

Memorandum 2010-33

**2010 Legislative Program:
Status of SB 1080 (Committee on Public Safety)
and SB 1115 (Committee on Public Safety)**

Senate Bills 1080 (Committee on Public Safety) and 1115 (Committee on Public Safety) would implement the Commission's recommendation on *Nonsubstantive Reorganization of Deadly Weapon Statutes*, 38 Cal. L. Revision Comm'n Reports 217 (2009). The bills would recodify the provisions governing control of deadly weapons (Penal Code §§ 12000-12809) to make them more user-friendly and readily understandable, without changing their substance.

SB 1080 is the main bill to reorganize the deadly weapon statutes. SB 1115 is a companion bill that would adjust numerous cross-references in the codes to reflect the reorganization. It is contingent on enactment of SB 1080. The recodification would have a delayed operative date of January 1, 2012, to afford people time to prepare for the transition to the new statutory scheme.

In June, the Assembly Committee on Public Safety passed both bills by a 6-0 vote. SB 1080 is now pending on the Assembly floor. SB 1115 has already passed the Assembly without opposition and is now pending before the Governor.

BILL COORDINATION

Each bill affects numerous code sections, some of which would also be affected by other legislation that is pending or has already been enacted this year. In such a situation, it is necessary to coordinate the pending bills, so that legislative reforms do not nullify each other.

Government Code Section 9605 specifies how to reconcile conflicts between two bills that affect the same code section:

In the absence of any express provision to the contrary in the statute which is enacted last, it shall be conclusively presumed that the statute which is enacted last is intended to prevail over statutes

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

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting.

which are enacted earlier at the same session and, in the absence of any express provision to the contrary in the statute which has a higher chapter number, it shall be presumed that a statute which has a higher chapter number was intended by the Legislature to prevail over a statute which is enacted at the same session but has a lower chapter number.

For the purposes of this section, every statute of an even-numbered year of a two-year regular session of the Legislature is deemed to bear a higher chapter number than any statute enacted in the odd-numbered year of that session.

In other words, the bill that is enacted and chaptered by the Secretary of State last will prevail, unless it contains express language to the contrary. The other bill's effect on the same code section will be "chaptered out" — i.e., it will become a nullity.

As a matter of comity, members of the Legislature routinely take steps to ensure that their bills do not chapter out other bills. That is being done in SB 1080 and SB 1115, in two different ways.

SB 1115: Subordination Clause

SB 1115 will be automatically coordinated with other pending legislation, because it contains a subordination clause. Section 108 of the bill states:

Any section of any act enacted by the Legislature during the 2010 calendar year, other than a section of the annual maintenance of the codes bill or another bill with a subordination clause, that takes effect on or before January 1, 2012, and that amends, amends and renumbers, amends and repeals, adds, repeals and adds, or repeals a section that is amended, amended and renumbered, amended and repealed, added, repealed and added, or repealed by this act, *shall prevail over this act, whether that act is chaptered before or after this act.*

(Emphasis added.)

Due to this subordination clause, if another bill affects a provision that would be amended by SB 1115 to adjust a cross-reference, that bill will prevail over SB 1115 and the amendment in SB 1115 will be chaptered out. That will not be a problem, because SB 1115 just adjusts cross-references, and if a cross-reference adjustment is chaptered out, it will still be possible to adjust the cross-reference in a clean-up bill next year, before the nonsubstantive reorganization becomes operative. We expect that several provisions in SB 1115 will be chaptered out and will have to be included in a clean-up bill next year.

In addition, the subordination clause in SB 1115 does not apply to the annual maintenance of the codes bill or another bill with a subordination clause. Unfortunately, there is such a bill that would amend a code section that is also in SB 1115. Senate Bill 1062 (Strickland), the annual public safety omnibus bill, would amend Penal Code Section 273.6, as would SB 1115. SB 1062 contains a subordination clause that excludes the annual maintenance of the codes bill, but does not exclude any other bill. Consequently, if both bills are enacted, SB 1115's amendment of Penal Code Section 273.6 will trump SB 1062's amendment of the same section, but not until SB 1115 becomes operative on January 1, 2012.

Due to this situation, it will be necessary to include an amendment of Penal Code Section 273.6 in next year's clean-up bill, to ensure that the revision effectuated by SB 1062 remains in force after SB 1115 becomes operative. We have been informed that this approach is acceptable to Senator Strickland.

SB 1080: Chaptering Amendments

SB 1080 is the heart of the reorganization proposal, so it does not contain a subordination clause. Instead, it needs to be coordinated with other pending bills through "chaptering amendments." A chaptering amendment is an amendment that would incorporate the revisions made by another bill, but on a contingent basis, such that those revisions would only be made if the conflicting bill is enacted.

SB 1080 needs extensive chaptering amendments to coordinate it with nine other bills that are either pending or have already been enacted this year. Those bills are:

- (1) Assembly Bill 1810 (Feuer).
- (2) Assembly Bill 1934 (Saldaña & Ammiano).
- (3) Assembly Bill 2263 (Yamada).
- (4) Assembly Bill 2358 (De Leon).
- (5) Assembly Bill 2668 (Galgiani).
- (6) Senate Bill 282 (Wright).
- (7) Senate Bill 408 (Padilla), 2010 Cal. Stat. ch. 21 (urgency measure).
- (8) Senate Bill 1062 (Strickland).
- (9) Senate Bill 1190 (Cedillo), 2010 Cal. Stat. ch. 109.

The staff and the Office of Legislative Counsel have been working hard on these chaptering amendments, which are lengthy but purely technical.

We anticipate that SB 1080 will be amended shortly before the August 20 deadline for amending bills. Then the bill will still have to be approved by the Assembly and go back to the Senate for concurrence, before being sent to the Governor.

Assuming the bill reaches the Governor's office, we have been assured that the Governor will sign it after he acts on the nine other bills that affect the same part of the code. That way, SB 1080 will be chaptered last, and all of the bills will be properly coordinated, due to the chaptering amendments in SB 1080.

The staff will seek approval from the Commission Chair before the chaptering amendments are actually made. When time permits (perhaps at the August 19 meeting), we will ask the Commission to ratify that decision.

COMMENT REVISIONS AND OTHER ADJUSTMENTS TO REFLECT 2010 LEGISLATION

Depending on which bills are enacted, it will be necessary to revise some of the Commission's Comments to reflect the new legislation. In addition, it will be necessary to make similar changes to the disposition table and supplemental disposition table in the Commission's report. We are already certain that some such revisions will be needed, because two bills affecting Title 2 of Part 4 of the Penal Code have already been enacted (SB 408 and SB 1190). But we do not yet know the full extent of the necessary changes.

These revisions will be purely technical adjustments to reflect the new legislation. When we have them ready, the staff will present them to the Commission Chair for approval. We will seek ratification from the Commission as time permits.

Respectfully submitted,

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