

Memorandum 2008-58

**Nonsubstantive Reorganization of Deadly Weapon Statutes:
Issues Relating to Previous Drafts**

In its nonsubstantive study of the statutes governing control of deadly weapons, the Commission is preparing a tentative recommendation, which would reorganize most of the material in Title 2 of Part 4 of the Penal Code (Penal Code §§ 12000-12809) in a new Part 6 of the Penal Code. The Commission has previously considered and tentatively approved drafts of Titles 1-3 and a partial draft (Divisions 1-6) of Title 4 of new Part 6. This memorandum discusses a number of issues relating to those previously reviewed drafts.

A redraft of some provisions is attached for Commissioners and other interested persons to review. Staff Notes (~~are~~ **Staff Note**) in the attachment raise matters for Commissioners and interested persons to consider. We do not plan to discuss each of these matters at the upcoming meeting. Rather, **a person who has a concern about any issue discussed in this memorandum should plan to raise the point for discussion at the meeting, or submit comments in writing** (preferably before the meeting, but afterwards is also acceptable).

Unless otherwise indicated, all statutory references in this memorandum are to the Penal Code. Brackets around a statutory cross-reference in a proposed new provision indicate that the cross-reference cannot yet be conformed to the numbering scheme of new Part 6.

NEW LEGISLATION

A number of bills affecting provisions in Title 2 of Part 4 were enacted this year. For a listing of the bills and the affected provisions, see Memorandum 2008-57. Except for one urgency measure that became operative on enactment, the new legislation will become operative on January 1, 2009.

The draft legislation tentatively approved by the Commission needs to be revised to reflect the newly enacted legislation. In particular, the following

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provisions require revision: Proposed Sections 16680, 17070, 18900, 20170, 21710, 22295, 23925, 25610, 26185, 26195, 26210, 26710, 26815, 27540, 27885, 27915, 27920, 28055, 28220. Revised versions of these provisions for the Commission's review and approval are shown in the attachment, in numerical order. **The Commission should approve these revisions, which are needed to properly reflect the state of existing law.**

In addition, **proposed Section 23905 should be removed from the Commission's draft**, because it would continue a provision that has been repealed. See Attachment p. 10.

Similarly, a new provision should be added to the draft, to continue a provision that was just enacted, which relates to less lethal weapons. The staff recommends that **proposed Section 19405 be added as shown at page 5 of the attachment.**

CORRECTED CROSS-REFERENCES

In preparing new Part 6, the Commission has corrected a number of cross-references that are plainly erroneous. As planned, these corrections are described in the draft preliminary part presented for this meeting. See Memorandum 2008-62, Attachment pp. 17, 21-24 (Appendix A).

It may also be helpful to note these corrections in the Comments to the provisions with corrected cross-references. For example, the Comment to proposed Section 26510 could be revised as follows:

26510. Section 26500 does not include a person acting pursuant to subdivision (f) of Section 186.22a or Section 18000 or 18005.

Comment. Section 26510 continues former Section 12070(b)(2) without substantive change. An erroneous cross-reference to Section 186.22a(e) has been corrected by replacing it with a cross-reference to Section 186.22a(f).

We have incorporated this revision in the version of proposed Section 26510 shown in the attachment. We have also made similar revisions in the Comments to proposed Sections 22815, 22835, 26030, 27555, and 27920, as shown in the attachment in numerical order. See also the discussion of "Armored Vehicle Guard (Proposed Section 26015)" below.

DEFINITION OF "FIREARM" (PROPOSED SECTION 16520)

Proposed Section 16520 would define the term "firearm." In drafting that definition, the staff overlooked existing Section 12085(e), which is in a statute on manufacturing firearms that the staff redrafted for this meeting. Section 12085(e) states:

(e)(1) As used in this section and Section 12086, the term "firearm" includes the frame or receiver of the weapon.

(2) As used in this section and Section 12086, the term "firearm" includes the unfinished frame or receiver of a weapon that can be readily converted to the functional condition of a finished frame or receiver.

(3) For purposes of this section and Section 12086, the term "firearm" does not include an unloaded firearm that is defined as an "antique firearm" in paragraph (16) of subsection (a) of Section 921 of Title 18 of the United States Code.

The definition of "firearm" in proposed Section 16520 needs to be revised to incorporate the substance of Section 12085(e).

That could be accomplished as shown in underscore below:

§ 16520. "Firearm"

16520. (a) As used in this part, "firearm" means any device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of any explosion or other form of combustion.

(b) As used in the following provisions, "firearm" includes the frame or receiver of the weapon:

- (1) [Section 12021].
- (2) [Section 12021.1].
- (3) [Section 12078, as it pertains to Sections 12072.5, 12077.5, and 12801(b)].
- (4) [Section 12101].
- (5) [Section 12801].
- (6) Section 16550.
- (7) Section 16730.
- (8) Section 16960.
- (9) Section 16990.
- (10) Section 17310.
- (11) Sections 26500 to 27140, inclusive.
- (12) Sections 27400 to 28000, inclusive.
- (13) Section 28100.
- (14) Sections 28400 to 28415, inclusive.
- (15) Sections 29010 to 29145, inclusive.
- (16) Sections 8100, 8101, and 8103 of the Welfare and Institutions Code.

(c) As used in the following provisions, “firearm” also includes any rocket, rocket propelled projectile launcher, or similar device containing any explosive or incendiary material whether or not the device is designed for emergency or distress signaling purposes:

- (1) Section 16750.
- (2) Subdivision (b) of Section 16840.
- (3) Section 25400.
- (4) Sections 25850 to 26025, inclusive.
- (5) Subdivisions (a), (b), and (c) of Section 26030.
- (6) Sections 26035 to 26055, inclusive.

(d) As used in the following provisions, “firearm” does not include an unloaded antique firearm:

- (1) Subdivisions (a) and (c) of Section 16730.
- (2) Section 16550.
- (3) Section 16960.
- (4) Section 17310.
- (5) Sections 26500 to 26585, inclusive.
- (6) Sections 26700 to 26915, inclusive.
- (7) Section 27510.
- (8) Section 27530.
- (9) Section 27540.
- (10) Section 27545.
- (11) Sections 27555 to 27570, inclusive.
- (12) Sections 29010 to 29145, inclusive.

(e) As used in [Section 12030], “firearm” does not include a destructive device.

(f) As used in Sections 17280 and 24680, “firearm” has the same meaning as in Section 922 of Title 18 of the United States Code.

(g) As used in Sections 29010 to 29145, inclusive, “firearm” includes the unfinished frame or receiver of a weapon that can readily be converted to the functional condition of a finished frame or receiver.

Comment. Subdivision (a) of Section 16520 continues former Section 12001(b) without substantive change, for purposes of “Part 6. Control of Deadly Weapons.” See also Section 12001, which continues former Section 12001(b) without substantive change, for purposes of “Title 2. Sentence Enhancements” of “Part 4. Prevention of Crimes and Apprehension of Criminals.”

Subdivision (b) continues former Section 12001(c) and former Section 12085(e)(1) without substantive change.

Subdivision (c) continues former Section 12001(d) without substantive change.

Subdivision (d) continues former Section 12001(e) and former Section 12085(e)(3) without substantive change. See Section 16710 (“antique firearm”).

Subdivision (e) continues the fourth sentence of former Section 12030(d) without substantive change. See Section 16460 (“destructive device”).

With respect to the definition of “firearm,” subdivision (f) continues the first paragraph of former Section 12020(c)(22)(C) without substantive change.

Subdivision (g) continues former Section 12085(e)(2) without substantive change.

The staff recommends that proposed Section 16520 be revised in this manner. We have incorporated these revisions in the version of proposed Section 16520 shown in the attachment.

SURRENDER OF SPECIFIED WEAPONS CONSTITUTING A NUISANCE
(PROPOSED SECTION 18000)

Existing Section 12028 specifies that various different kinds of weapons constitute a nuisance under certain circumstances. The section also provides procedures for surrender and disposal of weapons that constitute a nuisance.

Early in this study, the Commission decided to divide up the material in Section 12028 according to the type of weapon to which it pertains. The generally applicable material on procedures for surrender and disposal of weapons would be placed in the title on “Weapons Generally,” and cross-referenced in each of the other provisions. The material in a few other provisions covering multiple types of weapons would likewise be divided up according to the type of weapon to which it pertains. This approach is intended to help people readily find the rules that apply to their particular situation.

We have proceeded with the approach and it appears to be working out well. In drafting a provision that would continue part of Section 12028 relating to firearms, however, the staff realized that an adjustment should be made in a previously drafted provision, which would continue part of Section 12028 establishing generally applicable procedures for surrender and disposal of weapons.

Specifically, existing Section 12028(b)(1) says:

(b)(1) Except as provided in paragraph (2), a firearm of any nature owned or possessed in violation of Section 12021, 12021.1, or 12101 of this code, or Chapter 3 (commencing with Section 8100) of Division 5 of the Welfare and Institutions Code, or used in the commission of any misdemeanor as provided in this code, any felony, or an attempt to commit any misdemeanor as provided in this code or any felony, is, upon a conviction of the defendant or upon a juvenile court finding that an offense which would be a misdemeanor or felony if committed by an adult was committed or

attempted by the juvenile with the use of a firearm, a nuisance. *A finding that the defendant was guilty of the offense but was insane at the time the offense was committed is a conviction for the purposes of this section.*

(Emphasis added.) The italicized sentence clarifies how to treat a finding that the defendant was guilty but insane. The rule stated in that sentence applies not just for purposes of subdivision (b), but instead “for the purposes of *this section.*” (Emphasis added.)

To ensure that this rule is continued without substantive change, it would not be sufficient for the rule to apply to the provision that continues the first sentence of existing Section 12028(b)(1). As noted at pages 8-9 of the attachment to Memorandum 2008-59, the rule must also apply to the provision that continues the first sentence of existing Section 12028(c), because that sentence also refers to convictions and juvenile court determinations. It says:

(c) Any weapon described in subdivision (a), or, *upon conviction of the defendant or upon a juvenile court finding that an offense which would be a misdemeanor or felony if committed by an adult was committed or attempted by the juvenile with the use of a firearm*, any weapon described in subdivision (b) shall be surrendered to the sheriff of a county or the chief of police or other head of a municipal police department of any city or city and county or the chief of police of any campus of the University of California or the California State University or the Commissioner of the California Highway Patrol.

(Emphasis added.)

The first sentence of Section 12028(c) would be continued in proposed Section 18000. **To address the point discussed above, proposed Section 18000 should be revised as shown in underscore below:**

§ 18000. Surrender of specified weapons constituting nuisance

18000. (a) Any weapon described in Section 19190, 21390, 21590, or 25700, or, upon conviction of the defendant or upon a juvenile court finding that an offense that would be a misdemeanor or felony if committed by an adult was committed or attempted by the juvenile with the use of a firearm, any weapon described in Section 29300, shall be surrendered to one of the following:

- (1) The sheriff of a county.
- (2) The chief of police or other head of a municipal police department of any city or city and county.
- (3) The chief of police of any campus of the University of California or the California State University.
- (4) The Commissioner of the California Highway Patrol.

(b) For purposes of this section, the Commissioner of the California Highway Patrol shall receive only weapons that were confiscated by a member of the California Highway Patrol.

(c) A finding that the defendant was guilty of the offense but was insane at the time the offense was committed is a conviction for the purposes of this section.

Comment. Subdivision (a) of Section 18000 continues the first sentence of former Section 12028(c) without substantive change.

Subdivision (b) continues the second sentence of former Section 12028(c) without substantive change.

In combination with Section 29300(b), subdivision (c) continues the second sentence of former Section 12028(b)(1) without substantive change.

See Section 16520 ("firearm").

We have incorporated these revisions in the version of Section 18000 shown in the attachment.

UNLAWFUL CARRYING OF HANDGUN AS NUISANCE
(PROPOSED SECTION 25700)

Proposed Section 25400 would continue existing law prohibiting concealed carrying of a handgun, subject to certain exemptions. Proposed Section 25700 would say that unlawful carrying of a handgun in violation of Section 25400 is a nuisance. **To be more accurate, the leadline and the Comment for that provision should be revised as shown below:**

§ 25700. Unlawful concealed carrying of handgun as nuisance

25700. (a) The unlawful carrying of any handgun in violation of Section 25400 is a nuisance and is subject to Sections 18000 and 18005.

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

(1) Any firearm in the possession of the Department of Fish and Game.

(2) Any firearm that was used in the violation of any provision of the Fish and Game Code or any regulation adopted pursuant thereto.

(3) Any firearm that is forfeited pursuant to Section 5008.6 of the Public Resources Code.

Comment. With respect to unlawful concealed carrying of a handgun, subdivision (a) of Section 25700 continues former Section 12028(a) without substantive change.

With respect to unlawful concealed carrying of a handgun, subdivision (b) continues former Section 12028(e) without substantive change.

See Sections 16520 (“firearm”), 16640 (“handgun”).

We have incorporated these revisions in the version of Section 25700 shown in the attachment.

IDENTIFICATION CERTIFICATE FOR HONORABLY RETIRED PEACE OFFICER
(PROPOSED SECTION 25905)

Section 12031(a) makes it a crime to carry a loaded firearm in public. This crime is subject to various exemptions, including, under specified circumstances, an exemption for an honorably retired peace officer who has been issued an identification certificate by the law enforcement agency from which the officer retired. See Section 12031(b).

The third sentence of the first paragraph of existing Section 12031(b)(1) says that “[t]he issuing agency may charge a fee necessary to cover any reasonable expenses incurred by the agency in issuing certificates pursuant to this paragraph *and paragraph (3)*. (Emphasis added.) Earlier in this study, the staff questioned whether the italicized cross-reference to paragraph (3) was correct, because that paragraph does not provide for issuance of certificates. Rather, it says:

(3) An honorably retired peace officer who is listed in subdivision (c) of Section 830.5 and authorized to carry loaded firearms by this subdivision shall meet the training requirements of Section 832 and shall qualify with the firearm at least annually. The individual retired peace officer shall be responsible for maintaining his or her eligibility to carry a loaded firearm. The Department of Justice shall provide subsequent arrest notification pursuant to Section 11105.2 regarding honorably retired peace officers listed in subdivision (c) of Section 830.5 to the agency from which the officer has retired.

On reflection, however, we realized that the cross-reference to paragraph (3) might nonetheless be what the Legislature intended. Although that paragraph does not *provide for* issuance of certificates, it does *relate to* issuance of certificates. It requires certain honorably retired peace officers to meet specified training requirements and “qualify with the firearm at least annually.” A law enforcement agency that issues certificates to honorably retired peace officers might incur expenses in determining whether these requirements have been met. Thus, it might be appropriate to say that “[t]he issuing agency may charge a fee

necessary to cover any reasonable expenses incurred by the agency in issuing certificates pursuant to this paragraph *and paragraph (3).*" (Emphasis added.)

Given this, there may be no need to adjust the cross-reference as the staff previously recommended. See Memorandum 2008-39, Attachment p. 37. **To more closely track existing law, proposed Section 25905 should be revised as follows:**

25905. (a) Any peace officer described in Section 25900 who has been honorably retired shall be issued an identification certificate by the law enforcement agency from which the officer has retired.

(b) The issuing agency may charge a fee necessary to cover any reasonable expenses incurred by the agency in issuing certificates pursuant to ~~this article~~ Sections 25900, 25910, 25925, and this section.

(c) Any officer, except an officer listed in Section 830.1 or 830.2, subdivision (a) of Section 830.33, or subdivision (c) of Section 830.5 who retired prior to January 1, 1981, shall have an endorsement on the identification certificate stating that the issuing agency approves the officer's carrying of a loaded firearm.

(d) An honorably retired peace officer listed in Section 830.1 or 830.2, subdivision (a) of Section 830.33, or subdivision (c) of Section 830.5 who retired prior to January 1, 1981, shall not be required to obtain an endorsement from the issuing agency to carry a loaded firearm.

Comment. Subdivision (a) of Section 25905 continues the second sentence of the first paragraph of former Section 12031(b)(1) without substantive change.

Subdivision (b) continues the third sentence of the first paragraph of former Section 12031(b)(1) without substantive change.

Subdivision (c) continues the second paragraph of former Section 12031(b)(1) without substantive change.

Subdivision (d) continues the second sentence of former Section 12031(b)(2) without substantive change.

For guidance on a retired peace officer carrying a concealed firearm, see Sections 25450-25475. For guidance on a retired peace officer carrying a concealed and loaded firearm, see Sections 26300-26325.

See Sections 16520 ("firearm"), 16690 ("honorably retired"), 16840 ("loaded" and "loaded firearm").

We have incorporated these revisions in the version of Section 25905 shown in the attachment.

ARMORED VEHICLE GUARD (PROPOSED SECTION 26015)

Existing Section 12031(b)(7) refers to “[a]rmored vehicle guards, *as defined in Section 7521 of the Business and Professions Code*” As drafted for the September meeting, proposed Section 26015 would continue the italicized cross-reference.

We have since discovered, however, that the cross-reference to Business and Professions Code Section 7521 is incorrect. Section 7521 used to define “armored vehicle guard,” but now it only defines “private investigator.” The definition of “armored vehicle guard” has been relocated to Business and Professions Code Section 7582.1(d).

Proposed Section 26015 should thus be revised as follows:

§ 26015. Armored vehicle guard

26015. Section 25850 does not apply to any armored vehicle guard, as defined in Section ~~7521~~ 7582.1 of the Business and Professions Code, if either of the following conditions is satisfied:

(a) The guard was hired prior to January 1, 1977, and is acting within the course and scope of employment.

(b) The guard was hired on or after January 1, 1977, has received a firearms qualification card from the Department of Consumer Affairs, and is acting within the course and scope of employment.

Comment. Section 26015 continues former Section 12031(b)(7) without substantive change. An erroneous cross-reference to Business and Professions Code Section 7521 has been corrected.

We have incorporated these revisions in the version of Section 26015 shown in the attachment.

This approach seems more reasonable than perpetuating an obviously incorrect reference. Although this is a strictly nonsubstantive study, some degree of commonsense is appropriate in interpreting existing law. **The Commission should exercise such commonsense here and note the situation in the preliminary part of its report,** as shown in Appendix A at page 21 of the attachment to Memorandum 2008-62.

Respectfully submitted,

Barbara Gaal
Chief Deputy Counsel

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SUGGESTED REVISIONS TO DRAFTS
PREVIOUSLY APPROVED

Staff Note. This is a work in progress. The Commission has previously considered and tentatively approved drafts of Titles 1-3 and Divisions 1-6 of Title 4 of new Part 6 of the Penal Code. The draft legislation below consists of suggested revisions to some of that material. Commissioners and other interested persons should review it carefully and determine whether any changes are necessary before it is incorporated into a tentative recommendation.

Staff Notes (**Staff Note**) in the attached draft raise matters for Commissioners and interested persons to consider. We do not plan to discuss each of these matters at the upcoming meeting. Rather, persons should review the draft, identify any issues of concern, and then raise those issues for discussion at the meeting or express their concerns in writing before the meeting, or both.

Some of the provisions in this draft contain a bracketed cross-reference to one or more existing code sections. As new Part 6 of the Penal Code is drafted, these cross-references will be conformed to the new numbering scheme.

Blanks are used to indicate references to sections that have not yet been drafted (e.g., “Section _____”).

All of the proposed provisions would be located in the Penal Code. All references are to the Penal Code unless otherwise noted.

1 TITLE 1. PRELIMINARY PROVISIONS

2

3 DIVISION 2. DEFINITIONS

4

5 § 16520. “Firearm”

6 16520. (a) As used in this part, “firearm” means any device, designed to be used
7 as a weapon, from which is expelled through a barrel, a projectile by the force of
8 any explosion or other form of combustion.

9 (b) As used in the following provisions, “firearm” includes the frame or receiver
10 of the weapon:

11 (1) [Section 12078, as it pertains to Sections 12072.5, 12077.5, and 12801(b)].

12 (2) [Section 12101].

13 (3) [Section 12801].

14 (4) Section 16550.

15 (5) Section 16730.

16 (6) Section 16960.

17 (7) Section 16990.

18 (8) Section 17310.

19 (9) Sections 26500 to 27140, inclusive.

20 (10) Sections 27400 to 28000, inclusive.

1 (11) Section 28100.

2 (12) Sections 28400 to 28415, inclusive.

3 (13) Sections 29010 to 29145, inclusive.

4 (14) Sections 29800 to 29975, inclusive.

5 (15) Sections 8100, 8101, and 8103 of the Welfare and Institutions Code.

6 (c) As used in the following provisions, “firearm” also includes any rocket,
7 rocket propelled projectile launcher, or similar device containing any explosive or
8 incendiary material whether or not the device is designed for emergency or
9 distress signaling purposes:

10 (1) Section 16750.

11 (2) Subdivision (b) of Section 16840.

12 (3) Section 25400.

13 (4) Sections 25850 to 26025, inclusive.

14 (5) Subdivisions (a), (b), and (c) of Section 26030.

15 (6) Sections 26035 to 26055, inclusive.

16 (d) As used in the following provisions, “firearm” does not include an unloaded
17 antique firearm:

18 (1) Subdivisions (a) and (c) of Section 16730.

19 (2) Section 16550.

20 (3) Section 16960.

21 (4) Section 17310.

22 (5) Sections 26500 to 26585, inclusive.

23 (6) Sections 26700 to 26915, inclusive.

24 (7) Section 27510.

25 (8) Section 27530.

26 (9) Section 27540.

27 (10) Section 27545.

28 (11) Sections 27555 to 27570, inclusive.

29 (12) Sections 29010 to 29145, inclusive.

30 (e) As used in [Section 12030], “firearm” does not include a destructive device.

31 (f) As used in Sections 17280 and 24680, “firearm” has the same meaning as in
32 Section 922 of Title 18 of the United States Code.

33 (g) As used in Sections 29010 to 29145, inclusive, “firearm” includes the
34 unfinished frame or receiver of a weapon that can readily be converted to the
35 functional condition of a finished frame or receiver.

36 **Comment.** Subdivision (a) of Section 16520 continues former Section 12001(b) without
37 substantive change, for purposes of “Part 6. Control of Deadly Weapons.” See also Section
38 12001, which continues former Section 12001(b) without substantive change, for purposes of
39 “Title 2. Sentencing Enhancements” of “Part 4. Prevention of Crimes and Apprehension of
40 Criminals.”

41 Subdivision (b) continues former Section 12001(c) and former Section 12085(e)(1) without
42 substantive change.

43 Subdivision (c) continues former Section 12001(d) without substantive change.

44 Subdivision (d) continues former Section 12001(e) and former Section 12085(e)(3) without
45 substantive change. See Section 16710 (“antique firearm”).

1 Subdivision (e) continues the fourth sentence of former Section 12030(d) without substantive
2 change. See Section 16460 (“destructive device”).

3 With respect to the definition of “firearm,” subdivision (f) continues the first paragraph of
4 former Section 12020(c)(22)(C) without substantive change.

5 Subdivision (g) continues former Section 12085(e)(2) without substantive change.

6 **☞ Staff Note.** As discussed in the accompanying memorandum, proposed Section 16680 has
7 been revised to continue existing Penal Code Section 12085(e). The staff has also conformed
8 some cross-references to the numbering scheme in new Part 6.

9

10 **§ 16680. “Hard plastic knuckles” or “hard wooden knuckles”**

11 16680. As used in this part, “hard plastic knuckles” or “hard wooden knuckles”
12 means any device or instrument made wholly or partially of plastic or of wood,
13 composite, or paper materials that is not metal knuckles, that is worn for purposes
14 of offense or defense in or on the hand, and that either protects the wearer’s hand
15 while striking a blow or increases the force of impact from the blow or injury to
16 the individual receiving the blow. The plastic, wood, composite, or paper products
17 contained in the device may help support the hand or fist, provide a shield to
18 protect it, or consist of projections or studs that would contact the individual
19 receiving a blow.

20 **Comment.** Section 16680 continues the second and third sentences of former Section 12020.1
21 without substantive change.

22 See Section 16920 (“metal knuckles”).

23 **☞ Staff Note.** Proposed Section 16680 has been revised to reflect the enactment of SB 1162
24 (Maldonado), 2008 Cal. Stat. ch. 346.

25

26 **§ 17070. “Responsible adult”**

27 17070. As used in this part, “responsible adult” means a person at least 21 years
28 of age who is not prohibited by state or federal law from possessing, receiving,
29 owning, or purchasing a firearm.

30 **Comment.** Section 17070 continues former Section 12101(e) without substantive change.

31 **☞ Staff Note.** Proposed Section 17070 has been revised to reflect the enactment of AB 837
32 (Feuer), 2008 Cal. Stat. ch. 698.

33

34 **TITLE 2. WEAPONS GENERALLY**

35

1 DIVISION 3. SURRENDER, DISPOSAL, AND ENJOINING OF
2 WEAPONS CONSTITUTING A NUISANCE

3 **§ 18000. Surrender of specified weapons constituting nuisance**

4 18000. (a) Any weapon described in Section 19190, 21390, 21590, or 25700, or,
5 upon conviction of the defendant or upon a juvenile court finding that an offense
6 that would be a misdemeanor or felony if committed by an adult was committed or
7 attempted by the juvenile with the use of a firearm, any weapon described in
8 Section 29300, shall be surrendered to one of the following:

9 (1) The sheriff of a county.

10 (2) The chief of police or other head of a municipal police department of any
11 city or city and county.

12 (3) The chief of police of any campus of the University of California or the
13 California State University.

14 (4) The Commissioner of the California Highway Patrol.

15 (b) For purposes of this section, the Commissioner of the California Highway
16 Patrol shall receive only weapons that were confiscated by a member of the
17 California Highway Patrol.

18 (c) A finding that the defendant was guilty of the offense but was insane at the
19 time the offense was committed is a conviction for the purposes of this section.

20 **Comment.** Subdivision (a) of Section 18000 continues the first sentence of former Section
21 12028(c) without substantive change.

22 Subdivision (b) continues the second sentence of former Section 12028(c) without substantive
23 change.

24 In combination with Section 29300(b), subdivision (c) continues the second sentence of former
25 Section 12028(b)(1) without substantive change.

26 See Section 16520 (“firearm”).

27 ☞ **Staff Note.** As discussed in the accompanying memorandum, proposed Section 18000 has
28 been revised to add a sentence on how to treat a finding that the defendant was guilty but insane.
29 The staff has also conformed some cross-references to the numbering scheme in new Part 6.

30

31 DIVISION 5. DESTRUCTIVE DEVICES, EXPLOSIVES, AND
32 SIMILAR WEAPONS

33

34 Article 3. Permit and Inspection

35 **§ 18900. Permit for destructive device**

36 18900. (a) Every dealer, manufacturer, importer, and exporter of any destructive
37 device, or any motion picture or television studio using destructive devices in the

1 conduct of its business, shall obtain a permit for the conduct of that business from
2 the Department of Justice.

3 (b) Any person, firm, or corporation not mentioned in subdivision (a) shall
4 obtain a permit from the Department of Justice in order to possess or transport any
5 destructive device. No permit shall be issued to any person who meets any of the
6 following criteria:

7 (1) Has been convicted of any felony.

8 (2) Is addicted to the use of any narcotic drug.

9 (3) Is prohibited by state or federal law from possessing, receiving, owning, or
10 purchasing a firearm.

11 (c) An application for a permit shall comply with all of the following:

12 (1) It shall be filed in writing.

13 (2) It shall be signed by the applicant if an individual, or by a member or officer
14 qualified to sign if the applicant is a firm or corporation.

15 (3) It shall state the name, business in which engaged, business address, and a
16 full description of the use to which the destructive devices are to be put.

17 (d) Applications and permits shall be uniform throughout the state on forms
18 prescribed by the Department of Justice.

19 **Comment.** Subdivision (a) of Section 18900 continues former Section 12305(a) without
20 substantive change.

21 Subdivision (b) continues former Section 12305(b) without substantive change.

22 Subdivision (c) continues former Section 12305(c) without substantive change.

23 Subdivision (d) continues former Section 12305(d) without substantive change.

24 See Section 16460 (“destructive device”).

25 **Staff Note.** Proposed Section 17070 has been revised to reflect the enactment of AB 837
26 (Feuer), 2008 Cal. Stat. ch. 698.

27

28 DIVISION 6. LESS LETHAL WEAPONS

29

30 § 19405. Punishment for sale of less lethal weapon to person under age 18

31 19405. Any person who sells a less lethal weapon, as defined in Section 12601,
32 to a person under the age of 18 years is guilty of a misdemeanor, punishable by
33 imprisonment in the county jail for up to six months or by a fine of not more than
34 one thousand dollars (\$1,000), or by both that imprisonment and fine.

35 **Comment.** Section 19405 continues former Section 12655 without substantive change.

36 See Section 16780 (“less lethal weapon”).

37 **Staff Note.** Proposed Section 19405 would continue a provision that was added by AB 2973
38 (Soto), 2008 Cal. Stat. ch. 556.

1 TITLE 3. WEAPONS AND DEVICES
2 OTHER THAN FIREARMS

3

4 DIVISION 4. IMITATION FIREARMS

5

6 § 20170. Display of imitation firearm in public place

7 20170. (a) No person may openly display or expose any imitation firearm in a
8 public place.

9 (b) As used in this section, “public place” means an area open to the public and
10 includes any of the following:

11 (1) A street.

12 (2) A sidewalk.

13 (3) A bridge.

14 (4) An alley.

15 (5) A plaza.

16 (6) A park.

17 (7) A driveway.

18 (8) A front yard.

19 (9) A parking lot.

20 (10) An automobile, whether moving or not.

21 (11) A building open to the general public, including one that serves food or
22 drink, or provides entertainment.

23 (12) A doorway or entrance to a building or dwelling.

24 (13) A public school.

25 (14) A public or private college or university.

26 **Comment.** Subdivision (a) of Section 20170 continues former Section 12556(a) without
27 substantive change.

28 For circumstances in which this section is inapplicable, see Section 20175 (exemptions). For
29 consequences of violating this section, see Section 20180 (punishment).

30 Subdivision (b) continues former Section 12556(e) without substantive change.

31 See Section 16700 (“imitation firearm”).

32 **Staff Note.** Proposed Section 20170(b) has been revised to reflect an amendment made by
33 AB 2470 (Karnette), which incorporated revisions made by AB 352 (Solorio). See 2008 Cal. Stat.
34 ch. 676, §§ 2.5, 4.

35

1

DIVISION 6. KNUCKLES

2

CHAPTER 1. HARD PLASTIC KNUCKLES OR HARD WOODEN KNUCKLES

3

Staff Note. The heading of this chapter has been revised to reflect the enactment of SB 1162 (Maldonado), 2008 Cal. Stat. ch. 346.

4

5

§ 21710. Restrictions relating to hard plastic knuckles and hard wooden knuckles

6

21710. Any person in this state who commercially manufactures or causes to be commercially manufactured, or who knowingly imports into the state for commercial sale, keeps for commercial sale, or offers or exposes for commercial sale, any hard plastic knuckles or hard wooden knuckles is guilty of a misdemeanor.

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Comment. Section 21710 continues the first sentence of former Section 12020.1 without substantive change.

12

13

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

14

Staff Note. Proposed Section 21710 and the corresponding Comment have been revised to reflect the enactment of SB 1162 (Maldonado), 2008 Cal. Stat. ch. 346.

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DIVISION 8. SAPS AND SIMILAR WEAPONS

18

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19

§ 22295. Wooden club or baton for law enforcement purposes

20

§ 22295. (a) Nothing in any provision listed in Section 16580 prohibits any police officer, special police officer, peace officer, or law enforcement officer from carrying any wooden club or baton.

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22

23

(b) Nothing in any provision listed in Section 16580 prohibits a uniformed security guard, regularly employed and compensated by a person engaged in any lawful business, while actually employed and engaged in protecting and preserving property or life within the scope of employment, from carrying any wooden club or baton if the uniformed security guard has satisfactorily completed a course of instruction certified by the Department of Consumer Affairs in the carrying and use of the club or baton. The training institution certified by the Department of Consumer Affairs to present this course, whether public or private, is authorized to charge a fee covering the cost of the training.

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(c) The Department of Consumer Affairs, in cooperation with the Commission on Peace Officer Standards and Training, shall develop standards for a course in the carrying and use of a club or baton.

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(d) Any uniformed security guard who successfully completes a course of instruction under this section is entitled to receive a permit to carry and use a club

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1 or baton within the scope of employment, issued by the Department of Consumer
2 Affairs. The department may authorize a certified training institution to issue
3 permits to carry and use a club or baton. A fee in the amount provided by law shall
4 be charged by the Department of Consumer Affairs to offset the costs incurred by
5 the department in course certification, quality control activities associated with the
6 course, and issuance of the permit.

7 (e) Any person who has received a permit or certificate that indicates
8 satisfactory completion of a club or baton training course approved by the
9 Commission on Peace Officer Standards and Training prior to January 1, 1983,
10 shall not be required to obtain a club or baton permit or complete a course certified
11 by the Department of Consumer Affairs.

12 (f) Any person employed as a county sheriff's or police security officer, as
13 defined in Section 831.4, shall not be required to obtain a club or baton permit or
14 to complete a course certified by the Department of Consumer Affairs in the
15 carrying and use of a club or baton, provided that the person completes a course
16 approved by the Commission on Peace Officer Standards and Training in the
17 carrying and use of the club or baton, within 90 days of employment.

18 (g) Nothing in any provision listed in Section 16580 prohibits an animal control
19 officer, as described in Section 830.9, or an illegal dumping enforcement officer,
20 as described in Section 830.7, from carrying any wooden club or baton if the
21 animal control officer or illegal dumping enforcement officer has satisfactorily
22 completed a course of instruction certified by the Department of Consumer Affairs
23 in the carrying and use of the club or baton. The training institution certified by the
24 Department of Consumer Affairs to present this course, whether public or private,
25 is authorized to charge a fee covering the cost of the training.

26 **Comment.** With respect to a wooden club or baton, subdivision (a) of Section 22295 continues
27 former Section 12002(a) without substantive change. The remainder of former Section 12002(a)
28 is continued in Section 17515 without substantive change.

29 Subdivisions (b)-(g) continue former Section 12002(b)-(g) without substantive change.

30 **Staff Note.** Proposed Section 22295 has been revised to reflect the enactment of AB 2245
31 (Soto), 2008 Cal. Stat. ch. 96.

32

33 DIVISION 11. TEAR GAS AND TEAR GAS WEAPONS

34 CHAPTER 1. GENERAL PROVISIONS

35

36 § 22815. Minor age 16 or older

37 22815. (a) Notwithstanding subdivision (d) of Section 22810, a minor who has
38 attained the age of 16 years may purchase and possess tear gas or a tear gas

1 weapon pursuant to this division if the minor is accompanied by a parent or
2 guardian, or has the written consent of a parent or guardian.

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

7 (c) Any civil liability of a minor arising out of the minor’s use of tear gas or a
8 tear gas weapon other than for self-defense is imposed upon the person, parent, or
9 guardian who signed the statement of consent specified in subdivision (b). That
10 person, parent, or guardian shall be jointly and severally liable with the minor for
11 any damages proximately resulting from the negligent or wrongful act or omission
12 of the minor in the use of the tear gas or a tear gas weapon.

13 **Comment.** Section 22815 continues former Section 12403.8 without substantive change.

14 An erroneous cross-reference to former Section 12403.7(a)(4) has been replaced with a cross-
15 reference to Section 22810(d), which continues the substance of former Section 12403.7(d). An
16 erroneous cross-reference to former Section 12403.7(a)(3) has been replaced with a cross-
17 reference to Section 22810(c), which continues the substance of former Section 12403.7(c).

18 See Sections 17240 (“tear gas”), 17250 (“tear gas weapon”).

19  **Staff Note.** As discussed in the accompanying memorandum, the Comment to proposed
20 Section 22815 has been revised to reflect the correction of cross-references.

21 ...

22 **§ 22835. Private investigator or private patrol operator or employee**

23 22835. Notwithstanding any other provision of law, a person holding a license
24 as a private investigator pursuant to Chapter 11.3 (commencing with Section
25 7512) of Division 3 of the Business and Professions Code, or private patrol
26 operator pursuant to Chapter 11.5 (commencing with Section 7580) of Division 3
27 of the Business and Professions Code, or a uniformed patrolperson employee of a
28 private patrol operator, may purchase, possess, or transport any tear gas weapon, if
29 it is used solely for defensive purposes in the course of the activity for which the
30 license was issued and if the person has satisfactorily completed a course of
31 instruction approved by the Department of Consumer Affairs in the use of tear gas.

32 **Comment.** Section 22835 continues former Section 12403.5 without substantive change.

33 An erroneous cross-reference to “Chapter 11 (commencing with Section 7500), Division 3 of
34 the Business and Professions Code” has been corrected by replacing it with cross-references to
35 “Chapter 11.3 (commencing with Section 7512) of Division 3 of the Business and Professions
36 Code” and “Chapter 11.5 (commencing with Section 7580) of Division 3 of the Business and
37 Professions Code.”

38 See Sections 17240 (“tear gas”), 17250 (“tear gas weapon”).

39  **Staff Note.** As discussed in the accompanying memorandum, the Comment to proposed
40 Section 22835 has been revised to reflect the correction of cross-references.

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TITLE 4. FIREARMS

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DIVISION 3. DISGUISED OR MISLEADING APPEARANCE

....

CHAPTER 2. OBLITERATION OF IDENTIFICATION MARKS

....

§ 23905. Presumption

~~23905. Possession of any pistol or revolver upon which the name of the maker, model, manufacturer's number or other mark of identification has been changed, altered, removed, or obliterated, shall be presumptive evidence that the possessor has changed, altered, removed, or obliterated the same.~~

~~**Comment.** Section 23905 continues former Section 12091 without change. Continuation of this material is not intended to reflect any determination regarding its constitutionality. See Section 16025. For a case discussing the constitutionality of former Section 12091, see *In re Christopher K.*, 91 Cal. App. 4th 853, 110 Cal. Rptr. 914 (2001).~~

~~See Section 16530 ("firearm capable of being concealed upon the person," "pistol," and "revolver").~~

~~**Staff Note.** Proposed Section 23905 has been deleted because it would have continued a provision that was repealed by SB 1241 (Margett), 2008 Cal. Stat. ch. 699.~~

....

§ 23925. Exemptions

23925. Section 23920 does not apply to any of the following:

(a) The acquisition or possession of a firearm described in Section 23920 by any member of the military forces of this state or of the United States, while on duty and acting within the scope and course of employment.

(b) The acquisition or possession of a firearm described in Section 23920 by any peace officer described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, while on duty and acting within the scope and course of employment.

(c) The acquisition or possession of a firearm described in Section 23920 by any employee of a forensic laboratory, while on duty and acting within the scope and course of employment.

(d) The possession and disposition of a firearm described in Section 23920 by a person who meets all of the following:

(1) The person is not prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm.

1 (2) The person possessed the firearm no longer than was necessary to deliver it
2 to a law enforcement agency for that agency's disposition according to law.

3 (3) If the person is transporting the firearm, the person is transporting it to a law
4 enforcement agency in order to deliver it to the agency for the agency's
5 disposition according to law.

6 (4) If the person is transporting the firearm to a law enforcement agency, the
7 person has given prior notice to the agency that the person is transporting the
8 firearm to that agency for the agency's disposition according to law.

9 (5) The firearm is transported in a locked container as defined in Section 16850.

10 **Comment.** Section 23925 continues former Section 12094(b) without substantive change.
11 See Section 16520 ("firearm").

12 **Staff Note.** Proposed Section 23925 has been revised to reflect the enactment of AB 837
13 (Feuer), 2008 Cal. Stat. ch. 698.

14

15 DIVISION 5. CARRYING FIREARMS

16

17 CHAPTER 2. CARRYING A CONCEALED FIREARM

18

19 Article 4. Other Exemptions

20 § 25610. Carrying firearm in locked container

21 25610. (a) Section 25400 shall not be construed to prohibit any citizen of the
22 United States over the age of 18 years who resides or is temporarily within this
23 state, and who is not prohibited by state or federal law from possessing, receiving,
24 owning, or purchasing a firearm, from transporting or carrying any pistol,
25 revolver, or other firearm capable of being concealed upon the person, provided
26 that the following applies to the firearm:

27 (1) The firearm is within a motor vehicle and it is locked in the vehicle's trunk
28 or in a locked container in the vehicle.

29 (2) The firearm is carried by the person directly to or from any motor vehicle for
30 any lawful purpose and, while carrying the firearm, the firearm is contained within
31 a locked container.

32 (b) The provisions of this section do not prohibit or limit the otherwise lawful
33 carrying or transportation of any pistol, revolver, or other firearm capable of being
34 concealed upon the person in accordance with the provisions listed in Section
35 16580.

1 **§ 25905. Identification certificate for honorably retired peace officer**

2 25905. (a) Any peace officer described in Section 25900 who has been
3 honorably retired shall be issued an identification certificate by the law
4 enforcement agency from which the officer has retired.

5 (b) The issuing agency may charge a fee necessary to cover any reasonable
6 expenses incurred by the agency in issuing certificates pursuant to Sections 25900,
7 25910, 25925, and this section.

8 (c) Any officer, except an officer listed in Section 830.1 or 830.2, subdivision
9 (a) of Section 830.33, or subdivision (c) of Section 830.5 who retired prior to
10 January 1, 1981, shall have an endorsement on the identification certificate stating
11 that the issuing agency approves the officer's carrying of a loaded firearm.

12 (d) An honorably retired peace officer listed in Section 830.1 or 830.2,
13 subdivision (a) of Section 830.33, or subdivision (c) of Section 830.5 who retired
14 prior to January 1, 1981, shall not be required to obtain an endorsement from the
15 issuing agency to carry a loaded firearm.

16 **Comment.** Subdivision (a) of Section 25905 continues the second sentence of the first
17 paragraph of former Section 12031(b)(1) without substantive change.

18 Subdivision (b) continues the third sentence of the first paragraph of former Section
19 12031(b)(1) without substantive change.

20 Subdivision (c) continues the second paragraph of former Section 12031(b)(1) without
21 substantive change.

22 Subdivision (d) continues the second sentence of former Section 12031(b)(2) without
23 substantive change.

24 For guidance on a retired peace officer carrying a concealed firearm, see Sections 25450-
25 25475. For guidance on a retired peace officer carrying a concealed and loaded firearm, see
26 Sections 26300-26325.

27 See Sections 16520 ("firearm"), 16690 ("honorably retired"), 16840 ("loaded" and "loaded
28 firearm").

29 **Staff Note.** As discussed in the accompanying memorandum, the cross-references in
30 proposed Section 25905(b) have been revised to more closely conform to existing law.

31

32 **Article 4. Other Exemptions to the Crime of**
33 **Carrying a Loaded Firearm in Public**

34

35 **§ 26015. Armored vehicle guard**

36 26015. Section 25850 does not apply to any armored vehicle guard, as defined
37 in Section 7582.1 of the Business and Professions Code, if either of the following
38 conditions is satisfied:

39 (a) The guard was hired prior to January 1, 1977, and is acting within the course
40 and scope of employment.

1 (b) The guard was hired on or after January 1, 1977, has received a firearms
2 qualification card from the Department of Consumer Affairs, and is acting within
3 the course and scope of employment.

4 **Comment.** Section 26015 continues former Section 12031(b)(7) without substantive change.
5 An erroneous cross-reference to Business and Professions Code Section 7521 has been corrected.

6 **Staff Note.** As discussed in the accompanying memorandum, proposed Section 26015 has
7 been revised to correct an erroneous cross-reference to Business and Professions Code Section
8 7521.

9

10 **§ 26030. Guards, messengers, private investigators, private patrol operators, and alarm**
11 **company operators**

12 26030. (a) Section 25850 does not apply to any of the following who have been
13 issued a certificate pursuant to subdivision (d):

14 (1) Guards or messengers of common carriers, banks, and other financial
15 institutions, while actually employed in and about the shipment, transportation, or
16 delivery of any money, treasure, bullion, bonds, or other thing of value within this
17 state.

18 (2) Guards of contract carriers operating armored vehicles pursuant to California
19 Highway Patrol and Public Utilities Commission authority, if they were hired prior
20 to January 1, 1977.

21 (3) Guards of contract carriers operating armored vehicles pursuant to California
22 Highway Patrol and Public Utilities Commission authority, if they were hired on
23 or after January 1, 1977, and they have completed a course in the carrying and use
24 of firearms that meets the standards prescribed by the Department of Consumer
25 Affairs.

26 (4) Private investigators licensed pursuant to Chapter 11.3 (commencing with
27 Section 7512) of Division 3 of the Business and Professions Code, while acting
28 within the course and scope of their employment.

29 (5) Uniformed employees of private investigators licensed pursuant to Chapter
30 11.3 (commencing with Section 7512) of Division 3 of the Business and
31 Professions Code, while acting within the course and scope of their employment.

32 (6) Private patrol operators licensed pursuant to Chapter 11.5 (commencing with
33 Section 7580) of Division 3 of the Business and Professions Code, while acting
34 within the course and scope of their employment.

35 (7) Uniformed employees of private patrol operators licensed pursuant to
36 Chapter 11.5 (commencing with Section 7580) of Division 3 of the Business and
37 Professions Code, while acting within the course and scope of their employment.

38 (8) Alarm company operators licensed pursuant to Chapter 11.6 (commencing
39 with Section 7590) of Division 3 of the Business and Professions Code, while
40 acting within the course and scope of their employment.

41 (9) Uniformed security guards or night watch persons employed by any public
42 agency, while acting within the scope and course of their employment.

1 (10) Uniformed security guards, regularly employed and compensated in that
2 capacity by persons engaged in any lawful business, and uniformed alarm agents
3 employed by an alarm company operator, while actually engaged in protecting and
4 preserving the property of their employers, or on duty or en route to or from their
5 residences or their places of employment, and security guards and alarm agents en
6 route to or from their residences or employer-required range training.

7 (b) Nothing in paragraph (10) of subdivision (a) shall be construed to prohibit
8 cities and counties from enacting ordinances requiring alarm agents to register
9 their names.

10 (c) A certificate under this section shall not be required of any person who is a
11 peace officer, who has completed all training required by law for the exercise of
12 the person's power as a peace officer, and who is employed while not on duty as a
13 peace officer.

14 (d) The Department of Consumer Affairs may issue a certificate to any person
15 referred to in this section, upon notification by the school where the course was
16 completed, that the person has successfully completed a course in the carrying and
17 use of firearms and a course of training in the exercise of the powers of arrest,
18 which meet the standards prescribed by the department pursuant to Section 7583.5
19 of the Business and Professions Code.

20 **Comment.** The introductory clause of subdivision (a) of Section 26030 continues the first
21 sentence of the introductory paragraph of former Section 12031(d) without substantive change.

22 Subdivision (a)(1) continues former Section 12031(d)(1) without substantive change.

23 Subdivision (a)(2)-(3) continues former Section 12031(d)(2) without substantive change.

24 With respect to licensed private investigators, subdivision (a)(4) continues former Section
25 12031(d)(3) without substantive change. An erroneous cross-reference to "Chapter 11.5
26 (commencing with Section 7512) of Division 3 of the Business and Professions Code" has been
27 corrected.

28 With respect to uniformed employees of licensed private investigators, subdivision (a)(5)
29 continues former Section 12031(d)(6) without substantive change. An erroneous cross-reference
30 to "Chapter 11.5 (commencing with Section 7512) of Division 3 of the Business and Professions
31 Code" has been corrected.

32 With respect to licensed private patrol operators, subdivision (a)(6) continues former Section
33 12031(d)(3) without substantive change. An erroneous cross-reference to "Chapter 11.5
34 (commencing with Section 7512) of Division 3 of the Business and Professions Code" has been
35 corrected.

36 With respect to uniformed employees of licensed private patrol operators, subdivision (a)(7)
37 continues former Section 12031(d)(6) without substantive change. An erroneous cross-reference
38 to "Chapter 11.5 (commencing with Section 7512) of Division 3 of the Business and Professions
39 Code" has been corrected.

40 With respect to licensed alarm company operators, subdivision (a)(8) continues former Section
41 12031(d)(3) without substantive change.

42 Subdivision (a)(9) continues former Section 12031(d)(4) without substantive change.

43 Subdivision (a)(10) continues the first sentence of former Section 12031(d)(5) without
44 substantive change.

45 Subdivision (b) continues the second sentence of former Section 12031(d)(5) without
46 substantive change.

47 Subdivision (c) continues the second sentence of the introductory paragraph of former Section
48 12031(d) without substantive change.

49 Subdivision (d) continues former Section 12033 without substantive change.

1 See Section 16520 (“firearm”).

2 **☞ Staff Note.** As discussed in the accompanying memorandum, the Comment to proposed
3 Section 26030 has been revised to reflect the correction of cross-references.

4

5 CHAPTER 4. LICENSE TO CARRY PISTOL, REVOLVER, OR OTHER FIREARM
6 CAPABLE OF BEING CONCEALED UPON THE PERSON

7

8 **§ 26185. Fingerprinting and Department of Justice report**

9 26185. (a)(1) The fingerprints of each applicant shall be taken and two copies on
10 forms prescribed by the Department of Justice shall be forwarded to the
11 department.

12 (2) Upon receipt of the fingerprints and the fee as prescribed in Section 26190,
13 the department shall promptly furnish the forwarding licensing authority a report
14 of all data and information pertaining to any applicant of which there is a record in
15 its office, including information as to whether the person is prohibited by state or
16 federal law from possessing, receiving, owning, or purchasing a firearm.

17 (3) No license shall be issued by any licensing authority until after receipt of the
18 report from the department.

19 (b) Notwithstanding subdivision (a), if the license applicant has previously
20 applied to the same licensing authority for a license to carry firearms pursuant to
21 this article and the applicant’s fingerprints and fee have been previously forwarded
22 to the Department of Justice, as provided by this section, the licensing authority
23 shall note the previous identification numbers and other data that would provide
24 positive identification in the files of the Department of Justice on the copy of any
25 subsequent license submitted to the department in conformance with Section
26 26225 and no additional application form or fingerprints shall be required.

27 (c) If the license applicant has a license issued pursuant to this article and the
28 applicant’s fingerprints have been previously forwarded to the Department of
29 Justice, as provided in this section, the licensing authority shall note the previous
30 identification numbers and other data that would provide positive identification in
31 the files of the Department of Justice on the copy of any subsequent license
32 submitted to the department in conformance with Section 26225 and no additional
33 fingerprints shall be required.

34 **Comment.** Section 26185 continues former Section 12052 without substantive change.
35 See Section 16520 (“firearm”).

36 **☞ Staff Note.** Proposed Section 26185(a)(2) has been revised to reflect the enactment of AB
37 837 (Feuer), 2008 Cal. Stat. ch. 698.

38

1 § 26195. No license for person prohibited from possessing, receiving, owning, or purchasing
2 firearm

3 26195. (a) A license under this article shall not be issued if the Department of
4 Justice determines that the person is prohibited by state or federal law from
5 possessing, receiving, owning, or purchasing a firearm.

6 (b)(1) A license under this article shall be revoked by the local licensing
7 authority if at any time either the local licensing authority is notified by the
8 Department of Justice that a licensee is prohibited from owning or purchasing
9 firearms, or the local licensing authority determines that the person is prohibited
10 by state or federal law from possessing, receiving, owning, or purchasing a
11 firearm.

12 (2) If at any time the Department of Justice determines that a licensee is
13 prohibited by state or federal law from possessing, receiving, owning, or
14 purchasing a firearm, the department shall immediately notify the local licensing
15 authority of the determination.

16 (3) If the local licensing authority revokes the license, the Department of Justice
17 shall be notified of the revocation pursuant to Section 26225. The licensee shall
18 also be immediately notified of the revocation in writing.

19 **Comment.** Subdivision (a) of Section 26195 continues former Section 12050(d) without
20 substantive change.

21 Subdivision (b) continues former Section 12050(e) without substantive change.

22 **Staff Note.** Proposed Section 26195 has been revised to reflect the enactment of AB 837
23 (Feuer), 2008 Cal. Stat. ch. 698.

24

25 § 26210. Change of licensee's address

26 26210. (a) When a licensee under this article has a change of address, the license
27 shall be amended to reflect the new address and a new license shall be issued
28 pursuant to subdivision (b) of Section 26215.

29 (b) The licensee shall notify the licensing authority in writing within 10 days of
30 any change in the licensee's place of residence.

31 (c) If the license is one to carry concealed a pistol, revolver, or other firearm
32 capable of being concealed upon the person, then it may not be revoked solely
33 because the licensee changes his or her place of residence to another county if the
34 licensee has not breached any conditions or restrictions set forth in the license or
35 has not become prohibited by state or federal law from possessing, receiving,
36 owning, or purchasing a firearm. However, any license issued pursuant to Section
37 26150 or 26155 shall expire 90 days after the licensee moves from the county of
38 issuance if the licensee's place of residence was the basis for issuance of the
39 license.

40 (d) If the license is one to carry loaded and exposed a pistol, revolver, or other
41 firearm capable of being concealed upon the person, the license shall be revoked
42 immediately upon a change of the licensee's place of residence to another county.

1 order to determine if the applicant is prohibited by state or federal law from
2 possessing, receiving, owning, or purchasing a firearm.

3 (c) The department shall issue a certificate to an applicant if the department’s
4 records indicate that the applicant is not a person who is prohibited by state or
5 federal law from possessing firearms.

6 (d) The department shall adopt regulations to administer the certificate of
7 eligibility program and shall recover the full costs of administering the program by
8 imposing fees assessed to applicants who apply for those certificates.

9 **Comment.** Subdivisions (a)-(c) of Section 26710 continue former Section 12071(a)(4) without
10 substantive change.

11 Subdivision (d) continues former Section 12071(a)(5) without substantive change.

12 For exceptions to this provision, see Articles 5 (commencing with Section 27050) and 6
13 (commencing with Section 27100).

14 See Section 16520 (“firearm”).

15 **Staff Note.** Proposed Section 26710 has been revised to reflect the enactment of AB 837
16 (Feuer), 2008 Cal. Stat. ch. 698.

17

18 Article 2. Grounds for Forfeiture of License

19

20 § 26815. Waiting period and other delivery restrictions

21 26815. No firearm shall be delivered:

22 (a) Within 10 days of the application to purchase, or, after notice by the
23 department pursuant to Section 28220, within 10 days of the submission to the
24 department of any correction to the application, or within 10 days of the
25 submission to the department of any fee required pursuant to Section 28220,
26 whichever is later.

27 (b) Unless unloaded and securely wrapped or unloaded and in a locked
28 container.

29 (c) Unless the purchaser, transferee, or person being loaned the firearm presents
30 clear evidence of the person’s identity and age to the dealer.

31 (d) Whenever the dealer is notified by the Department of Justice that the person
32 is prohibited by state or federal law from processing, owning, purchasing, or
33 receiving a firearm. The dealer shall make available to the person in the prohibited
34 class a prohibited notice and transfer form, provided by the department, stating
35 that the person is prohibited from owning or possessing a firearm, and that the
36 person may obtain from the department the reason for the prohibition.

37 **Comment.** Section 26815 continues former Section 12071(b)(3) without substantive change.

38 For exceptions to this provision, see Articles 3 (commencing with Section 26950), 4
39 (commencing with Section 27000), 5 (commencing with Section 27050), and 6 (commencing
40 with Section 27100).

41 For the consequences of violating this section, see Section 26800 (forfeiture of license).

1 See Sections 16190 (“application to purchase”), 16400 (“clear evidence of the person’s identity
2 and age”), 16520 (“firearm”), 26700 (“dealer,” “licensee,” or “person licensed pursuant to
3 Sections 26700 to 26915, inclusive”).

4 **☞ Staff Note.** Proposed Section 26815 has been revised to reflect the enactment of AB 837
5 (Feuer), 2008 Cal. Stat. ch. 698.

6 As revised, subdivision (d) refers to a person “prohibited by state or federal law from
7 *processing, owning, purchasing, or receiving* a firearm.” (Emphasis added.) The staff is not sure
8 whether the italicized language is what the Legislature actually intended to use when it amended
9 Penal Code Section 12071(b)(3)(D) in AB 837.

10 Many other provisions were amended by the same bill to refer to a person who is (or is not)
11 “prohibited by state or federal law from *possessing, receiving, owning, or purchasing* a firearm.”
12 See, e.g., 2008 Cal. Stat. ch. 698, §§ 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26
13 (emphasis added). It seems likely that Section 12071(b)(3)(D) was also supposed to contain that
14 phrase, instead of the phrase “processing, owning, purchasing, or receiving.”

15 We would appreciate input on whether this is actually the case. If such input indicates that
16 there might have been a mistake in drafting AB 837, the Commission could add this matter to its
17 list of “Minor Clean-up Issues for Possible Future Legislative Attention.”

18

19 CHAPTER 4. CRIMES RELATING TO SALE, LEASE, OR TRANSFER OF FIREARMS

20 Article 1. Crimes Relating to Sale, Lease, or Transfer of Firearms

21

22 § 27540. Waiting period and other delivery restrictions

23 27540. No dealer, whether or not acting pursuant to Chapter 5 (commencing
24 with Section 28050), shall deliver a firearm to a person, as follows:

25 (a) Within 10 days of the application to purchase, or, after notice by the
26 department pursuant to Section 28220, within 10 days of the submission to the
27 department of any correction to the application, or within 10 days of the
28 submission to the department of any fee required pursuant to Section 28225,
29 whichever is later.

30 (b) Unless unloaded and securely wrapped or unloaded and in a locked
31 container.

32 (c) Unless the purchaser, transferee, or person being loaned the firearm presents
33 clear evidence of the person’s identity and age to the dealer.

34 (d) Whenever the dealer is notified by the Department of Justice that the person
35 is prohibited by state or federal law from possessing, receiving, owning, or
36 purchasing a firearm.

37 (e)(1) Commencing April 1, 1994, and until January 1, 2003, no pistol, revolver,
38 or other firearm capable of being concealed upon the person shall be delivered
39 unless the purchaser, transferee, or person being loaned the firearm presents to the
40 dealer a basic firearms safety certificate.

1 (2) Commencing January 1, 2003, no handgun shall be delivered unless the
2 purchaser, transferee, or person being loaned the handgun presents a handgun
3 safety certificate to the dealer.

4 (f) No pistol, revolver, or other firearm capable of being concealed upon the
5 person shall be delivered whenever the dealer is notified by the Department of
6 Justice that within the preceding 30-day period the purchaser has made another
7 application to purchase a pistol, revolver, or other firearm capable of being
8 concealed upon the person and that the previous application to purchase involved
9 none of the entities specified in subdivision (b) of Section 27535.

10 **Comment.** Section 27540 continues former Section 12072(c) without substantive change.

11 For exceptions to this provision, see Articles 2 (commencing with Section 27600), 3
12 (commencing with Section 27650), and 4 (commencing with Section 27700).

13 For the consequences of violating this section, see Section 27590 (punishment for violation of
14 article).

15 See Sections 16190 (“application to purchase”), 16240 (“basic firearms safety certificate”),
16 16400 (“clear evidence of the person’s identity and age”), 16520 (“firearm”), 16530 (“firearm
17 capable of being concealed upon the person,” “pistol,” and “revolver”), 16670 (“handgun safety
18 certificate”), 26700 (“dealer,” “licensee,” or “person licensed pursuant to Sections 26700 to
19 26915, inclusive”).

20 **Staff Note.** Proposed Section 27540 has been revised to reflect the enactment of AB 837
21 (Feuer), 2008 Cal. Stat. ch. 698.

22

23 **§ 27555. Obtaining verification number**

24 27555. (a)(1) Commencing July 1, 2008, a person who is licensed pursuant to
25 Chapter 44 (commencing with Section 921) of Title 18 of the United States Code
26 may not sell, deliver, or transfer a firearm to a person in California who is licensed
27 pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United
28 States Code unless, prior to delivery, the person intending to sell, deliver, or
29 transfer the firearm obtains a verification number via the Internet for the intended
30 sale, delivery, or transfer, from the Department of Justice.

31 (2) If Internet service is unavailable to either the department or the licensee due
32 to a technical or other malfunction, or a federal firearms licensee who is located
33 outside of California does not possess a computer or have Internet access, alternate
34 means of communication, including facsimile or telephone, shall be made
35 available for a licensee to obtain a verification number in order to comply with this
36 section.

37 (b) For every identification number request received pursuant to this section, the
38 department shall determine whether the intended recipient is on the centralized list
39 of firearms dealers pursuant to Section 26715, or the centralized list of exempted
40 federal firearms licensees pursuant to Section 28450, or the centralized list of
41 firearms manufacturers pursuant to Section 29060.

1 (c)(1) If the department finds that the intended recipient is on one of these lists,
2 the department shall issue to the inquiring party, a unique identification number
3 for the intended sale, delivery, or transfer.

4 (2) In addition to the unique verification number, the department may provide to
5 the inquiring party information necessary for determining the eligibility of the
6 intended recipient to receive the firearm.

7 (3) The person intending to sell, deliver, or transfer the firearm shall provide the
8 unique verification number to the recipient along with the firearm upon delivery,
9 in a manner to be determined by the department.

10 (d) If the department finds that the intended recipient is not on one of these lists,
11 the department shall notify the inquiring party that the intended recipient is
12 ineligible to receive the firearm.

13 (e) The department shall prescribe the manner in which the verification numbers
14 may be requested via the Internet, or by alternate means of communication, such
15 as by facsimile or telephone, including all required enrollment information and
16 procedures.

17 (f) This section does not apply to the sale, delivery, or transfer of an assault
18 weapon, a machinegun, a short-barreled rifle, or a short-barreled shotgun.

19 **Comment.** Section 27555 continues former Section 12072(f)(1) without substantive change.
20 An erroneous reference to “this section” in former Section 12072(f)(1)(B) has been replaced with
21 a reference to Section 26715, which continues former Section 12071(e).

22 For exceptions to this provision, see Articles 2 (commencing with Section 27600) and 5
23 (commencing with Section 27800).

24 For the consequences of violating this section, see Section 27590 (punishment for violation of
25 article).

26 See Sections 16520 (“firearm”), 16880 (“machinegun”), 17170 (“short-barreled rifle”), 17180
27 (“short-barreled shotgun”), 26700 (“dealer,” “licensee,” or “person licensed pursuant to Sections
28 26700 to 26915, inclusive”), 30510 (“assault weapon”), 30515 (further clarification of “assault
29 weapon”).

30 **Staff Note.** As discussed in the accompanying memorandum, the Comment to proposed
31 Section 27555 has been revised to reflect the correction of a cross-reference. The staff has also
32 conformed a cross-reference to the numbering scheme in new Part 6.

33

34 Article 6. Exceptions to the Requirement of Using a Dealer for a
35 Private Party Firearms Transaction

36

37 **§ 27885. Exception for loan of firearm if lender is constantly in presence of recipient, loan is**
38 **for 3 days or less, and other requirements are met**

39 27885. Section 27545 does not apply to the loan of a firearm if all of the
40 following conditions exist:

41 (a) The person loaning the firearm is at all times within the presence of the
42 person being loaned the firearm.

- 1 (b) The loan is for a lawful purpose.
- 2 (c) The loan does not exceed three days in duration.
- 3 (d) The individual receiving the firearm is not prohibited by state or federal law
- 4 from possessing, receiving, owning or purchasing a firearm.
- 5 (e) The person loaning the firearm is 18 years of age or older.
- 6 (f) The person being loaned the firearm is 18 years of age or older.
- 7 **Comment.** Section 27885 continues former Section 12078(d)(2) without substantive change,
- 8 as that provision applied to former Section 12072(d).
- 9 See Section 16520 (“firearm”).

10 **Staff Note.** Proposed Section 27885 has been revised to reflect the enactment of AB 837
11 (Feuer), 2008 Cal. Stat. ch. 698.

12

13 **§ 27915. Exception for person who takes title or possession of firearm, other than handgun,**
14 **by operation of law**

15 27915. Section 27545 does not apply to a person who takes title or possession of
16 a firearm by operation of law if both of the following requirements are satisfied:

- 17 (a) The firearm is not a handgun.
- 18 (b) The person is not prohibited by state or federal law from possessing,
- 19 receiving, owning, or purchasing a firearm.

20 **Comment.** Section 27915 continues former Section 12078(i)(1) without substantive change.
21 See Sections 16520 (“firearm”), 16640 (“handgun”), 16990 (“person taking title or possession
22 of a firearm by operation of law”).

23 **Staff Note.** Proposed Section 27915 has been revised to reflect the enactment of AB 837
24 (Feuer), 2008 Cal. Stat. ch. 698.

25 **§ 27920. Exception for person who takes title or possession of handgun by operation of law**

26 27920. Section 27545 does not apply to a person who takes title or possession of
27 a handgun by operation of law if the person is not prohibited by state or federal
28 law from possessing, receiving, owning, or purchasing a firearm and all of the
29 following conditions are met:

- 30 (a) If the person taking title or possession is neither a levying officer as defined
31 in Section 481.140, 511.060, or 680.260 of the Code of Civil Procedure, nor a
32 person who is receiving that firearm pursuant to subdivision (g), (i), or (j) of
33 Section 16990, the person shall, within 30 days of taking possession, forward by
34 prepaid mail or deliver in person to the Department of Justice, a report of
35 information concerning the individual taking possession of the firearm, how title
36 or possession was obtained and from whom, and a description of the firearm in
37 question.

- 38 (b) If the person taking title or possession is receiving the firearm pursuant to
39 subdivision (g) of Section 16990, the person shall do both of the following:

- 40 (1) Within 30 days of taking possession, forward by prepaid mail or deliver in
41 person to the department, a report of information concerning the individual taking

1 possession of the firearm, how title or possession was obtained and from whom,
2 and a description of the firearm in question.

3 (2) Prior to taking title or possession of the firearm, the person shall obtain a
4 handgun safety certificate.

5 (c) Where the person receiving title or possession of the handgun is a person
6 described in subdivision (i) of Section 16990, on the date that the person is
7 delivered the firearm, the name and other information concerning the person
8 taking possession of the firearm, how title or possession of the firearm was
9 obtained and from whom, and a description of the firearm by make, model, serial
10 number, and other identifying characteristics, shall be entered into the Automated
11 Firearms System (AFS) via the California Law Enforcement Telecommunications
12 System (CLETS) by the law enforcement or state agency that transferred or
13 delivered the firearm. An agency without access to AFS shall arrange with the
14 sheriff of the county in which the agency is located to input this information via
15 this system.

16 (d) Where the person receiving title or possession of the handgun is a person
17 described in subdivision (g) of Section 16990, on the date that the person is
18 delivered the firearm, the name and other information concerning the person
19 taking possession of the firearm, how title or possession of the firearm was
20 obtained and from whom, and a description of the firearm by make, model, serial
21 number, and other identifying characteristics, shall be entered into the AFS via the
22 CLETS by the law enforcement or state agency that transferred or delivered the
23 firearm. An agency without access to AFS shall arrange with the sheriff of the
24 county in which the agency is located to input this information via this system. In
25 addition, that law enforcement agency shall not deliver that handgun to the person
26 referred to in this subdivision unless, prior to the delivery of the handgun, the
27 person presents proof to the agency that the person is the holder of a handgun
28 safety certificate.

29 (e) The reports that individuals complete pursuant to this section shall be
30 provided to them by the Department of Justice.

31 **Comment.** Section 27920 continues former Section 12078(i)(2) without substantive change.
32 An erroneous cross-reference to Code of Civil Procedure Section 680.210 has been corrected by
33 replacing it with a cross-reference to Code of Civil Procedure Section 680.260.

34 See Sections 16520 (“firearm”), 16640 (“handgun”), 16990 (“person taking title or possession
35 of a firearm by operation of law”).

36 **Staff Note.** Proposed Section 27920 has been revised to reflect the enactment of AB 837
37 (Feuer), 2008 Cal. Stat. ch. 698. As discussed in the accompanying memorandum, the Comment
38 has been revised to reflect the correction of a cross-reference.

39

40 CHAPTER 5. PROCEDURE FOR A PRIVATE PARTY FIREARMS TRANSACTION

41

1 § 28055. Fees

2 28055. (a) For a sale, loan, or transfer conducted pursuant to this chapter, the
3 purchaser or transferee or person being loaned the firearm may be required by the
4 dealer to pay a fee not to exceed ten dollars (\$10) per firearm.

5 (b) No other fee may be charged by the dealer for a sale, loan, or transfer of a
6 firearm conducted pursuant to this chapter, except for the applicable fees that may
7 be charged pursuant to [Sections 12088.9] and 28300 and Article 3 (commencing
8 with Section 28100) of Chapter 6 and forwarded to the Department of Justice, and
9 the fees set forth in [Section 12805].

10 (c) The dealer may not charge any additional fees.

11 (d) Nothing in these provisions shall prevent a dealer from charging a smaller
12 fee.

13 **Comment.** Subdivisions (a) and (b) of Section 28055 continue the seventh sentence of former
14 Section 12082(a) without substantive change.

15 Subdivision (c) continues the ninth sentence of former Section 12082(a) without substantive
16 change.

17 Subdivision (d) continues the eighth sentence of former Section 12082(a) without substantive
18 change.

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

21  **Staff Note.** Proposed Section 28055 has been revised to reflect the enactment of AB 837
22 (Feuer), 2008 Cal. Stat. ch. 698.

23

24 CHAPTER 6. RECORDKEEPING, BACKGROUND CHECKS, AND FEES RELATING TO
25 SALE, LEASE, OR TRANSFER OF FIREARMS

26

27 Article 3. Submission of Fees and Firearm Purchaser Information to
28 the Department of Justice

29

30 § 28220. Background check by Department of Justice

31 28220. (a) Upon submission of firearm purchaser information, the Department
32 of Justice shall examine its records, as well as those records that it is authorized to
33 request from the State Department of Mental Health pursuant to Section 8104 of
34 the Welfare and Institutions Code, in order to determine if the purchaser is a
35 person described in subdivision (a) of Section 27535, or is prohibited by state or
36 state or federal law from possessing, receiving, owning, or purchasing a firearm.

37 (b) To the extent that funding is available, the Department of Justice may
38 participate in the National Instant Criminal Background Check System (NICS), as

1 described in subsection (t) of Section 922 of Title 18 of the United States Code,
2 and, if that participation is implemented, shall notify the dealer and the chief of the
3 police department of the city or city and county in which the sale was made, or if
4 the sale was made in a district in which there is no municipal police department,
5 the sheriff of the county in which the sale was made, that the purchaser is a person
6 prohibited from acquiring a firearm under federal law.

7 (c) If the department determines that the purchaser is prohibited by state or
8 federal law from possessing, receiving, owning, or purchasing a firearm or is a
9 person described in subdivision (a) of Section 27535, it shall immediately notify
10 the dealer and the chief of the police department of the city or city and county in
11 which the sale was made, or if the sale was made in a district in which there is no
12 municipal police department, the sheriff of the county in which the sale was made,
13 of that fact.

14 (d) If the department determines that the copies of the register submitted to it
15 pursuant to subdivision (d) of Section 28210 contain any blank spaces or
16 inaccurate, illegible, or incomplete information, preventing identification of the
17 purchaser or the pistol, revolver, or other firearm to be purchased, or if any fee
18 required pursuant to Section 28225 is not submitted by the dealer in conjunction
19 with submission of copies of the register, the department may notify the dealer of
20 that fact. Upon notification by the department, the dealer shall submit corrected
21 copies of the register to the department, or shall submit any fee required pursuant
22 to Section 28225, or both, as appropriate and, if notification by the department is
23 received by the dealer at any time prior to delivery of the firearm to be purchased,
24 the dealer shall withhold delivery until the conclusion of the waiting period
25 described in Sections 26815 and 27540.

26 (e) If the department determines that the information transmitted to it pursuant to
27 Section 28215 contains inaccurate or incomplete information preventing
28 identification of the purchaser or the pistol, revolver, or other firearm capable of
29 being concealed upon the person to be purchased, or if the fee required pursuant to
30 Section 28225 is not transmitted by the dealer in conjunction with transmission of
31 the electronic or telephonic record, the department may notify the dealer of that
32 fact. Upon notification by the department, the dealer shall transmit corrections to
33 the record of electronic or telephonic transfer to the department, or shall transmit
34 any fee required pursuant to Section 28225, or both, as appropriate, and if
35 notification by the department is received by the dealer at any time prior to
36 delivery of the firearm to be purchased, the dealer shall withhold delivery until the
37 conclusion of the waiting period described in Sections 26815 and 27540.

38 **Comment.** Section 28220 continues former Section 12076(d) without substantive change.

39 For exceptions to provisions in this article and in Articles 1 (commencing with Section 28100),
40 2 (commencing with Section 28150), and 4 (commencing with Section 28300), see Article 5
41 (commencing with Section 28400).

42 For the consequences of violating this article, see Section 28250.

1 See Sections 16520 (“firearm”), 16530 (“firearm capable of being concealed upon the person,”
2 “pistol,” and “revolver”), 26700 (“dealer,” “licensee,” or “person licensed pursuant to Sections
3 26700 to 26915, inclusive”), 28200 (“purchase,” “purchaser,” “sale,” and “seller”).
4 **☞ Staff Note.** Proposed Section 28220 has been revised to reflect the enactment of AB 837
5 (Feuer), 2008 Cal. Stat. ch. 698.
