assembly Member McCarthy,  
32 improvement of the clarity and organization of the deadly weapon statutes would

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(personal use or discharge of firearm), 12022.55 (discharge of firearm from vehicle causing great bodily injury).

A few provisions in Title 2 of Part 4 of the Penal Code provide sentence enhancements that are specific to crimes involving the control of deadly weapons. See Sections 12072(g)(4), 12280(a)(2) & (d). These provisions are closely tied to the substance of the sections in which they are located. They would therefore be moved to proposed Part 6, and kept in close proximity to the same substantive material as at present. See proposed Sections 27590, 30600, 30615 *infra*.

10. See proposed Sections 12001-12022.95 ("Title 2. Sentence Enhancements") *infra*.

11. Senate Floor Analysis of ACR 73 (Aug. 26, 2006), pp. 4-5.

1 also facilitate the future development of the law, by making it easier for the  
2 Legislature to assess the state of existing law and thereby avoid redundancy or  
3 inconsistency in enacting new provisions.

#### 4 **Nonsubstantive Reform**

5 The proposed law would improve the organizational clarity of the deadly  
6 weapons statutes, as intended. However, there is an important limit on the extent  
7 to which the Commission can make that law clearer, simpler, or better organized.  
8 ACR 73 requires that any reform proposed by the Commission “[n]either expand  
9 nor contract the scope of criminal liability under current provisions.”

10 That limitation has been the controlling principle in the preparation of the  
11 proposed law. The Commission has exercised extreme care to ensure that the  
12 proposed law would not result in any substantive change in outcome under the  
13 affected statutes.

14 Specific measures taken by the Commission to avoid making any substantive  
15 change in the law are described below.

#### 16 ***Objective and Participatory Study Process***

17 The Commission’s study process is well-suited to the development of a  
18 nonsubstantive reform of the deadly weapon statutes, for the following reasons:

- 19 • The Commission is neutral and objective, with no special interest in the  
20 subject of deadly weapons. The Commission has no motivation to introduce  
21 substantive changes into the deadly weapon statutes.
- 22 • The Commission has prior experience in drafting legislation to recodify  
23 complex bodies of law without making any substantive change.<sup>12</sup>
- 24 • The Commission’s work is transparent. All materials are publicly  
25 distributed. All deliberations are conducted at open public meetings.
- 26 • The Commission actively solicits input from affected interest groups.  
27 Interim drafts of the proposed law are provided to those groups for review.  
28 Any objection that a change would have a substantive effect is carefully  
29 analyzed and addressed by the Commission.
- 30 • In proposing legislative reform, the Commission prepares a thorough  
31 explanatory report that explains the purpose and effect of the proposed law,  
32 and sets out a complete draft of the proposed legislation, with a detailed  
33 table of contents and a table showing the disposition of every affected  
34 section. This report facilitates public review of the proposed law.

#### 35 ***Commission Comments***

36 In preparing a recommendation, the Commission drafts an explanatory  
37 “Comment” for every section that is added, amended, or repealed.<sup>13</sup> A Comment

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12. For example, the Commission recently recommended the nonsubstantive recodification of the civil discovery statutes, an important and sensitive body of law. See *Civil Discovery: Nonsubstantive Reform*, 33 Cal. L. Revision Comm’n Reports 789 (2003); enacted as 2004 Cal. Stat. ch. 182.

1 indicates the derivation of a section and often explains its purpose, its relation to  
2 other law, and potential issues concerning its meaning or application.

3 The Comments in this recommendation state expressly, for each affected  
4 section, that the proposed law is not intended to make any change to the substance  
5 of the affected provision.

6 On completion of a final recommendation, the full recommendation, including  
7 the proposed legislation and the Comments, will be presented to the Legislature  
8 and the Governor. If legislation is introduced to effectuate the proposed law, the  
9 full recommendation will be provided to each member of every policy committee  
10 that reviews the legislation.

11 Commission materials that have been placed before and considered by the  
12 Legislature are considered evidence of legislative intent,<sup>14</sup> and are entitled to great  
13 weight in construing statutes.<sup>15</sup> The materials are a key interpretive aid for  
14 practitioners as well as courts,<sup>16</sup> and courts may judicially notice and rely on  
15 them.<sup>17</sup> Courts at all levels of the state<sup>18</sup> and federal<sup>19</sup> judicial systems use

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13. The Comments follow each section of the proposed legislation *infra*.

14. See, e.g., *Fair v. Bakhtiari*, 40 Cal. 4th 189, 195, 147 P.3d 653, 657, 51 Cal. Rptr. 3d 871, 875 (2006) (“The Commission’s official comments are deemed to express the Legislature’s intent.”); *People v. Williams*, 16 Cal. 3d 663, 667-68, 547 P.2d 1000, 128 Cal. Rptr. 888 (1976) (“The official comments of the California Law Revision Commission on the various sections of the Evidence Code are declarative of the intent not only of the draft[ers] of the code but also of the legislators who subsequently enacted it. [Citation]”).

15. See, e.g., *Dep’t of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.*, 40 Cal. 4th 1, 13 n.9, 145 P.3d 462, 469 n.9, 50 Cal. Rptr. 3d 585, 593 n.9 (2006) (Commission’s official comments are persuasive evidence of Legislature’s intent); *Hale v. Southern Cal. IPA Med. Group, Inc.*, 86 Cal. App. 4th 919, 927, 103 Cal. Rptr. 2d 773, 778 (2001):

In an effort to discern legislative intent, an appellate court is entitled to take judicial notice of the various legislative materials, including committee reports, underlying the enactment of a statute. (*Kern v. County of Imperial* (1990) 226 Cal. App. 3d 391, 400, fn. 8 [276 Cal. Rptr. 524]; *Coopers & Lybrand v. Superior Court* (1989) 212 Cal. App. 3d 524, 535, fn. 7 [260 Cal. Rptr. 713].) In particular, reports and interpretive opinions of the Law Revision Commission are entitled to great weight. (*Schmidt v. Southern Cal. Rapid Transit Dist.* (1993) 14 Cal. App. 4th 23, 30, fn. 10 [17 Cal. Rptr. 2d 340].)

16. *Cf.* 7 B. Witkin, *Summary of California Law Constitutional Law* § 123, at 230 (10th ed. 2005) (Commission reports as aid to construction); Gaylord, *An Approach to Statutory Construction*, 5 Sw. U. L. Rev. 349, 384 (1973).

17. See, e.g., *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.*, 133 Cal. App. 4th 26, 34 Cal. Rptr. 3d 520 (2005) (providing overview of materials that may be judicially noticed in determining legislative intent); *Hale*, 86 Cal. App. 4th at 927; *Barkley v. City of Blue Lake*, 18 Cal. App. 4th 1745, 1751 n.3, 23 Cal. Rptr. 2d 315, 318-19 n.3 (1993).

18. See, e.g., *Sullivan v. Delta Air Lines, Inc.*, 15 Cal. 4th 288, 935 P.2d 781, 63 Cal. Rptr. 2d 74 (1997) (California Supreme Court); *Administrative Management Services, Inc. v. Fidelity & Deposit Co.*, 129 Cal. App. 3d 484, 181 Cal. Rptr. 141 (1982) (court of appeal); *Rossetto v. Barross*, 90 Cal. App. 4th Supp. 1, 110 Cal. Rptr. 2d 255 (2001) (appellate division of superior court).

19. See, e.g., *California v. Green*, 399 U.S. 149 (1970) (United States Supreme Court); *Southern Cal. Bank v. Zimmerman (In re Hilde)*, 120 F.3d 950 (9th Cir. 1997) (federal court of appeal); *Williams v. Townsend*, 283 F. Supp. 580 (C.D. Cal. 1968) (federal district court); *Ford Consumer Fin. Co. v. McDonell*

1 Commission materials to construe statutes enacted on Commission  
2 recommendation.<sup>20</sup>

3 The Commission's Comments will make clear that the proposed law should be  
4 construed as an entirely nonsubstantive reorganization of the law.

5 *Statements of Legislative Intent*

6 The proposed law would be known as the Deadly Weapons Recodification Act  
7 of 2012.<sup>21</sup> It would include a number of codified provisions making clear that the  
8 proposed law would continue existing law without any substantive change. That  
9 general point would be stated in proposed Section 16005:

10 16005. Nothing in the Deadly Weapons Recodification Act of 2012 is intended  
11 to substantively change the law relating to deadly weapons. The act is intended to  
12 be entirely nonsubstantive in effect. Every provision of this part, of Title 2  
13 (commencing with Section 12001) of Part 4, and every other provision of this act,  
14 including, without limitation, every cross-reference in every provision of the act,  
15 shall be interpreted consistent with the nonsubstantive intent of the act.

16 In addition, proposed Section 16010 would make clear that a provision of the  
17 proposed law is intended as a restatement and continuation of the provision that it  
18 restates, and that any reference to a restated provision is deemed to include a  
19 reference to the section that restates it (and vice versa):

20 16010. (a) A provision of this part or of Title 2 (commencing with Section  
21 12001) of Part 4, or any other provision of the Deadly Weapons Recodification  
22 Act of 2012, insofar as it is substantially the same as a previously existing  
23 provision relating to the same subject matter, shall be considered as a restatement  
24 and continuation thereof and not as a new enactment.

25 (b) A reference in a statute to a previously existing provision that is restated and  
26 continued in this part or in Title 2 (commencing with Section 12001) of Part 4, or  
27 in any other provision of the Deadly Weapons Recodification Act of 2012, shall,

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(*In re McDonell*), 204 B.R. 976 (B.A.P. 9th Cir. 1996) (bankruptcy appellate panel); *In re Garrido*, 43 B.R. 289 (Bankr. S.D. Cal. 1984) (bankruptcy court).

20. See, e.g., *Jevne v. Superior Court*, 35 Cal. 4th 935, 947, 11 P.3d 954, 962, 28 Cal. Rptr. 3d 685, 694-95 (2005) (Commission report entitled to substantial weight in construing statute); *Collection Bureau of San Jose v. Rumsey*, 24 Cal. 4th 301, 308 & n.6, 6 P.3d 713, 718 & n.6, 99 Cal. Rptr. 2d 792, 797 & n.6 (2000) (Comments to reenacted statute reiterate the clear understanding and intent of original enactment); *Brian W. v. Superior Court*, 20 Cal. 3d 618, 623, 574 P.2d 788, 791, 143 Cal. Rptr. 717, 720 (1978) (Comments persuasive evidence of Legislature's intent); *Volkswagen Pac., Inc. v. City of Los Angeles*, 7 Cal. 3d 48, 61-63, 496 P.2d 1237, 1247-48, 101 Cal. Rptr. 869, 879-80 (1972) (Comments evidence clear legislative intent of law); *Van Arsdale v. Hollinger*, 68 Cal. 2d 245, 249-50, 437 P.2d 508, 511, 66 Cal. Rptr. 20, 23 (1968) (Comments entitled to substantial weight); *County of Los Angeles v. Superior Court*, 62 Cal. 2d 839, 843-44, 402 P.2d 868, 870-71, 44 Cal. Rptr. 796, 798-99 (1965) (statutes reflect policy recommended by Commission).

21. See proposed Section 16000 *infra*. In selecting this title, the Commission assumed that because of its magnitude the proposed legislation would not be introduced until the beginning of the 2011-2012 legislative session, and would not be enacted until 2012. The title will require adjustment if the proposed legislation is enacted in a different year.

1 unless a contrary intent appears, be deemed a reference to the restatement and  
2 continuation.

3 (c) A reference in a statute to a provision of this part or of Title 2 (commencing  
4 with Section 12001) of Part 4, or any other provision of the Deadly Weapons  
5 Recodification Act of 2012, which is substantially the same as a previously  
6 existing provision, shall, unless a contrary intent appears, be deemed to include a  
7 reference to the previously existing provision.

8 The Commission has taken special care to avoid any ambiguity with respect to  
9 the operation of provisions that concern repeat offenses. Proposed Section 16015  
10 would expressly state that a conviction under a restated section is also deemed to  
11 be a conviction under the section that restates it:

12 16015. If a previously existing provision is restated and continued in this part,  
13 or in Title 2 (commencing with Section 12001) of Part 4, or in any other provision  
14 of the Deadly Weapons Recodification Act of 2012, a conviction under that  
15 previously existing provision shall, unless a contrary intent appears, be treated as  
16 a prior conviction under the restatement and continuation of that provision.

17 Finally, proposed Sections 16020 and 16025 would make clear that restatement  
18 of a provision is not intended to have any effect, positive or negative, on a judicial  
19 interpretation of the restated provision or a judicial holding that the provision is  
20 unconstitutional:

21 16020. (a) A judicial decision interpreting a previously existing provision is  
22 relevant in interpreting any provision of this part, of Title 2 (commencing with  
23 Section 12001) of Part 4, or any other provision of the Deadly Weapons  
24 Recodification Act of 2012, which restates and continues that previously existing  
25 provision.

26 (b) However, in enacting the Deadly Weapons Recodification Act of 2012, the  
27 Legislature has not evaluated the correctness of any judicial decision interpreting  
28 a provision affected by the act.

29 (c) The Deadly Weapons Recodification Act of 2012 is not intended to, and  
30 does not, reflect any assessment of any judicial decision interpreting any  
31 provision affected by the act.

32 16025. (a) A judicial decision determining the constitutionality of a previously  
33 existing provision is relevant in determining the constitutionality of any provision  
34 of this part, of Title 2 (commencing with Section 12001) of Part 4, or any other  
35 provision of the Deadly Weapons Recodification Act of 2012, which restates and  
36 continues that previously existing provision.

37 (b) However, in enacting the Deadly Weapons Recodification Act of 2012, the  
38 Legislature has not evaluated the constitutionality of any provision affected by the  
39 act, or the correctness of any judicial decision determining the constitutionality of  
40 any provision affected by the act.

41 (c) The Deadly Weapons Recodification Act of 2012 is not intended to, and  
42 does not, reflect any determination of the constitutionality of any provision  
43 affected by the act.

1 By their terms, the provisions discussed above would apply to the entire body of  
2 recodified deadly weapon statutes.

3 ***Legislative Process***

4 After the Commission completes its study process and issues a final  
5 recommendation, the proposed law would be scrutinized carefully in the  
6 legislative process. This would serve as a final safeguard against any unintended  
7 substantive change in the law.

8 **DRAFTING APPROACH**

9 **Structure of Proposed Law**

10 The proposed law would relocate most of the provisions of existing Title 2 of  
11 Part 4 of the Penal Code to a new Part 6 of the Penal Code, commencing with  
12 proposed Section 16000.<sup>22</sup>

13 The provisions of existing Title 2 are organized into two levels: chapters and  
14 articles. That provides little organizational flexibility, making it difficult to group  
15 similar provisions together unless they are combined into an excessively long  
16 section.

17 By contrast, proposed Part 6 would be organized into four levels: Titles,  
18 divisions, chapters, and articles. This provides much greater latitude to group  
19 similar provisions together, and then combine similar groupings into a logical  
20 hierarchical structure.

21 This approach complies with the Legislature’s directive to “[o]rganize existing  
22 provisions in such a way that similar provisions are located in close proximity to  
23 each other.”<sup>23</sup> It allows for a more coherent and intuitive organizational structure,  
24 which should make it easier for a reader to find relevant provisions within the  
25 statute.

26 **Short, Simple Sections**

27 One of the common complaints about existing Title 2 of Part 4 of the Penal  
28 Code is that many of its sections are excessively long. For example, Assembly  
29 Member McCarthy noted that “Penal Code Section 12078 is 5,880 words long and  
30 occupies 11 pages....”<sup>24</sup>

31 Excessively long sections can obscure relevant details of law, especially if a  
32 single section addresses several different subjects.

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22. A number of sentence enhancement provisions would not be relocated to new Part 6. See discussion under “Sentence Enhancements” *supra*. The portion of Section 12590 relating to picketing in the uniform of a peace officer would be placed in “Chapter 4.5. Peace Officers” of Title 3 of Part 2 of the Penal Code. See proposed Section 830.95 *infra*.

23. ACR 73.

24. Senate Committee on Judiciary Analysis of ACR 73 (August 24, 2006), p. 4.

1 A better approach is to divide the law into a larger number of smaller sections,  
2 with each section limited to a single subject. Short sections have numerous  
3 advantages. They enhance readability and understanding of the law, and make it  
4 easier to locate and refer to pertinent material. In contrast to a long section, a short  
5 section can be amended without undue technical difficulties and new material can  
6 be inserted where logically appropriate, facilitating sound development of the law.  
7 The use of short sections is the preferred drafting technique of the California Code  
8 Commission,<sup>25</sup> the Legislature,<sup>26</sup> the Legislative Counsel,<sup>27</sup> and the Law Revision  
9 Commission.<sup>28</sup>

10 Moreover, ACR 73 specifically directs the Commission to “[r]educe the length  
11 and complexity of current sections.”

12 For all of the reasons discussed above, the proposed law would divide lengthy  
13 sections into shorter and simpler provisions. The number of sections would almost  
14 quadruple, but there would be relatively little change in the word count of the  
15 governing law.<sup>29</sup>

#### 16 **Definition of Terms**

17 Under existing law, many definitions are scattered throughout Title 2 of Part 4  
18 of the Penal Code. Some terms are used with different definitions in different  
19 contexts,<sup>30</sup> or are defined for some uses but not others.<sup>31</sup> This can create

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25. California Code Commission, *Drafting Rules and Principles for Use of California Code Commission Draftsmen*, 1947-48 Report, app. G, at 4.

26. Senate & Assembly Joint Rule 8 (Jan. 9, 2007).

27. Legislative Counsel of California, *Legislative Drafting Manual* 26-28 (1975).

28. Commission Staff Memorandum 76-24 (Feb. 17, 1976); First Supplement to Commission Staff Memorandum 85-64 (May 31, 1985).

29. Title 2 of Part 4 of the Penal Code consists of 230 sections, with about 95,000 words of text. The proposed legislation (including all material derived from Title 2 of Part 4, whether placed in the title on “Sentence Enhancements,” in proposed Part 6, or elsewhere) would consist of 857 sections, with about 115,000 words of text. The increase in word count is due to the addition of headings, paragraph labels, guidepost provisions, statements of legislative intent, and provisions needed for drafting convenience, and the repetition of exceptions and other material formerly consolidated in Sections 12020, 12028, 12029, and 12078 (see discussion of “Substantive Organization” *infra*).

Proposed Part 6 would commence with proposed Section 16000 *infra*. The Commission deliberately left numbering gaps in proposed Part 6. This will allow for future changes in the law, without resort to decimal numbering.

30. For example, the term “antique firearm” has three different definitions as applied in different contexts: (1) Sections 12001(e), 12078(p)(6)(B), 12085(e)(3), 12088.8(a), and 12801(b) use the same definition of “antique firearm” as in Section 921(a)(16) of Title 18 of the United States Code, (2) Section 12020(b)(5) contains a long, apparently unique definition of “antique firearm,” and (3) Sections 12276.1(d)(3) and 12278(d) define an “antique firearm” as any firearm manufactured before January 1, 1899.

31. For example, the term “loaded” is defined in one way for purposes of Section 12023 (see Section 12001(j)), defined in another way for purposes of Sections 12025(b)(6)(A), 12031, and 12035 (see Sections

1 uncertainty as to whether any given term is subject to a statutory definition. That  
2 may lead to misunderstanding of the law. It may also lead to unintended  
3 consequences, if the Legislature uses a defined term without realizing that it would  
4 be subject to an already existing definition.

5 The proposed law would group most of the definitions in a separate division  
6 near the beginning of the proposed law, in alphabetical order. The Commission’s  
7 Comments to sections that use a defined term would include a cross-reference to  
8 the applicable definition. This approach would make it easier for members of the  
9 public, attorneys, judges, and the Legislature to quickly determine whether a term  
10 is subject to a statutory definition. It will also make it easier for the Legislature to  
11 identify and review cases where a single term has multiple definitions that are  
12 similar but not identical, or is defined for some purposes but not for others. That  
13 would facilitate future simplification of the law.<sup>32</sup>

14 In drafting the definition provisions, the Commission was careful neither to  
15 expand nor contract the existing scope of application of any definition. Where an  
16 existing definition applies to every use of a term in Title 2 of Part 4 of the Penal  
17 Code, the proposed law would provide that the definition applies to every use of  
18 that term in proposed Part 6 of the Penal Code. That statement of general  
19 application will facilitate the use of uniform definitions in the future. It will allow  
20 the Legislature to use a term in its defined sense without the need to draft a new  
21 definition provision.

22 Where an existing definition applies to some but not all uses of a term in Title 2  
23 of Part 4, the proposed law would limit the definition to the same uses as under  
24 current law. For example, Section 12126 defines “semiautomatic pistol” for  
25 purposes of that section. The term is also used without definition elsewhere in  
26 Title 2 of Part 4.<sup>33</sup> To avoid creating a risk of a substantive change, the definition  
27 of “semiautomatic pistol” in the proposed law would apply only to the provisions  
28 that would continue the substance of Section 12126.<sup>34</sup>

29 In two cases, the proposed law deviates from the general approach of grouping  
30 all definitions together near the beginning of proposed Part 6 of the Penal Code.

31 First, some existing provisions include common terms that are given special  
32 definitions (e.g., “furnishes”<sup>35</sup>). It may not be immediately obvious to a reader of  
33 such a provision that the common term has a special definition. That could lead to

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12025(b)(6)(A), 12031(g), and 12035(a)(2)), and is used without definition in other sections (see, e.g., Sections 12031.1, 12036(b), 12040(a)(4)).

32. In conducting this strictly nonsubstantive study, the Commission has identified some instances in which simplification or standardization of a definition or other terminology might be possible in a future reform. See Appendix B (Items #1-#34) *infra*; see also discussion of “Minor Clean-Up Issues for Possible Future Legislative Attention” *infra*.

33. See Sections 12071(b)(8)(D)(i), 12130(d)(1)-(3), 12132(i), 12276.1(a)(4)-(5).

34. See proposed Section 17140 *infra* (defining “semiautomatic pistol” as used in proposed Sections 16900 and 31910).

35. See Section 12552.

1 misunderstanding of the law. In those cases, the definition is located near the  
2 provision that uses the defined term.<sup>36</sup>

3 Second, some existing provisions mix definitions with substantive rules in  
4 complex ways. Rather than separate those definitions from the related substantive  
5 rules, the provisions are left largely unchanged and located with other provisions  
6 addressing the same substance.<sup>37</sup> In order to help readers find those definitions, the  
7 proposed law includes “guidepost” provisions in the definitions division, which  
8 refer to definitions that are located elsewhere.<sup>38</sup>

### 9 **Substantive Organization**

10 Proposed Part 6 of the Penal Code would be divided into four different titles.  
11 Title 1, entitled “Preliminary Provisions,” would include the statements of

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36. See proposed Sections 16730(c) (“transaction”), 17280(b) (“major component”), 19915(b) (“furnishes”), 20170(b) (“public place”), 25000 (“child”), 25200(d) (“off-premises”), 26045(c) (“immediate”), 26915(g) (“secured”), 28150(a)-(b) (“purchase,” “purchaser”), 28150(c) (“sale”), 28170(e) (“transaction”), 28200(a)-(b) (“purchase,” “purchaser”), 28200(c)-(d) (“sale,” “seller”), 30510(f) (“series”), 31905(e) (“malfunction”) *infra*.

37. See proposed Sections 26700 (“dealer,” “licensee,” or “person licensed pursuant to Sections 26700 to 26915, inclusive”), 29030 (“licensee”), 29141 (“secure facility” for firearm storage by manufacturer), 29142 (special definition of “secure facility” for firearm storage by manufacturer producing fewer than 500 firearms per calendar year), 30510 (“assault weapon”), 30515 (further clarification of “assault weapon”), 30710 (“SKS rifle”), 31900 (“drop safety requirement for handguns”), 31905 (“firing requirement for handguns”), 31910 (“unsafe handgun”) *infra*.

The provisions defining “.50 BMG cartridge” (proposed Section 30525) and “.50 BMG rifle” (proposed Section 30530) do not mix definitions with substantive rules. The Commission placed them in the chapter on assault weapons and .50 BMG rifles because it might be confusing to have the provisions defining “assault weapon” in that chapter without also including the definitions of “.50 BMG cartridge” and “.50 BMG rifle.”

38. See proposed Sections 16100 (“.50 BMG cartridge” guidepost provision), 16110 (“.50 BMG rifle” guidepost provision), 16200 (“assault weapon” guidepost provision), 16440 (“dealer” guidepost provision), 16500 (“drop safety requirement for handguns” guidepost provision), 16560 (“firing requirement for handguns” guidepost provision), 16820 (“licensee” guidepost provision), 16980 (“person licensed pursuant to Sections 26700 to 26915, inclusive” guidepost provision), 17111 (guidepost provision for “secure facility” for firearm storage by manufacturer), 17220 (“SKS rifle” guidepost provision), 17300 (“unsafe handgun” guidepost provision) *infra*.

The proposed law also includes “guidepost” provisions to help readers when several terms are defined synonymously. For example, proposed Section 16370 would define “certified instructor” and “DOJ Certified Instructor” synonymously, and would be located with other definitions that begin with the letter “C”. A guidepost provision for “DOJ Certified Instructor” would be located with the definitions that begin with the letter “D,” and would state that “[u]se of the term ‘DOJ Certified Instructor’ is governed by Section 16370.” See proposed Section 16480 *infra*. For additional examples, see:

- (1) Proposed Sections 16420 (“dagger” guidepost provision) and 16470 (“dirk” or “dagger”).
- (2) Proposed Sections 16530 (“firearm capable of being concealed upon the person,” “pistol,” and “revolver”), 17010 (“pistol” guidepost provision), and 17080 (“revolver” guidepost provision).
- (3) Proposed Sections 16810 (“licensed premises,” “licensee’s business premises,” and “licensee’s place of business”), 16822 (“licensee’s business premises” guidepost provision), and 16824 (“licensee’s place of business” guidepost provision).

1 legislative intent described above.<sup>39</sup> Title 1 would also include the definitions for  
2 new Part 6, in alphabetical order.

3 Title 2, entitled “Weapons Generally,” would include substantive provisions that  
4 apply to all types of deadly weapons, such as the rules pertaining to seizure of a  
5 deadly weapon at the scene of domestic violence. Title 2 would also include other  
6 laws that relate to both firearms and non-firearms. For example, it would include  
7 the provisions governing a “destructive device,” which is defined to include some  
8 items that would be classified as a firearm and others that would not.<sup>40</sup>

9 Title 3, entitled “Weapons and Devices Other Than Firearms,” would include  
10 laws governing control of such deadly weapons as imitation firearms, knives,  
11 knuckles, nunchakus, and other non-firearms. The title would be divided into  
12 divisions, each of which would cover a different type of deadly weapon. The  
13 divisions would be arranged in alphabetical order, starting with “BB Devices” and  
14 ending with “Tear Gas and Tear Gas Weapons.”

15 Title 4, entitled “Firearms,” would contain the extensive provisions relating to  
16 control of firearms. It would consist of a number of different divisions, including  
17 one entitled “Special Rules Relating to Particular Types of Firearms or Firearm  
18 Equipment.” Within that division, there would be several different chapters, each  
19 of which would cover a different type of firearm or firearm equipment. The  
20 chapters would be arranged in alphabetical order, starting with “Ammunition” and  
21 ending with “Zip Guns.”

22 In reorganizing existing law in this manner, the Commission made a few  
23 drafting decisions that are particularly noteworthy. These decisions relate to the  
24 following provisions:

- 25 • Section 12020
- 26 • Sections 12028 and 12029
- 27 • Section 12078

28 The treatment of these provisions is described below.

29 ***Section 12020***

30 Section 12020 is an extremely long provision that generally prohibits the  
31 manufacture, import, sale, gift, loan, or possession of a panoply of weapons and  
32 associated equipment. The provision includes numerous exemptions, some of  
33 which relate to a broad range of weapons, while others relate to only one specific  
34 type of weapon.<sup>41</sup> Thus, a person interested in the rules applicable to a particular

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39. See discussion of “Statements of Intent” *supra*.

40. See proposed Section 16460 *infra*, which would continue the definition of “destructive device” currently found in Section 12301(a).

41. See Section 12020(b)(1)-(32).

1 type of weapon may have to read much irrelevant material before finding the  
2 relevant portions of Section 12020.

3 To make it easier for persons to find the relevant rules, the Commission divided  
4 up the substance of Section 12020 according to the type of weapon or equipment  
5 to which it pertains. For example, the rules relating to short-barreled rifles and  
6 short-barreled shotguns would be placed in a chapter with other provisions relating  
7 to those types of weapons.<sup>42</sup> Similarly, the many rules relating to large capacity  
8 magazines would be placed in a chapter on large-capacity magazines.<sup>43</sup>

9 Some of the exemptions in Section 12020 are broad. They pertain to more than  
10 one type of weapon or equipment, and do not clearly specify which items are  
11 within their scope.<sup>44</sup>

12 Ideally, it would be possible to determine which items are covered by a broad  
13 exemption, and to state the exemption in the division, chapter, or article for each  
14 item covered. Because it is not entirely clear which items are covered, however,  
15 the broad exemptions could not be treated in that manner without creating a risk of  
16 a substantive change.<sup>45</sup>

17 Instead, the proposed law would place the broad exemptions in a chapter within  
18 the title on “Weapons Generally.”<sup>46</sup> The entire chapter (as opposed to specific  
19 provisions within the chapter) would be cross-referenced in every section  
20 prohibiting the manufacture, import, sale, gift, loan, or possession of a type of

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42. See proposed Sections 33215-33225 *infra*.

43. See proposed Sections 32310, 32400-32450 *infra*.

For a list of all of the provisions that would continue the substance of the weapon prohibitions in Section 12020(a), see proposed Section 16590 *infra*, which would define the term “generally prohibited weapon” to include all of the items now covered by Section 12020(a).

44. For example, paragraph (b)(9) creates an exemption for an instrument or device possessed by a historical society, museum, or institutional collection:

(b) Subdivision (a) does not apply to any of the following:

....

(9) Instruments or devices that are possessed by federal, state, and local historical societies, museums, and institutional collections which are open to the public, provided that these instruments or devices are properly housed, secured from unauthorized handling, and, if the instrument or device is a firearm, unloaded.

Other broad exemptions are stated in paragraphs (b)(5), (b)(7)-(8), (b)(10)-(13), and (b)(16)-(18).

45. For example, it is unclear whether the exemption for “an instrument or device” possessed by a historical society, museum, or institutional collection (paragraph (b)(9)) would extend to a flechette dart, which is a type of ammunition. A court might consider that exemption inapplicable to a flechette dart, because some of the other exemptions in Section 12020 specifically refer to “ammunition,” not just to “an instrument or device.” But such an interpretation is not a foregone conclusion.

The Commission could try to predict which interpretation a court would adopt, and then either include or omit the exemption from the portion of the code relating to flechette darts, in accordance with its prediction. That would necessarily entail a risk of a substantive change, however, because the Commission’s prediction might be incorrect.

46. See proposed Sections 17700-17745 *infra*.

1 weapon or equipment that was covered by Section 12020.<sup>47</sup> That would draw  
2 attention to the broad exemptions, without taking a position on whether a  
3 particular exemption pertains to a particular type of weapon or equipment.<sup>48</sup>

4 ***Sections 12028 and 12029***

5 Section 12028 is another provision that pertains to a variety of weapons. It states  
6 that certain weapons constitute a nuisance under specified circumstances. The  
7 section also provides procedures for surrender and disposal of those weapons.  
8 Section 12029 is quite similar, except it classifies different weapons as a nuisance  
9 and the procedures for surrender and disposal of those weapons are much less  
10 detailed.

11 The Commission treated these two provisions the same way as Section 12020,  
12 dividing up their substance according to the type of weapon or equipment to which  
13 it pertains.<sup>49</sup> The generally applicable procedures for surrender and disposal of  
14 weapons would be placed in the title on “Weapons Generally,”<sup>50</sup> and cross-  
15 referenced in each weapon-specific provision derived from the same section.<sup>51</sup> The  
16 cross-reference would help a reader find the procedures for surrender and disposal  
17 of the weapon in question.

18 ***Section 12078***

19 Section 12078 is an enormous provision that consists of 48 different exceptions,  
20 each of which relates to one or more enumerated code sections. As so drafted, the  
21 meaning of each exception is difficult to grasp without careful study.

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47. For example, proposed Section 20610 would state:

20610. *Except as provided in Chapter 1 (commencing with Section 17700) of Division 2 of Title 2, any person in this state who manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, lends, or possesses any lipstick case knife is punishable by imprisonment in a county jail not exceeding one year or in the state prison.*

(Emphasis added.)

48. The possibility of relocating these provisions could be explored in the future, as a separate law reform project. See discussion of “Minor Clean-Up Issues for Possible Future Legislative Attention” *infra* and Appendix B (Item # 81) *infra*.

49. For example, the substance of Section 12028 relating to a switchblade knife would be continued in a chapter on switchblade knives. See proposed Section 21590 *infra*.

50. See proposed Sections 18000 and 18005, which would continue the surrender and disposal rules from Section 12028, and proposed Section 18010, which would continue the surrender and disposal rules from Section 12029.

51. For example, the provision on switchblade knives constituting a nuisance (proposed Section 21590 *infra*) would cross-refer to proposed Sections 18000 and 18005, which would continue the surrender and disposal rules from Section 12028:

21590. The unlawful possession and carrying of any switchblade knife, as provided in Section 21510, is a nuisance *and is subject to Sections 18000 and 18005.*

(Emphasis added.)

1 To make the substance of Section 12078 more readily understandable, the  
2 proposed legislation would divide it up, such that each exception is stated in close  
3 proximity to each substantive rule that it modifies. For example, subdivision (e) of  
4 Section 12078 creates an exception relating to gunsmiths: “Section 12071,  
5 subdivisions (c) and (d) of Section 12072, and subdivision (b) of Section 12801  
6 shall not apply to the delivery of a firearm to a gunsmith for service or repair, or to  
7 the return of the firearm to its owner by the gunsmith.” In the proposed legislation,  
8 that exception for gunsmith transactions would be stated in close proximity to (1)  
9 the provisions that would continue Section 12071,<sup>52</sup> (2) the provision that would  
10 continue Section 12072(c),<sup>53</sup> (3) the provision that would continue Section  
11 12072(d),<sup>54</sup> and (4) the provision that would continue Section 12801(b).<sup>55</sup> This  
12 would make it more easily apparent which substantive rules are modified by the  
13 exception.

#### 14 **Unnecessary Cross-References**

15 ACR 73 directs the Commission to “[a]void unnecessary use of cross-  
16 references.” Consistent with that direction, the proposed law would eliminate  
17 cross-references where doing so would not affect the meaning of a provision or  
18 make it more difficult to understand.

19 One type of cross-reference that can often be eliminated without affecting the  
20 substance of the law is a cross-reference to an applicable definition. As discussed  
21 above, the proposed law would group most definitions together near the beginning  
22 of proposed Part 6 of the Penal Code, with clear statements indicating the  
23 application of each definition. Each section that uses a defined term would have a  
24 Commission Comment directing the reader to the applicable definition. This

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52. The substance of Section 12071 (other than definitions) would be continued in proposed Sections 26700-26915 *infra*. The exception for gunsmith transactions would be stated nearby, in proposed Section 27105 *infra*. For convenient reference, it would be located with other exceptions to proposed Sections 26700-26915, and those exceptions would be cross-referenced in the Comments to proposed Sections 26700-26915.

53. The substance of Section 12072(c) would be continued in proposed Section 27540 *infra*. The exception for gunsmith transactions would be stated nearby, in proposed Section 27705 *infra*. For convenient reference, it would be located with other exceptions to proposed Section 27540, and those exceptions would be cross-referenced in the Comment to proposed Section 27540.

54. The substance of Section 12072(d) would be continued in proposed Section 27545 *infra*. The exception for gunsmith transactions would be stated nearby, in proposed Section 27890 *infra*. For convenient reference, it would be located with other exceptions to proposed Section 27545, and those exceptions would be cross-referenced in the Comment to proposed Section 27545.

55. The substance of Section 12801(b) would be continued in proposed Section 31615(a) *infra* (except the definition of “antique firearm”). The exception for gunsmith transactions would be stated nearby, in proposed Section 31755 *infra*. For convenient reference, it would be located with other exceptions to proposed Section 31615(a), and those exceptions would be cross-referenced in the Comment to proposed Section 31615.

1 obviates the need to include a statutory cross-reference whenever a defined term is  
2 used.<sup>56</sup>

### 3 **Conforming Cross-References**

4 Title 2 of Part 4 of the Penal Code contains many provisions that cross-refer to  
5 other statutes. As material is reorganized in new Part 6 of the Penal Code, each  
6 such cross-reference must be conformed to the new numbering scheme.

7 Often, an existing cross-reference can simply be replaced by a cross-reference to  
8 a new provision containing the exact same material as the previously cross-  
9 referenced provision.

10 In some instances, however, that is not the best approach. For example, the  
11 cross-referenced provision may have been reorganized into a series of smaller  
12 provisions, some of which are not relevant to the purpose of the cross-reference. If  
13 all of the smaller provisions were cited in place of the original cross-reference,  
14 readers would unnecessarily be forced to review irrelevant material. In such cases,  
15 it is necessary to exercise some judgment to properly conform the cross-reference  
16 in a way that is consistent with its original purpose. In making such changes, the  
17 Commission carefully examined the substance of the provisions in question and  
18 determined that there would be no substantive change. The Commission's  
19 Comments would state as much, and would be official legislative history.<sup>57</sup> In  
20 addition, proposed Section 16005 would state expressly that changes to cross-  
21 references should be construed as nonsubstantive.

22 Conforming the cross-references required particular attention where the existing  
23 statutory text relates to events that occurred in the past, such as registration periods  
24 that have ended or procedures that no longer apply.<sup>58</sup> For example, suppose a  
25 provision refers to a "firearm declared by the court pursuant to Section 12276.5 to  
26 be an assault weapon,"<sup>59</sup> but Section 12276.5 no longer establishes a procedure for  
27 a court to declare a firearm to be an assault weapon.<sup>60</sup> In recodifying the provision  
28 that refers to Section 12276.5, it may not be appropriate to replace the cross-  
29 reference to Section 12276.5 with a cross-reference to the proposed new provision  
30 that would continue the current substance of Section 12276.5. Instead, it may be  
31 better to cross-refer to "former Section 12276.5." The Commission used care in

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56. However, there are some instances where a cross-reference to a definition has been preserved, where the definition is particularly important, potentially confusing, or likely to be overlooked. See, e.g., proposed Sections 17505, 17740, 23925, 25105, 25205, 27820, 27870, 27875, 27880, 27955, 27965 *infra*.

57. See discussion of "Commission Comments" *supra*.

58. There are a number of examples of this type of situation in the provisions relating to assault weapons and .50 BMG rifles (Sections 12275-12290). For an explanation of why the Commission preserved such statutory material instead of deleting it as obsolete, see discussion of "Provisions That Might Be Obsolete" *infra*.

59. See, e.g., Section 12276(d).

60. That procedure was discontinued as of January 1, 2007. See 2006 Cal. Stat. ch. 793, § 1.

1 addressing such situations, as by providing background information or an  
2 explanation in the Comment to assist readers.<sup>61</sup> Here, as elsewhere, the overriding  
3 principle and intent was to preserve the substance of existing law without  
4 substantive change.<sup>62</sup>

5 There are also a few provisions that contain one or more cross-references that  
6 are plainly erroneous. Where the proper cross-reference is obvious, the  
7 Commission has corrected the cross-reference, rather than perpetuating the error.  
8 These corrections are listed and explained in Appendix A.<sup>63</sup> Where the proper  
9 cross-reference is not altogether obvious, the Commission has left it alone, so as  
10 not to create a risk of a substantive change. These situations could be addressed in  
11 a future reform.<sup>64</sup>

12 Finally, a large number of statutory provisions located outside of Title 2 cross-  
13 refer to provisions located within Title 2. The Commission has prepared a  
14 conforming revision for each such statute, which would correct each Title 2 cross-  
15 reference to reflect the new organization.<sup>65</sup>

#### 16 **Provisions That Might Be Obsolete**

17 Some of the provisions in Title 2 of Part 4 of the Penal Code contain language  
18 that might be obsolete, such as rules that no longer apply,<sup>66</sup> deadlines that have  
19 long since passed,<sup>67</sup> and procedures for programs that have ended.<sup>68</sup> In drafting the

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61. See, e.g., proposed Section 30510 Comment *infra*.

62. Again, that intent would be clearly expressed in proposed Section 16005 (nonsubstantive reform) *infra*.

In determining how to conform the numerous cross-references in the deadly weapons statutes, the Commission also relied in part on proposed Section 16010 (continuation of existing law) *infra*. Where this provision appeared particularly relevant, the Commission included a citation to it in the Comment. See, e.g., proposed Section 30520 Comment *infra*.

63. The Commission also corrected an obvious drafting error in Section 12076(c). That provision governs electronic or telephonic transfer of applicant information for a firearm transaction. Section 12076(b) is a parallel provision, which governs use of a register for submitting applicant information to the Department of Justice for a firearm transaction. Much of the wording of these provisions is similar, except Section 12076(c) refers to “the electronic or telephonic transfer” and Section 12076(b) refers to “the register.”

In one place, however, Section 12076(c)(1) refers to “the register,” not “the electronic or telephonic transfer.” That reference is misplaced in a provision on electronic or telephonic transfer. The reference to “the register” should be replaced with a reference to “the electronic or telephonic transfer.” The Commission has made this correction. See proposed Section 28250 & Comment *infra*.

64. See discussion of “Minor Clean-Up Issues for Possible Future Legislative Attention” *infra* and Appendix B (Items #56-63) *infra*.

65. See “Conforming Revisions” *infra*.

66. See, e.g., Section 12076(a)(1), which says that “[b]efore January 1, 1998, the Department of Justice shall determine the method by which a dealer shall submit firearm purchaser information to the department and the information shall be in one of the following formats ....” (Emphasis added.)

67. See, e.g., Section 12021(i), which calls for development of a protocol that “shall be completed on or before January 1, 2005.”

1 proposed legislation, the Commission preserved almost all of that language. The  
2 Commission took this cautious approach because deleting such language might  
3 raise concerns about a possible substantive change, and because the apparently  
4 obsolete language might remain useful for reference purposes, such as deciding  
5 what crimes can be charged for conduct that occurred in the past. In a number of  
6 instances, the Commission suggests studying whether future clean-up to eliminate  
7 or otherwise revise obsolete language would be appropriate.<sup>69</sup>

#### 8 **Other Drafting Techniques**

9 In reorganizing the provisions on control of deadly weapons, the Commission  
10 used a few other drafting techniques, which it regularly employs. In particular, the  
11 Commission (1) replaced gender-specific with gender neutral language, (2)  
12 primarily used the singular form instead of the plural, because the singular form  
13 tends to be more clear,<sup>70</sup> and (3) eliminated awkward phrases such as “he or she,”  
14 “himself or herself,” “his or hers,” and “him or her” when possible. The  
15 Commission only used these drafting techniques where there appeared to be no  
16 risk of a substantive change.

### 17 **DISPOSITION TABLE**

18 This recommendation concludes with a disposition table showing, for every  
19 provision of Title 2 of Part 4 of the Penal Code, the new provision that would  
20 continue it. This table will be part of the Commission’s final recommendation and  
21 will assist the public and the Legislature in reviewing the proposed law.

22 If legislation to implement this recommendation is enacted, the disposition table  
23 will be provided to legal publishers, who would typically make the table available  
24 as part of the print and online versions of the Penal Code. The table would then  
25 help to correlate a court decision or other document that cites an existing  
26 provision, with the new provision that would continue the existing provision. This  
27 would ease the transition from existing law to the new law.

### 28 **MINOR CLEAN-UP ISSUES FOR POSSIBLE** 29 **FUTURE LEGISLATIVE ATTENTION**

30 In conducting this study, the Commission identified a number of minor  
31 problems within Title 2 of Part 4 of the Penal Code, which could not be addressed

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68. See, e.g., subdivision (f) of Section 12281, which requires relinquishment or disposal of an SKS rifle in a specified manner “on or before January 1, 2000,” and subdivision (h) of the same section, which establishes a purchase program for SKS rifles relinquished pursuant to subdivision (f).

69. See discussion of “Minor Clean-Up Issues for Possible Future Legislative Attention” *infra* and Appendix B (Items #35-#39) *infra*.

70. A change from plural form to singular form (or vice versa) does not affect the meaning of a provision. See Section 7 (“the singular number includes the plural, and the plural the singular ....”).

1 without potentially raising concerns about a substantive change. Because this  
2 study is strictly nonsubstantive, the proposed law does not include any language to  
3 address those problems.

4 Instead, the Commission has prepared a list of “Minor Clean-Up Issues for  
5 Possible Future Legislative Attention.” The proposed law includes an uncodified  
6 provision that would authorize the Commission to study the problems noted in the  
7 list and recommend legislation to correct them. No other authority would be  
8 granted under that provision.

9 The minor clean-up issues are listed in Appendix B. As far as the Commission is  
10 aware, these issues are unlikely to involve significant controversy.

## 11 DEFERRED OPERATIVE DATE

12 Because of the breadth of the organizational changes that would be made by the  
13 proposed law, the Commission recommends that it be given a deferred operative  
14 date. The proposed law includes an uncodified provision to that effect, delaying  
15 the operation of the proposed law by one year.<sup>71</sup>

16 This deferred operation will provide time for those who work closely with the  
17 affected statutes, including legal publishers, to adjust to the new organization  
18 before it takes effect.

## 19 NEW LEGISLATION

20 New legislation relating to control of deadly weapons might be enacted after the  
21 Commission submits this recommendation in compliance with the statutory  
22 deadline of July 1, 2009, but before a bill to implement the recommendation is  
23 introduced in the Legislature. If so, the Commission will prepare a supplemental  
24 recommendation, adjusting its proposal as necessary to reflect the newly enacted  
25 legislation.

26 Once a bill to implement the recommendation is introduced in the Legislature,  
27 there might be conflicts between that bill and other pending legislation. If so, the  
28 Commission will recommend double-jointing amendments or other steps to  
29 eliminate the conflicts and coordinate the bills. Any such adjustments will be  
30 consistent with the nonsubstantive nature of this study.

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71. The proposed section authorizing the Commission to study the minor clean-up issues would not have a deferred operative date.

## APPENDIX A: CORRECTED CROSS-REFERENCES

1 In reorganizing the provisions on control of deadly weapons, the Law Revision  
2 Commission found some provisions that contain one or more incomplete or  
3 incorrect cross-references. Where the proper cross-reference is obvious, the  
4 Commission corrected the cross-reference in drafting its proposed legislation. That  
5 approach seemed more sensible than perpetuating a plainly incorrect cross-  
6 reference.

7 Those instances are described in detail below:

- 8 • Section 11106(b)(2) refers to “a firearms transaction record, as defined in  
9 paragraph (5) of subdivision (c) of Section 12071.” There no longer is a  
10 “paragraph (5) of subdivision (c) of Section 12071.” It was relabeled as  
11 Section 12071(c)(4)(A).<sup>1</sup> The proposed law would correct this problem by  
12 replacing the cross-reference to “paragraph (5) of subdivision (c) of Section  
13 12071” with a cross-reference to the provision that would continue the  
14 substance of Section 12071(c)(4)(A).<sup>2</sup>
- 15 • Section 12031(b)(7) refers to armored vehicle guards “as defined in Section  
16 7521 of the Business and Professions Code ....” The cross-reference to  
17 Business and Professions Code Section 7521 is incorrect. That section used  
18 to define “armored vehicle guard,” but now it only defines “private  
19 investigator.” The definition of “armored vehicle guard” has been relocated  
20 to Business and Professions Code Section 7582.1(d). The proposed law  
21 would correct this erroneous cross-reference.<sup>3</sup>
- 22 • Section 12031(d)(3) refers to private investigators and private patrol  
23 operators “who are licensed pursuant to Chapter 11.5 (commencing with  
24 Section 7512) of Division 3 of the Business and Professions Code ....”  
25 Similarly, Section 12031(d)(6) refers to uniformed employees of “private  
26 patrol operators and private investigators licensed pursuant to Chapter 11.5  
27 (commencing with Section 7512) of Division 3 of the Business and  
28 Professions Code ....” These cross-references are incorrect. Private  
29 investigators are now licensed pursuant to Chapter 11.3 (commencing with  
30 Section 7512) of Division 3 of the Business and Professions Code. Private  
31 patrol operators are licensed pursuant to Chapter 11.5 (commencing with  
32 Section 7580) of Division 3 of the Business and Professions Code. The  
33 proposed law would correct these erroneous cross-references.<sup>4</sup>

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1. Compare 1999 Cal. Stat. ch. 128, § 1, with 2001 Cal. Stat. ch. 944, § 5.1.

2. See proposed amendment to Section 11106, which is in the separate tentative recommendation on *Nonsubstantive Reorganization of Deadly Weapon Statutes: Conforming Revisions* (Feb. 2009).

3. See proposed Section 26015 & Comment *infra*.

4. See proposed Section 26030 & Comment *infra*.

- 1 • Section 12070(b)(2) refers to “a person acting pursuant to subdivision (e) of  
2 Section 186.22a.” The cross-reference to subdivision (e) of Section 186.22a  
3 does not make sense, because that provision simply says: “Nothing in this  
4 chapter shall preclude any aggrieved person from seeking any other remedy  
5 provided by law.” The correct cross-reference is to subdivision (f) of the  
6 same section, which concerns confiscation of firearms, ammunition, and  
7 deadly weapons as a nuisance, and disposal of the items following  
8 confiscation. It was formerly labeled as subdivision (e).<sup>5</sup> The proposed law  
9 would correct this erroneous cross-reference.<sup>6</sup>
- 10 • Section 12072(f)(1)(B) says: “For every identification number request  
11 received pursuant to this section, the department shall determine whether the  
12 intended recipient is on the centralized list of firearms dealers *pursuant to*  
13 *this section ...*”<sup>7</sup> The italicized cross-reference is incorrect, because Section  
14 12072 does not provide for a centralized list of firearms dealers. That is  
15 done in Section 12071(e). The proposed law would correct this erroneous  
16 cross-reference.<sup>8</sup>
- 17 • Section 12078(i)(2)(A) refers to “a levying officer as defined in Section  
18 481.140, 511.060, or 680.210 of the Code of Civil Procedure.” The  
19 reference to Code of Civil Procedure Section 680.210 is incorrect. That  
20 provision defines “general intangibles,” not “levying officer.” The definition  
21 of “levying officer” is in Code of Civil Procedure Section 680.260 instead.  
22 The proposed law would correct this erroneous cross-reference.<sup>9</sup>
- 23 • Section 12081(b)(5) says: “The Department of Justice shall review  
24 subsequent arrests ... to determine the continuing validity of the permit as  
25 specified in subdivision (d) for all entertainment firearms permit holders.”  
26 The cross-reference to subdivision (d) is incorrect, because subdivision (d)  
27 does not relate to the continuing validity of an entertainment firearms  
28 permit. The correct cross-reference is to subdivision (f), which was  
29 originally labeled as subdivision (d) in the bill enacting Section 12081.<sup>10</sup>  
30 Apparently due to inadvertence, the cross-reference was not adjusted when  
31 the bill was amended and the subdivisions were relabeled. The proposed law  
32 would correct this erroneous cross-reference.<sup>11</sup>
- 33 • Section 12101(c)(1)(B) cross-refers to Section 12560. That provision existed  
34 when Section 12101 was added to the codes in 1988, but it has since been

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5. See 1991 Cal. Stat. ch. 260, § 1.

6. See proposed Section 26510 & Comment *infra*.

7. Emphasis added.

8. See proposed Section 27555 & Comment *infra*.

9. See proposed Section 27920 & Comment *infra*.

10. See SB 231 (Scott & Murray), as amended Aug. 9, 2004, § 4.

11. See proposed Section 29520 & Comment *infra*.

1 repealed.<sup>12</sup> Consequently, there is no need to continue the cross-reference.  
2 The proposed law would delete this obsolete cross-reference.<sup>13</sup>

- 3 • Section 12101(d) cross-refers to “Article 14 (commencing with Section 601)  
4 of Chapter 2 of Part 1 of the Welfare and Institutions Code.” That cross-  
5 reference is incomplete. The correct cross-reference is to “Article 1  
6 (commencing with Section 601) of Chapter 2 of Part 1 of *Division 2* of the  
7 Welfare and Institutions Code.” The proposed law would correct this  
8 incomplete cross-reference.<sup>14</sup>
- 9 • Section 12132(g) refers to “a curio or relic, as defined in Section 178.11 of  
10 the Code of Federal Regulations.” The reference to Section 178.11 of the  
11 Code of Federal Regulations is incorrect. There is no such provision. The  
12 cross-reference should be to Section 478.11 of Title 27 of the Code of  
13 Federal Regulations, which contains a definition of “curio or relic.” The  
14 proposed law would correct the cross-reference.<sup>15</sup>
- 15 • Section 12276.5(b)(2) cross-refers to “Chapter 3.5 (commencing with  
16 Section 11340) of Division 3 of Title 2 of the Government Code.” That  
17 cross-reference is incomplete. The correct cross-reference is to “Chapter 3.5  
18 (commencing with Section 11340) of *Part 1* of Division 3 of Title 2 of the  
19 Government Code. The proposed law would correct this incomplete cross-  
20 reference.<sup>16</sup>
- 21 • Section 12278(a) refers to “a curio or relic, as defined in Section 178.11 of  
22 the Code of Federal Regulations.” The reference to Section 178.11 of the  
23 Code of Federal Regulations is incorrect. There is no such provision. The  
24 cross-reference should be to Section 478.11 of Title 27 of the Code of  
25 Federal Regulations, which contains a definition of “curio or relic.” The  
26 proposed law would correct the cross-reference.<sup>17</sup>
- 27 • Section 12280(u)(3) refers to the “operative date of Section 12276.1, as  
28 specified in subdivision (d) of that section.” The cross-reference to  
29 subdivision (d) is incorrect. The operative date of Section 12276.1 (January  
30 1, 2000), was originally stated in subdivision (d),<sup>18</sup> but it is now stated in  
31 subdivision (e) instead. The proposed law would correct this mistake by  
32 referring directly to the operative date of January 1, 2000.<sup>19</sup>
- 33 • Section 12305 contains two references to a permit granted or issued  
34 pursuant to “this article.” Section 12305 is not part of an article. It is located  
35 in a chapter that is not divided into articles. The references to “this article”

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12. See 1990 Cal. Stat. ch. 9, § 14.

13. See proposed Section 29700 & Comment *infra*.

14. See proposed Section 29705 & Comment *infra*.

15. See proposed Section 32110 & Comment *infra*.

16. See proposed Section 30520 & Comment *infra*.

17. See proposed Section 30530 & Comment *infra*.

18. See 1999 Cal. Stat. ch. 129, § 7.

19. See proposed Section 30620(c) *infra*.

1 are plainly erroneous. Under existing law, the correct reference is to “this  
2 section,” because Section 12305 is the only section in its chapter that relates  
3 to the granting or issuance of a permit. In the proposed law, however, the  
4 substance of Section 12305 would be continued in an article.<sup>20</sup> The  
5 references to “this article” would therefore be left intact, because they would  
6 no longer be erroneous.<sup>21</sup>

- 7 • Section 12316(c) refers to “an armored vehicle guard, who is engaged in the  
8 performance of his or her duties, as defined in subdivision (e) of Section  
9 7521 of the Business and Professions Code ....” The cross-reference to  
10 Business and Professions Code Section 7521(e) is incorrect. That section  
11 used to define “armored vehicle guard,” but now it only defines “private  
12 investigator.” The definition of “armored vehicle guard” has been relocated  
13 to Business and Professions Code Section 7582.1(d). The proposed law  
14 would correct this erroneous cross-reference.<sup>22</sup>
- 15 • Section 12403.8(a) refers to “paragraph (4) of subdivision (a) of Section  
16 12403.7,” which does not exist. The obvious intent is to refer to subdivision  
17 (d) of Section 12403.7, which used to be paragraph (4) of subdivision (a).<sup>23</sup>  
18 The proposed law would correct that error.<sup>24</sup>
- 19 • Section 12403.8(b) refers to “paragraph (3) of subdivision (a) of Section  
20 12403.7,” which does not exist. The obvious intent is to refer to subdivision  
21 (c) of Section 12403.7, which used to be paragraph (3) of subdivision (a).<sup>25</sup>  
22 The proposed law would correct that error.<sup>26</sup>
- 23 • Section 12403.5 refers to a “person holding a license as a private  
24 investigator or private patrol operator issued pursuant to Chapter 11  
25 (commencing with Section 7500), Division 3 of the Business and  
26 Professions Code.” However, Chapter 11 (commencing with Section 7500)  
27 of Division 3 of the Business and Professions Code no longer relates to  
28 private investigators and private patrol operators. Instead, it relates to  
29 repossessioners. The provisions governing private investigators are now located  
30 in Chapter 11.3 (commencing with Section 7512) of Division 3 of the  
31 Business and Professions Code. The provisions governing private patrol  
32 operators are now located in Chapter 11.5 (commencing with Section 7580)  
33 of the same division. The proposed law would correct the cross-reference.<sup>27</sup>

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20. See proposed Article 3 (commencing with Section 18900) of Chapter 1 of Division 5 of Title 2 of Part 6 *infra*.

21. See proposed Sections 18905, 18910 *infra*.

22. See proposed Section 30310 & Comment *infra*.

23. See 1995 Cal. Stat. ch. 437, § 6.

24. See proposed Section 22815(a) & Comment *infra*.

25. See 1995 Cal. Stat. ch. 437, § 6.

26. See proposed Section 22815(b) & Comment *infra*.

27. See proposed Section 22835 & Comment *infra*.

APPENDIX B:  
MINOR CLEAN-UP ISSUES FOR POSSIBLE  
FUTURE LEGISLATIVE ATTENTION

1 In conducting this strictly nonsubstantive study, the Commission identified a  
2 number of minor problems within Title 2 of Part 4 of the Penal Code, which could  
3 not be addressed without potentially raising concerns about a substantive change.  
4 Those issues are listed here. As far as the Commission is aware, this list consists  
5 of relatively noncontroversial clean-up issues, not issues involving substantial  
6 controversy. If any of the issues listed below appears likely to involve substantial  
7 controversy, please notify the Commission.

- 8 (1) Consider whether to expand the following definitions to the entirety of new  
9 Part 6 of the Penal Code:

10 "Application to purchase"<sup>1</sup>

11 "Assault weapon"<sup>2</sup>

12 "Capacity to accept more than 10 rounds"<sup>3</sup>

13 "Deadly weapon"<sup>4</sup>

14 "Destructive device"<sup>5</sup>

15 "Explosive"<sup>6</sup>

16 "Firearm safety device"<sup>7</sup>

17 "Licensed premises"<sup>8</sup>

18 "Locked container"<sup>9</sup>

19 "Rifle"<sup>10</sup>

20 "Semiautomatic pistol"<sup>11</sup>

21 "Short-barreled rifle"<sup>12</sup>

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1. See Commission Staff Memorandum 2007-20, Attachment p. 1. Any Commission Staff Memorandum referred to in this appendix can be obtained from the Commission, through its website ([www.clrc.ca.gov](http://www.clrc.ca.gov)) or otherwise.

2. See Commission Staff Memorandum 2007-33, Attachment pp. 7-8.

3. See Commission Staff Memorandum 2007-33, Attachment p. 15.

4. See First Supplement to Commission Staff Memorandum 2007-20, p. 1 & Attachment p. 1.

5. See Commission Staff Memorandum 2007-33, Attachment p. 22.

6. See Commission Staff Memorandum 2007-33, Attachment p. 26.

7. See Commission Staff Memorandum 2007-33, Attachment p. 28.

8. See Commission Staff Memorandum 2008-17, Attachment p. 30.

9. See Commission Staff Memorandum 2008-17, Attachment p. 32.

10. See Commission Staff Memorandum 2008-17, Attachment pp. 42-43.

11. See Commission Staff Memorandum 2008-17, Attachment p. 47.

12. See Commission Staff Memorandum 2007-33, Attachment pp. 44-45.

- 1                   “Short-barreled shotgun”<sup>13</sup>  
2                   “Shotgun”<sup>14</sup>  
3                   “Silencer”<sup>15</sup>
- 4           (2) Consider whether it is really necessary to have multiple definitions of the  
5           term “antique firearm.”<sup>16</sup>
- 6           (3) Consider whether a single definition of “honorably retired” could be applied  
7           to the entirety of new Part 6 of the Penal Code.<sup>17</sup>
- 8           (4) Consider whether a single definition of “person” could be applied to the  
9           entirety of new Part 6 of the Penal Code.<sup>18</sup>
- 10          (5) Consider whether the references to “person, parent, or guardian” now found  
11          in Penal Code Section 12403.8(c) should be replaced with “parent, guardian,  
12          or other person.”<sup>19</sup>
- 13          (6) Consider whether a single definition of “lawful possession of the firearm”  
14          could be applied to the entirety of new Part 6 of the Penal Code.<sup>20</sup>
- 15          (7) Consider whether to conform the definitions of “operation of law” and “A  
16          person taking title or possession of firearms by operation of law,” and  
17          whether to extend a single definition to the entirety of new Part 6 of the  
18          Penal Code.<sup>21</sup>
- 19          (8) Consider whether the definition of “loaded” given in Penal Code Sections  
20          12031(g) and 12035(a)(2) should be extended more broadly.<sup>22</sup>
- 21          (9) Consider whether the definition of “magazine” given in Penal Code Section  
22          12276.1(d)(1) should be extended more broadly.<sup>23</sup>
- 23          (10) Consider whether the definition of “locking device” for firearm should be  
24          extended more broadly, particularly to the provision that would continue  
25          Penal Code Section 12071(b)(7).<sup>24</sup>

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13. See Commission Staff Memorandum 2007-33, Attachment p. 44.

14. See Commission Staff Memorandum 2008-17, Attachment pp. 49-50.

15. See Commission Staff Memorandum 2008-17, Attachment p. 50.

16. See Commission Staff Memorandum 2007-21, Attachment pp. 4-5.

17. See Commission Staff Memorandum 2007-33, Attachment p. 36.

18. See Commission Staff Memorandum 2008-17, Attachment pp. 37-38.

19. See Commission Staff Memorandum 2008-25, Attachment p. 24.

20. See Commission Staff Memorandum 2008-17, Attachment p. 26.

21. See Commission Staff Memorandum 2007-33, Attachment pp. 41-42; Commission Staff Memorandum 2008-17, Attachment p. 37.

22. See Commission Staff Memorandum 2008-17, Attachment p. 31.

23. See Commission Staff Memorandum 2008-17, Attachment p. 34.

24. See Commission Staff Memorandum 2008-17, Attachment p. 32; Commission Staff Memorandum 2008-23, p. 5.

- 1 (11) Penal Code Section 12316(a) defines “bona fide evidence of majority and  
2 identity.” Penal Code Section 12071(c)(1) defines “clear evidence of his or  
3 her identity and age.” The two definitions are different. Consider whether it  
4 is necessary to use two distinct terms with differing definitions.<sup>25</sup>
- 5 (12) Consider whether to revise the definition of “department” to say: “As used  
6 in this part, unless otherwise apparent from the context, ‘department’ means  
7 the Department of Justice.”<sup>26</sup>
- 8 (13) Consider whether to provide separate definitions of the terms “pistol” and  
9 “revolver.”<sup>27</sup>
- 10 (14) Consider whether the definition of “unsafe handgun” should be revised to  
11 improve clarity and readability.<sup>28</sup>
- 12 (15) Consider whether the same definition of “furnishes” should be used in the  
13 provisions relating to (1) furnishing tear gas or a tear gas weapon to a minor,  
14 (2) furnishing a stun gun to a minor, and (3) furnishing a BB device to a  
15 minor.<sup>29</sup>
- 16 (16) Consider whether and, if so, how, to define “.50 BMG Rifle” for purposes of  
17 Penal Code Section 12022.5.<sup>30</sup>
- 18 (17) Consider whether to revise the definition of “agent.”<sup>31</sup>
- 19 (18) It is unclear which definition of “imitation firearm” applies in Penal Code  
20 Section 12553(b).<sup>32</sup> Consider how to eliminate this ambiguity.
- 21 (19) It is unclear whether the definition of “imitation firearm” in Penal Code  
22 Section 12550(c) is meant to apply to Penal Code Section 12555 to any  
23 extent.<sup>33</sup> Consider how to eliminate this ambiguity.
- 24 (20) Consider whether to clarify which definition of “licensee” applies to Penal  
25 Code Section 12086.<sup>34</sup>
- 26 (21) Consider whether to clarify the intended scope of the definition of “secured”  
27 now found in Penal Code Section 12071(b)(20)(G)(ii).<sup>35</sup>

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25. See Commission Staff Memorandum 2007-33, Attachment pp. 13, 18.

26. See Commission Staff Memorandum 2007-33, Attachment p. 21.

27. See Commission Minutes (April 2008), pp. 6-7.

28. See Commission Staff Memorandum 2008-17, Attachment pp. 56-57.

29. See Commission Staff Memorandum 2007-33, Attachment p. 31.

30. See Commission Staff Memorandum 2008-53, Attachment p. 8.

31. See Commission Staff Memorandum 2008-27, pp. 1-2.

32. See Commission Staff Memorandum 2008-26, Attachment p. 18.

33. See Commission Staff Memorandum 2008-42, pp. 15-19.

34. See Commission Staff Memorandum 2008-49, Attachment p. 4.

35. See Commission Staff Memorandum 2008-49, Attachment pp. 30-32.

- 1 (22) Consider whether the definition of “ammunition” in Penal Code Section  
2 12316(b)(2) should be extended to apply to Penal Code Section 12316(d),  
3 and perhaps elsewhere.<sup>36</sup>
- 4 (23) Consider whether Welfare and Institutions Code Section 676(a)(24) should  
5 be revised to refer to the definition of “assault weapon” now found in Penal  
6 Code Section 12276.1, as well as the definition of “assault weapon” now  
7 found in Penal Code Section 12276.<sup>37</sup>
- 8 (24) Consider whether Welfare and Institutions Code Section 8104 should be  
9 revised to refer to the definition of “assault weapon” now found in Penal  
10 Code Section 12276.1, as well as the definition of “assault weapon” now  
11 found in Penal Code Section 12276.<sup>38</sup>
- 12 (25) Consider whether to rename the “certificate of eligibility” referred to in  
13 Penal Code Section 12071.1 and the “certificate of eligibility” referred to in  
14 Penal Code Section 12071(a), to prevent confusion.<sup>39</sup>
- 15 (26) Consider whether to standardize the references to “facilities manager” and  
16 “facility’s manager” in Penal Code Section 12071.1.<sup>40</sup>
- 17 (27) Consider whether to standardize the references to “applied orally” and  
18 “administered orally” in Penal Code Section 12804(c).<sup>41</sup>
- 19 (28) The second sentence of Penal Code Section 12028.5(g) refers to a “family  
20 violence incident,” not a “domestic violence incident.” Consider whether to  
21 replace “family violence incident” with “domestic violence incident.”<sup>42</sup>
- 22 (29) Article 8 of Chapter 6 of Title 2 of Part 4 (i.e., Penal Code §§ 12800-12809)  
23 is inconsistent in referring to instructors.<sup>43</sup> Consider whether and, if so, how,  
24 to address this problem.
- 25 (30) In Title 2 of Part 4 of the Penal Code, the usage of “dealer,” “licensee,” and  
26 similar terms is potentially confusing.<sup>44</sup> Consider whether and, if so, how, to  
27 address this problem.
- 28 (31) Consider, on a case-by-case basis, whether references to “pistol, revolver, or  
29 firearm capable of being concealed upon the person” should be replaced  
30 with the term “handgun.”<sup>45</sup>

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36. See Commission Staff Memorandum 2008-59, Attachment pp. 35-36.

37. See Commission Staff Memorandum 2009-11, Attachment p. 143.

38. See Commission Staff Memorandum 2009-11, Attachment pp. 169-70.

39. See Commission Staff Memorandum 2008-49, Attachment p. 47.

40. See Commission Staff Memorandum 2008-49, Attachment p. 49.

41. See Commission Staff Memorandum 2009-5, Attachment p. 11.

42. See Commission Staff Memorandum 2007-21, Attachment p. 17.

43. See Commission Staff Memorandum 2007-33, Attachment p. 16.

44. See Commission Staff Memorandum 2007-33, Attachment pp. 19-20.

- 1 (32) Consider whether to revise the references to “gun show producer license”  
2 and “producer’s certificate of eligibility” now found in Penal Code Section  
3 12071.1(e).<sup>46</sup>
- 4 (33) Consider whether to conform the references to “magnetic strip” and  
5 “magnetic stripe” in Penal Code Section 12077(f).<sup>47</sup>
- 6 (34) Consider whether statutory references to “Dealer Record of Sale Account”  
7 and “Dealers’ Record of Sale Special Account” should be conformed.<sup>48</sup>
- 8 (35) The first clause of Penal Code Section 12027(a)(1)(C) states a general rule.  
9 The remainder of Penal Code Section 12027(a)(1)(C) states an exception to  
10 that general rule. Consider whether the exception is obsolete.<sup>49</sup>
- 11 (36) The first clause of the third paragraph of Penal Code Section 12031(b)(1)  
12 states a general rule. The remainder of that paragraph states an exception to  
13 the general rule. Consider whether the exception is obsolete.<sup>50</sup>
- 14 (37) Consider whether the statutes governing the recordkeeping process for a  
15 firearm transaction should be revised to delete, segregate, or otherwise  
16 modify material relating to recordkeeping methods that are no longer in  
17 use.<sup>51</sup>
- 18 (38) Consider whether the statutes relating to SKS rifles should be revised to  
19 delete, segregate, or otherwise modify outdated material.<sup>52</sup>
- 20 (39) Consider whether Penal Code Section 12101(f) is obsolete and can be  
21 deleted from the codes.<sup>53</sup>
- 22 (40) Consider whether the language now in Penal Code Section 12035(h) is  
23 unnecessary and redundant.<sup>54</sup>
- 24 (41) Consider whether Penal Code Sections 12070(b)(2) and 12070(b)(8) are  
25 unnecessarily redundant to some extent.<sup>55</sup>
- 26 (42) Consider whether Penal Code Sections 12070(b)(13) and 12070(b)(14) are  
27 unnecessarily redundant to some extent.<sup>56</sup>

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45. See, e.g., Commission Staff Memorandum 2008-17, Attachment pp. 21-22 (proposed §§ 16650, 16660), 24-25 (proposed § 16730), 52-53 (proposed § 17260), 54-57 (proposed § 17300), 60-61 (proposed § 17510).

46. See Commission Staff Memorandum 2008-49, Attachment pp. 51-52.

47. See Commission Staff Memorandum 2008-49, Attachment p. 107.

48. See Commission Staff Memorandum 2008-59, Attachment p. 10.

49. See Commission Staff Memorandum 2008-39, Attachment p. 19.

50. See Commission Staff Memorandum 2008-39, Attachment p. 38.

51. See Commission Staff Memorandum 2008-49, Attachment pp. 99-100.

52. See Commission Staff Memorandum 2009-4, Attachment pp. 19-20.

53. See Commission Staff Memorandum 2008-59, Attachment pp. 17-18.

54. See Commission Staff Memorandum 2008-39, Attachment p. 9.

55. See Commission Staff Memorandum 2008-49, Attachment pp. 6-7.

- 1 (43) Consider whether Penal Code Sections 12132(c) and (g) are unnecessarily  
2 redundant to some extent.<sup>57</sup>
- 3 (44) Consider whether Penal Code Sections 12021.3(a)(1)(G) and 12021.3(a)(3)  
4 are unnecessarily redundant to some extent, and whether one or both of  
5 these provisions should be revised to improve clarity.<sup>58</sup>
- 6 (45) Consider whether the language now in Penal Code Sections 12280(n), (o),  
7 and (p) contains redundancies, and whether that language could be improved  
8 to make it more readily understandable.<sup>59</sup>
- 9 (46) Consider whether the language now in Penal Code Section 12021.3(a)(2)  
10 contains a redundancy, and whether to correct the grammatical structure of  
11 that provision.<sup>60</sup>
- 12 (47) Consider whether Penal Code Section 12021.3(a)(2) and (i)(1) are  
13 unnecessarily redundant to some extent.<sup>61</sup>
- 14 (48) Consider whether Penal Code Section 12021.3(b)(3) and (i)(2) are  
15 unnecessarily redundant to some extent.<sup>62</sup>
- 16 (49) Consider whether Penal Code Section 12021.3(j)(2)(D) and (3) are  
17 unnecessarily redundant to some extent.<sup>63</sup>
- 18 (50) Consider whether the language now found in Penal Code Section  
19 12021.3(i)(4) should be deleted because it is redundant with the language  
20 now found in Penal Code Section 12078(j).<sup>64</sup>
- 21 (51) Consider whether the language now found in Penal Code Section  
22 12807(b)(2) should be revised to eliminate an accidental phrase repetition.<sup>65</sup>
- 23 (52) Consider whether it is necessary to refer to the “successor” of 27 C.F.R. §  
24 478.11 in Penal Code Section 12078(t)(1) & (2).<sup>66</sup>
- 25 (53) Consider whether it is necessary to refer to the “successor” of 27 C.F.R. §  
26 478.100 in Penal Code Sections 12071(b)(1)(B) and 12071(e)(3)(C).<sup>67</sup>

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56. See Commission Staff Memorandum 2008-49, Attachment p. 10.

57. See Commission Staff Memorandum 2009-15, pp. 7-8.

58. See Commission Staff Memorandum 2009-8, Attachment pp. 3-4.

59. See Commission Staff Memorandum 2009-4, Attachment p. 19.

60. See Commission Staff Memorandum 2009-8, Attachment p. 4.

61. See Commission Staff Memorandum 2009-8, Attachment pp. 4-5.

62. See Commission Staff Memorandum 2009-8, Attachment p. 6.

63. See Commission Staff Memorandum 2009-8, Attachment pp. 9-10.

64. See Commission Staff Memorandum 2009-8, Attachment pp. 10-11.

65. See Commission Staff Memorandum 2009-5, Attachment p. 15.

66. See Commission Staff Memorandum 2008-49, Attachment pp. 38, 77, 84-85.

67. See Commission Staff Memorandum 2008-49, Attachment pp. 16-17, 20.

- 1 (54) Consider whether the exception to Penal Code Section 12801(b) that is now  
2 found in Penal Code Section 12078(k)(1) is necessary.<sup>68</sup>
- 3 (55) Consider whether the exception to Penal Code Section 12801(b) that is now  
4 found in Penal Code Section 12078(k)(5) is necessary.<sup>69</sup>
- 5 (56) Consider whether the cross-reference to Penal Code Section 12025 in Penal  
6 Code Section 12031(j)(2) is incorrect and should be fixed.<sup>70</sup>
- 7 (57) Consider whether the cross-reference to Penal Code Section 12028(c) in  
8 Penal Code Section 12028.5(e) is overly narrow and should be expanded.<sup>71</sup>
- 9 (58) Consider whether the cross-reference at the beginning of Penal Code  
10 Section 12071(e)(1) should be expanded to encompass Penal Code Section  
11 12071(e)(2).<sup>72</sup>
- 12 (59) Consider how to correct the erroneous cross-reference to Family Code  
13 Section 6385(a) in Penal Code Section 12076(e)(5).<sup>73</sup>
- 14 (60) Consider how to correct the erroneous cross-references to Penal Code  
15 Section 12806 that are now found in Penal Code Sections 12071(b)(11) and  
16 (12).<sup>74</sup>
- 17 (61) Penal Code Section 12021(c)(1) says: “*Except as provided in subdivision (a)*  
18 *or paragraph (2) of this subdivision*, any person who has been convicted of  
19 a misdemeanor violation of ....”<sup>75</sup> Consider whether the italicized clause  
20 should refer to paragraph (3) in addition to paragraph (2).<sup>76</sup>
- 21 (62) Consider whether the reference in Penal Code Section 12071(h) to  
22 “Paragraph (14) *or* (15) of subdivision (b)” should be replaced with a  
23 reference to “Paragraphs (14) *and* (15) of subdivision (b).”<sup>77</sup>
- 24 (63) Consider whether the references to “this paragraph” and “this section” in  
25 Penal Code Section 12072(f)(2)(C) are correct, or should be made parallel.<sup>78</sup>
- 26 (64) Consider whether to revise the language now found in the first paragraph of  
27 Penal Code Section 12032, to improve clarity.<sup>79</sup>

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68. See Commission Staff Memorandum 2009-5, Attachment p. 22.

69. See Commission Staff Memorandum 2009-5, Attachment pp. 23-24.

70. See Commission Staff Memorandum 2008-39, Attachment pp. 44-45.

71. See Commission Staff Memorandum 2009-27, List of Corrections & Staff Suggestions for Improvement, pp. 13-14 (entry for proposed Section 18275).

72. See Commission Staff Memorandum 2008-49, Attachment p. 17.

73. See Commission Staff Memorandum 2008-49, Attachment pp. 113-14; Commission Minutes (Oct. 2008), p. 8; 2002 Cal. Stat. ch. 265 (SB 1627 (Kuehl)).

74. See Commission Staff Memorandum 2009-10, Attachment pp. 174-75.

75. Emphasis added.

76. See Commission Staff Memorandum 2008-59, Attachment pp. 21-22.

77. See Commission Staff Memorandum 2008-49, Attachment p. 32.

78. See Commission Staff Memorandum 2008-49, Attachment pp. 69-70.

- 1 (65) Consider whether to revise the language now found in Penal Code Section  
2 12079(a), to improve clarity.
- 3 (66) Consider whether to revise the language now found in Penal Code Section  
4 12130(b), to improve clarity.<sup>80</sup>
- 5 (67) Consider whether to revise the language now found in Penal Code Section  
6 12301(a)(3), to improve clarity.<sup>81</sup>
- 7 (68) Consider whether to replace “those firearms” with “handguns” in what is  
8 now Penal Code Section 12800, to improve clarity.<sup>82</sup>
- 9 (69) Consider whether to revise the language now found in Penal Code Section  
10 12804(e), to improve clarity.<sup>83</sup>
- 11 (70) Consider whether the language now found in Penal Code Section 12001.1(b)  
12 could be simplified without any change in meaning.<sup>84</sup>
- 13 (71) Consider whether the language now found in Penal Code Section 12088.5  
14 should be reworded to improve readability without any change in meaning.<sup>85</sup>
- 15 (72) Consider whether the language now found in Penal Code Section  
16 12071.4(i)-(j) should be revised to improve clarity and readability.<sup>86</sup>
- 17 (73) Consider whether Penal Code Section 12101(a)(2)(A) should refer to “the  
18 use of a firearm” instead of “this use of a firearm.” Also consider whether to  
19 simplify Penal Code Section 12101(a)(2)(A)-(D) without changing the  
20 substance.<sup>87</sup>
- 21 (74) Penal Code Section 12027(c) refers to “those weapons.” Consider whether  
22 to replace that phrase with a more precise phrase.<sup>88</sup>
- 23 (75) Consider whether the language now in Penal Code Section 12050(f)(4)(B)  
24 should be revised to better reflect its intent.<sup>89</sup>
- 25 (76) Consider whether the language now in the first sentence of Penal Code  
26 Section 12071(b)(14) should be revised to better reflect its intent.<sup>90</sup>

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79. See Commission Staff Memorandum 2009-8, Attachment p. 12.

80. See Commission Staff Memorandum 2009-5, Attachment pp. 33-34.

81. See Commission Staff Memorandum 2007-33, Attachment pp. 22-23.

82. See Commission Staff Memorandum 2009-5, Attachment p. 7.

83. See Commission Staff Memorandum 2009-5, Attachment p. 11.

84. See Commission Staff Memorandum 2008-25, Attachment p. 8.

85. See Commission Staff Memorandum 2008-26, Attachment pp. 12-13.

86. See Commission Staff Memorandum 2008-49, Attachment p. 55.

87. See Commission Staff Memorandum 2008-59, Attachment pp. 14-15.

88. See Commission Staff Memorandum 2008-39, Attachment p. 29.

89. See Commission Staff Memorandum 2008-39, Attachment pp. 54-55.

90. See Commission Staff Memorandum 2008-49, Attachment p. 30.

- 1 (77) Consider whether the language now found in Penal Code Section  
2 12076(d)(2), relating to use of the NICS system, should be revised so that  
3 the provision better reflects its intent.<sup>91</sup>
- 4 (78) Penal Code Section 12020.3 criminalizes possession of a bright orange or  
5 bright green gun. Consider whether the purpose of this provision would be  
6 better served by expanding the scope of the provision.<sup>92</sup>
- 7 (79) Penal Code Section 12088.1 addresses three distinct subjects: (a) the firearm  
8 safety device requirement and exemptions from that requirement, (b) the  
9 warning requirement for a long-gun safe that does not comply with the  
10 standards for gun safes, and (c) the warning requirement of Penal Code  
11 Section 12088.3. Consider the possibility of dividing this material into  
12 several code sections.<sup>93</sup>
- 13 (80) Consider whether to reorganize the provisions relating to identification  
14 certificates for retired peace officers and endorsements on those certificates  
15 authorizing officers to carry a concealed firearm, carry a loaded firearm, or  
16 carry a concealed and loaded firearm.<sup>94</sup>
- 17 (81) Consider which exemptions listed in Penal Code Section 12020 apply to  
18 which weapons and equipment, and then consider whether to place each of  
19 those exemptions in proximity to the provisions governing the weapons or  
20 equipment to which it applies.<sup>95</sup>
- 21 (82) Consider whether to relocate the substance of Penal Code Section 12316(c)  
22 to the chapter on “Schools” (Penal Code §§ 626-626.11).<sup>96</sup>
- 23 (83) Consider whether any of the provisions in new Part 6 of the Penal Code  
24 should be redrafted to use the singular form instead of the plural form.<sup>97</sup>
- 25 (84) Read literally, Penal Code Section 12028.5(c) only requires delivery of a  
26 firearm, not other deadly weapons. Consider whether this is due to an  
27 oversight that should be corrected.<sup>98</sup>
- 28 (85) In some places, Penal Code Section 12028.5 refers to “the owner or person  
29 who possessed the firearm” or to “the owner or person who was in lawful  
30 possession.” In other places, the provision refers only to “the owner” or to  
31 “the lawful owner.” These references should be reviewed to determine

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91. See Commission Staff Memorandum 2008-49, Attachment p. 112.

92. See Commission Staff Memorandum 2008-26, Attachment p. 14.

93. See Commission Staff Memorandum 2008-26, Attachment pp. 5-8.

94. See Commission Staff Memorandum 2008-39, Attachment pp. 17, 35-36, 57.

95. See Commission Staff Memorandum 2007-33, Attachment p. 48.

96. See Commission Staff Memorandum 2008-59, pp. 36-37.

97. See Commission Staff Memorandum 2008-39, pp. 1-2.

98. See Commission Staff Memorandum 2007-21, Attachment p. 14.

- 1           whether they are appropriate as is, or should be revised to achieve greater  
2           consistency.<sup>99</sup>
- 3           (86) Consider why the first sentence of Penal Code Section 12078(t) refers to a  
4           “loan,” while the second sentence does not.<sup>100</sup>
- 5           (87) Consider why the first sentence of Penal Code Section 12071.4(h) refers to  
6           the grandparent of a person under age 18, but the second sentence does  
7           not.<sup>101</sup>
- 8           (88) Consider whether Penal Code Section 12078(a)(8) should refer to an  
9           “authorized law enforcement representative” instead of “an authorized law  
10          enforcement agency.”<sup>102</sup>
- 11          (89) Consider whether the last sentence of Penal Code Section 12078(i)(2)(A)  
12          should refer to “report forms” instead of “reports.”<sup>103</sup>
- 13          (90) Penal Code Section 12071(b)(3)(D) refers to a person “prohibited by state or  
14          federal law from processing, owning, purchasing, or receiving a firearm.”  
15          Consider whether the phrase “processing, owning, purchasing, or receiving”  
16          should be replaced with “possessing, receiving, owning, or purchasing.”<sup>104</sup>
- 17          (91) Consider whether Penal Code Sections 12101(a)(2), (b)(2), and (c)(1)  
18          should be revised to replace “one of the following” with “any of the  
19          following.”<sup>105</sup>
- 20          (92) Consider whether the introduction to Penal Code Section 12276.1(c) should  
21          be revised to replace “either of the following” with “any of the following.”  
22          <sup>106</sup>
- 23          (93) Consider whether to delete “in Sacramento” from Penal Code Section  
24          12076(b)(3) & (c)(2), to fix a chaptering out problem.<sup>107</sup>
- 25          (94) Consider how to designate the unlabeled paragraph now found in Penal  
26          Code Section 12370(b), and how to conform the references to “this  
27          paragraph.”<sup>108</sup>
- 28          (95) Some of the provisions in Title 2 of Part 4 of the Penal Code apply in the  
29          probate context, but do not apply to other types of at-death transfers.<sup>109</sup>

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99. See Commission Staff Memorandum 2007-21, Attachment p. 13.

100. See Commission Staff Memorandum 2008-49, Attachment p. 38, 77.

101. See Commission Staff Memorandum 2008-49, Attachment p. 54.

102. See Commission Staff Memorandum 2008-49, Attachment p. 87.

103. See Commission Staff Memorandum 2008-49, Attachment p. 92.

104. See Commission Staff Memorandum 2008-58, Attachment p. 20.

105. See Commission Staff Memorandum 2008-59, Attachment pp. 15, 16.

106. See Commission Staff Memorandum 2009-4, Attachment p. 7.

107. See Commission Staff Memorandum 2008-61, p. 2.

108. See Commission Staff Memorandum 2009-5, Attachment p. 5.

1 Consider whether to extend some or all of these provisions to all types of at-  
2 death transfers.<sup>110</sup>

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109. See, e.g., Penal Code §§ 12020(b)(7)-(8), 12070(b)(3), 12280(i), 12281(f)(2), 12285(b)(1) & (3).

110. See Commission Staff Memorandum 2009-4, Attachment pp. 16-17, 28, 30; Commission Staff Memorandum 2008-49, Attachment p. 7.

