

NONSUBSTANTIVE  
REORGANIZATION OF  
DEADLY WEAPON STATUTES

In 2006, the Legislature enacted Assembly Concurrent Resolution 73 (McCarthy) (hereafter “ACR 73”), which 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 ....” The resolution states:

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

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

*Resolved by the Assembly of the State of California, the Senate thereof concurring*, That the Legislature authorizes and requests that the California Law Revision Commission 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, and that this legislation shall accomplish the following objectives:

- (a) Reduce the length and complexity of current sections.
- (b) Avoid unnecessary use of cross-references.
- (c) Neither expand nor contract the scope of criminal liability under current provisions. In the event that the commission’s draft changes the scope of criminal liability under the current provisions, this shall be made explicit in the commission’s draft or any commentary related to the draft.
- (d) To the extent compatible with objective (c), use common definitions of terms.

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

(f) Eliminate duplicative provisions; and be it further

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

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

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

Before a government exercises its power to take away one's liberty, it should be clear to every person what actions will cause them to forfeit their freedom. Instead of adding to the lengthy and complex area of firearm laws, a reorganization of the current laws should be undertaken to ensure that statutes that impose criminal penalties are easily understandable.<sup>2</sup>

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

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

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).

## SCOPE OF STUDY

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

### **Type of Weapons**

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

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

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

In light of the language of the resolution and its history, the Commission believes that the study should encompass all

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

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

deadly weapons. That is the scope of the legislation proposed in this recommendation.

### **Relevant Code Sections**

A second issue is whether the Commission's study should focus on a specific portion of the Penal Code, or instead encompass any Penal Code provision that relates to the "control of deadly weapons."

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

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

### Sentence Enhancements

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

Many of the sentence enhancements in Title 2 of Part 4 of the Penal Code do not involve deadly weapons at all.<sup>8</sup> Other enhancements involve the use or possession of a deadly weapon during the commission of a crime, but are not generally concerned with regulating the ownership, transfer, sale, or storage of deadly weapons.<sup>9</sup>

The proposed law would leave these sentence enhancement provisions unchanged, in their current location in the Penal

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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 (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*.

Code.<sup>10</sup> They would not be included within the reorganized body of statutes governing the control of deadly weapons.

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

## STUDY OBJECTIVES

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

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

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

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Gun owners shouldn't have to consult an attorney specializing in firearms law just to find out what they need to do to avoid committing a crime. Law enforcement should have clear, bright line, easily understandable guidelines on how to enforce these laws. This resolution is

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

offered in the hope that an independent, expert body of legal experts can offer up some helpful suggestions on ways that these laws can be clarified so that our citizens will be able to determine, with relative ease, what the law requires and prohibits in the area of firearms regulation.<sup>11</sup>

In addition to the benefits described by Assembly Member McCarthy, improvement of the clarity and organization of the deadly weapon statutes would also facilitate the future development of the law, by making it easier for the Legislature to assess the state of existing law and thereby avoid redundancy or inconsistency in enacting new provisions.

#### **Nonsubstantive Reform**

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

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

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

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

### *Objective and Participatory Study Process*

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

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

### *Commission Comments*

In preparing a recommendation, the Commission drafts an explanatory "Comment" for every section that is added,

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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.



amended, or repealed.<sup>13</sup> A Comment indicates the derivation of a section and often explains its purpose, its relation to other law, and potential issues concerning its meaning or application.

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

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

Commission materials that have been placed before and considered by the Legislature are considered evidence of legislative intent,<sup>14</sup> and are entitled to great weight in construing statutes.<sup>15</sup> The materials are a key interpretive aid

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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.”).

15. See, e.g., *Dep’t of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.*, 40 Cal. 4th 1, 12-13 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. S. 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

for practitioners as well as courts,<sup>16</sup> and courts may judicially notice and rely on them.<sup>17</sup> Courts at all levels of the state<sup>18</sup> and federal<sup>19</sup> judicial systems use Commission materials to construe statutes enacted on Commission recommendation.<sup>20</sup>

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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); Gaylor, *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, 298, 935 P.2d 781, 63 Cal. Rptr. 2d 74 (1997) (California Supreme Court); *Admin. Mgmt. Services, Inc. v. Fid. & Deposit Co. of Md.*, 129 Cal. App. 3d 484, 488, 181 Cal. Rptr. 141 (1982) (court of appeal); *Rossetto v. Barross*, 90 Cal. App. 4th Supp. 1, 5-6, 110 Cal. Rptr. 2d 255 (2001) (appellate division of superior court).

19. See, e.g., *California v. Green*, 399 U.S. 149, 154 n.3 (1970) (United States Supreme Court); *S. Cal. Bank v. Zimmerman (In re Hilde)*, 120 F.3d 950, 953 (9th Cir. 1997) (federal court of appeals); *Williams v. Townsend*, 283 F. Supp. 580, 582 (C.D. Cal. 1968) (federal district court); *Ford Consumer Fin. Co. v. McDonell (In re McDonell)*, 204 B.R. 976, 978-79 (B.A.P. 9th Cir. 1996) (bankruptcy appellate panel); *In re Garrido*, 43 B.R. 289, 292-93 (Bankr. S.D. Cal. 1984) (bankruptcy court).

20. See, e.g., *Jevne v. Superior Court*, 35 Cal. 4th 935, 947, 111 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), *overruled on other grounds*; *Privette v. Superior Court*, 5 Cal. 4th 689, 696, 854 P.2d 721, 21 Cal. Rptr. 2d 72 (1993); *County of Los Angeles v. Superior Court*, 62 Cal. 2d 839, 843-44,

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

*Statements of Legislative Intent*

The proposed law would be known as the Deadly Weapons Recodification Act of 2010.<sup>21</sup> It would include a number of codified provisions making clear that the proposed law would continue existing law without any substantive change. That general point would be stated in proposed Section 16005:

16005. Nothing in the Deadly Weapons Recodification Act of 2010 is intended to substantively change the law relating to deadly weapons. The act is intended to be entirely nonsubstantive in effect. Every provision of 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.

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

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 2010, 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.

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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*. The title will require adjustment if the proposed legislation is enacted in a different year.

(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 2010, 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 or of Title 2 (commencing with Section 12001) of Part 4, or any other provision of the Deadly Weapons Recodification Act of 2010, 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.

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

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 2010, 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.

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

16020. (a) A judicial decision interpreting a previously existing provision is relevant in interpreting 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 2010, which restates and continues that previously existing provision.

(b) However, in enacting the Deadly Weapons Recodification Act of 2010, 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 2010 is not intended to, and does not, reflect any assessment of any judicial decision interpreting any provision affected by the act.

16025. (a) A judicial decision determining the constitutionality of a previously existing provision is relevant in determining the constitutionality of 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 2010, which restates and continues that previously existing provision.

(b) However, in enacting the Deadly Weapons Recodification Act of 2010, 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 2010 is not intended to, and does not, reflect any determination of the constitutionality of any provision affected by the act.

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

### *Legislative Process*

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

## DRAFTING APPROACH

### **Structure of Proposed Law**

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

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

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

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

### **Short, Simple Sections**

One of the common complaints about existing Title 2 of Part 4 of the Penal Code is that many of its sections are excessively long. For example, Assembly Member McCarthy

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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.

noted that “Penal Code Section 12078 is 5,880 words long and occupies 11 pages ....”<sup>24</sup>

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

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

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

For all of the reasons discussed above, the proposed law would divide lengthy sections into shorter and simpler provisions. The number of sections would almost quadruple,

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

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 (May 14, 2009).

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).

but there would be relatively little change in the word count of the governing law.<sup>29</sup>

### Definition of Terms

Under existing law, many definitions are scattered throughout Title 2 of Part 4 of the Penal Code. Some terms are used with different definitions in different contexts,<sup>30</sup> or are defined for some uses but not others.<sup>31</sup> This can create uncertainty as to whether any given term is subject to a statutory definition. That may lead to misunderstanding of the law. It may also lead to unintended consequences, if the Legislature uses a defined term without realizing that it would be subject to an already existing definition.

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29. Title 2 of Part 4 of the Penal Code consists of 234 sections (excluding 3 sections that are scheduled to sunset on January 1, 2011), with about 98,000 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 877 sections, with about 118,500 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 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)).



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

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

Where an existing definition applies to some but not all uses of a term in Title 2 of Part 4, the proposed law would limit the definition to the same uses as under current law. For example, Section 12126 defines "semiautomatic pistol" for purposes of that section. The term is also used without

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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-#35) *infra*; see also discussion of "Minor Clean-Up Issues for Possible Future Legislative Attention" *infra*.

definition elsewhere in Title 2 of Part 4.<sup>33</sup> To avoid creating a risk of a substantive change, the definition of “semiautomatic pistol” in the proposed law would apply only to the provisions that would continue the substance of Section 12126.<sup>34</sup>

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

First, some existing provisions include common terms that are given special definitions (e.g., “furnishes”<sup>35</sup>). It may not be immediately obvious to a reader of such a provision that the common term has a special definition. That could lead to misunderstanding of the law. In those cases, the definition is located near the provision that uses the defined term.<sup>36</sup>

Second, some existing provisions mix definitions with substantive rules in complex ways. Rather than separate those definitions from the related substantive rules, the provisions are left largely unchanged and located with other provisions addressing the same substance.<sup>37</sup> In order to help readers find

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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.

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

those definitions, the proposed law includes “guidepost” provisions in the definitions division, which refer to definitions that are located elsewhere.<sup>38</sup>

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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).

### Substantive Organization

Proposed Part 6 of the Penal Code would be divided into four different titles. Title 1, entitled “Preliminary Provisions,” would include the statements of legislative intent described above.<sup>39</sup> Title 1 would also include the definitions for new Part 6, in alphabetical order.

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

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

Title 4, entitled “Firearms,” would contain the extensive provisions relating to control of firearms. It would consist of a number of different divisions, including one entitled “Special Rules Relating to Particular Types of Firearms or Firearm Equipment.” Within that division, there would be several different chapters, each of which would cover a different type of firearm or firearm equipment. The chapters would be

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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).

arranged in alphabetical order, starting with “Ammunition” and ending with “Zip Guns.”

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

- Section 12020
- Sections 12028 and 12029
- Section 12078

The treatment of these provisions is described below.

### ***Section 12020***

Section 12020 is an extremely long provision that generally prohibits the manufacture, import, sale, gift, loan, or possession of a panoply of weapons and associated equipment. The provision includes numerous exemptions, some of which relate to a broad range of weapons, while others relate to only one specific type of weapon.<sup>41</sup> Thus, a person interested in the rules applicable to a particular type of weapon may have to read much irrelevant material before finding the relevant portions of Section 12020.

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

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

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

capacity magazines would be placed in a chapter on large-capacity magazines.<sup>43</sup>

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

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

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.

Instead, the proposed law would place the broad exemptions in a chapter within the title on “Weapons Generally.”<sup>46</sup> The entire chapter (as opposed to specific provisions within the chapter) would be cross-referenced in every section prohibiting the manufacture, import, sale, gift, loan, or possession of a type of weapon or equipment that was covered by Section 12020.<sup>47</sup> That would draw attention to the broad exemptions, without taking a position on whether a particular exemption pertains to a particular type of weapon or equipment.<sup>48</sup>

### *Sections 12028 and 12029*

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

The Commission treated these two provisions the same way as Section 12020, dividing up their substance according to the

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

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 # 83) *infra*.

type of weapon or equipment to which it pertains.<sup>49</sup> The generally applicable procedures for surrender and disposal of weapons would be placed in the title on “Weapons Generally,”<sup>50</sup> and cross-referenced in each weapon-specific provision derived from the same section.<sup>51</sup> The cross-reference would help a reader find the procedures for surrender and disposal of the weapon in question.

### *Section 12078*

Section 12078 is an enormous provision that consists of about 50 different exceptions, each of which relates to one or more enumerated code sections. As so drafted, the meaning of each exception is difficult to grasp without careful study.

To make the substance of Section 12078 more readily understandable, the proposed legislation would divide it up, such that each exception is stated in close proximity to each substantive rule that it modifies. For example, subdivision (e)(1) of Section 12078 creates an exception relating to gunsmiths: “Section 12071, subdivisions (c) and (d) and paragraph (1) of subdivision (f) of Section 12072, and subdivision (b) of Section 12801 shall not apply to the delivery of a firearm to a gunsmith for service or repair, or to

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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.)



the return of the firearm to its owner by the gunsmith.” In the proposed legislation, that exception for gunsmith transactions would be stated in close proximity to (1) the provisions that would continue Section 12071,<sup>52</sup> (2) the provision that would continue Section 12072(c),<sup>53</sup> (3) the provision that would continue Section 12072(d),<sup>54</sup> (4) the provision that would continue Section 12072(f)(1),<sup>55</sup> and (5) the provision that would continue Section 12801(b).<sup>56</sup> This would make it more easily apparent which substantive rules are modified by the exception.

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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 12072(f)(1) would be continued in proposed Section 27555 *infra*. The exception for gunsmith transactions would be stated nearby, in proposed Section 27825 *infra*. For convenient reference, it would be located with other exceptions to proposed Section 27555, and those exceptions would be cross-referenced in the Comment to proposed Section 27555.

56. 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.

### Unnecessary Cross-References

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

One type of cross-reference that can often be eliminated without affecting the substance of the law is a cross-reference to an applicable definition. As discussed above, the proposed law would group most definitions together near the beginning of proposed Part 6 of the Penal Code, with clear statements indicating the application of each definition. Each section that uses a defined term would have a Commission Comment directing the reader to the applicable definition. This obviates the need to include a statutory cross-reference whenever a defined term is used.<sup>57</sup>

### Conforming Cross-References

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

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

In some instances, however, that is not the best approach. For example, the cross-referenced provision may have been reorganized into a series of smaller provisions, some of which are not relevant to the purpose of the cross-reference. If all of the smaller provisions were cited in place of the original

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57. 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*.

cross-reference, readers would unnecessarily be forced to review irrelevant material. In such cases, it is necessary to exercise some judgment to properly conform the cross-reference in a way that is consistent with its original purpose. In making such changes, the Commission carefully examined the substance of the provisions in question and determined that there would be no substantive change. The Commission's Comments would state as much, and would be official legislative history.<sup>58</sup> In addition, proposed Section 16005 would state expressly that changes to cross-references should be construed as nonsubstantive.

Conforming the cross-references required particular attention where the existing statutory text relates to events that occurred in the past, such as registration periods that have ended or procedures that no longer apply.<sup>59</sup> For example, suppose a provision refers to a "firearm declared by the court pursuant to Section 12276.5 to be an assault weapon,"<sup>60</sup> but Section 12276.5 no longer establishes a procedure for a court to declare a firearm to be an assault weapon.<sup>61</sup> In recodifying the provision that refers to Section 12276.5, it may not be appropriate to replace the cross-reference to Section 12276.5 with a cross-reference to the proposed new provision that would continue the current substance of Section 12276.5. Instead, it may be better to cross-refer to "former Section 12276.5." The Commission used care in addressing such

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

59. 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*.

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

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

situations, as by providing background information or an explanation in the Comment to assist readers.<sup>62</sup> Here, as elsewhere, the overriding principle and intent was to preserve the substance of existing law without substantive change.<sup>63</sup>

There are also a few provisions that contain one or more cross-references that are plainly erroneous. Where the proper cross-reference is obvious, the Commission has corrected the cross-reference, rather than perpetuating the error. These corrections are listed and explained in Appendix A.<sup>64</sup> Where the proper cross-reference is not altogether obvious, the Commission has left it alone, so as not to create a risk of a substantive change. These situations could be addressed in a future reform.<sup>65</sup>

Finally, a large number of statutory provisions located outside of Title 2 cross-refer to provisions located within Title

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

63. 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*.

64. 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*.

65. See discussion of “Minor Clean-Up Issues for Possible Future Legislative Attention” *infra* and Appendix B (Items #58-65) *infra*.

2. The Commission has prepared a conforming revision for each such statute, which would correct each Title 2 cross-reference to reflect the new organization.<sup>66</sup>

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

Some of the provisions in Title 2 of Part 4 of the Penal Code contain language that might be obsolete, such as rules that no longer apply,<sup>67</sup> deadlines that have long since passed,<sup>68</sup> and procedures for programs that have ended.<sup>69</sup> In drafting the proposed legislation, the Commission preserved almost all of that language. The Commission took this cautious approach because deleting such language might raise concerns about a possible substantive change, and because the apparently obsolete language might remain useful for reference purposes, such as deciding what crimes can be charged for conduct that occurred in the past. In a number of instances, the Commission suggests studying whether future clean-up to eliminate or otherwise revise obsolete language would be appropriate.<sup>70</sup>

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66. See “Conforming Revisions” *infra*.

67. 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.)

68. See, e.g., Section 12021(i), which calls for development of a protocol that “shall be completed on or before January 1, 2005.”

69. 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).

70. See discussion of “Minor Clean-Up Issues for Possible Future Legislative Attention” *infra* and Appendix B (Items #36-#40) *infra*.

### Other Drafting Techniques

In reorganizing the provisions on control of deadly weapons, the Commission used a few other drafting techniques, which it regularly employs. In particular, the Commission (1) replaced gender-specific with gender-neutral language, (2) primarily used the singular form instead of the plural, because the singular form tends to be more clear,<sup>71</sup> and (3) eliminated awkward phrases such as “he or she,” “himself or herself,” “his or hers,” and “him or her” when possible. The Commission only used these drafting techniques where there appeared to be no risk of a substantive change.

## DISPOSITION TABLE

This recommendation concludes with a disposition table showing, for every provision of Title 2 of Part 4 of the Penal Code, the new provision that would continue it. This table will be part of the Commission’s final recommendation and will assist the public and the Legislature in reviewing the proposed law.

If legislation to implement this recommendation is enacted, the disposition table will be provided to legal publishers, who would typically make the table available as part of the print and online versions of the Penal Code. The table would then help to correlate a court decision or other document that cites an existing provision, with the new provision that would continue the existing provision. This would ease the transition from existing law to the new law.

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71. 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 ....”).

## MINOR CLEAN-UP ISSUES FOR POSSIBLE FUTURE LEGISLATIVE ATTENTION

In conducting this study, the Commission identified a number of minor problems within Title 2 of Part 4 of the Penal Code, which could not be addressed without potentially raising concerns about a substantive change. Because this study is strictly nonsubstantive, the proposed law does not include any language to address those problems.

Instead, the Commission has prepared a list of “Minor Clean-Up Issues for Possible Future Legislative Attention.” The proposed law includes an uncodified provision that would authorize the Commission to study the problems noted in the list and recommend legislation to correct them. No other authority would be granted under that provision.

The minor clean-up issues are listed in Appendix B. As far as the Commission is aware, these issues are unlikely to involve significant controversy.

## DEFERRED OPERATIVE DATE

Because of the breadth of the organizational changes that would be made by the proposed law, the Commission recommends that it be given a deferred operative date. The proposed law includes an uncodified provision to that effect, delaying the operation of the proposed law by one year.<sup>72</sup>

This deferred operation will provide time for those who work closely with the affected statutes, including legal publishers, to adjust to the new organization before it takes effect.

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72. The proposed section authorizing the Commission to study the minor clean-up issues would not have a deferred operative date.

## NEW LEGISLATION

New legislation relating to control of deadly weapons was enacted after the Commission submitted a pre-print version of this recommendation in compliance with the statutory deadline of July 1, 2009. The current version of the recommendation incorporates the legislation that was enacted in 2009.

Once a bill to implement the recommendation is introduced, there might be conflicts between that bill and other pending legislation. If so, the Commission will recommend double-jointing amendments or other steps to eliminate the conflicts and coordinate the bills. Any such adjustments will be consistent with the nonsubstantive nature of this study.

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