

## Memorandum 2007-20

**Nonsubstantive Reorganization of Deadly Weapon Statutes:  
"Title 1. Preliminary Provisions" of New Part 6 of the Penal Code**

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In its nonsubstantive study of the statutes governing control of deadly weapons, the Commission is proposing to create a new Part 6 of the Penal Code, entitled "Control of Deadly Weapons." Part 6 would include the material now found in Title 2 of Part 4 of the Penal Code, except for Penal Code Sections 12021.5-12022.95, which are sentencing enhancement provisions that would remain in their current location. Part 6 would be divided into four different titles, the first of which would be "Title 1. Preliminary Provisions." See CLRC Memorandum 2007-19, Exhibit pp. 1-21.

Attached is a draft of "Title 1. Preliminary Provisions." Staff Notes in the 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.

The Commission is working towards a tentative recommendation that includes the entirety of new Part 6. When the tentative recommendation is completed, it will be broadly circulated for comment.

A few points are explained below.

**Material Included**

The attached draft of "Title 1. Preliminary Provisions" consists of a number of definitions, arranged in alphabetical order. All of these definitions are currently found in Penal Code Section 12001.

Section 12001 also includes three provisions that state substantive rules (subdivisions (k), (l), and (m)). As discussed at pages 1-2 of CLRC Memorandum 2007-19, the substance of these provisions would be placed elsewhere in Part 6, not in "Title 1. Preliminary Provisions."

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

In addition, Section 12001 includes a provision that relates to Penal Code Section 12023, which makes it a crime to carry a “loaded” firearm with intent to commit a felony. Specifically, subdivision (j) defines when a firearm is deemed “loaded” for purposes of Section 12023. It says that “[f]or purposes of Section 12023, a firearm shall be deemed to be ‘loaded’ whenever both the firearm and the unexpended ammunition capable of being discharged from the firearm are in the immediate possession of the same person.”

This definition of “loaded” differs from colloquial understanding of what constitutes a loaded firearm (i.e., a firearm containing live ammunition that can be discharged). It also differs from the definition of “loaded” in two other provisions in Title 2 of Part 4 of the Penal Code. See Penal Code Sections 12031(g) (defining “loaded” for purposes of Section 12031), 12035(a)(2) (defining “loaded” for purposes of Section 12035). In addition, the term “loaded” is used repeatedly in various other provisions in Title 2, without being defined. See, e.g., Penal Code §§ 12021.5, 12022.53, 12027.1.

Because the definition of “loaded” in Section 12001(j) appears to be a special definition for purposes of Section 12023, we have not included it in “Division 1. Definitions” of “Title 1. Preliminary Provisions.” Instead, **it should be placed in proximity to the substance of Section 12023**, in “Division 9. Miscellaneous Rules Relating to Firearms Generally” of “Title 4. Firearms and Similar Weapons.” See CLRC Memorandum 2007-19, Exhibit p. 14. **The Commission’s outline for new Part 6 of the Penal Code should be revised to put Section 12001(j) in this location.**

### **Additional Material to be Included**

Although the attached draft consists exclusively of definitions now found in Penal Code Section 12001, many other provisions currently in Title 2 of Part 4 also contain definitions. As the Commission drafts new Part 6 of the Penal Code, it will determine whether each definition should be added to “Division 1. Definitions” of “Title 1. Preliminary Provisions,” or kept close to the substantive material in which the definition is used. See CLRC Minutes (April 2007), p. 11; CLRC Memorandum 2007-19, Exhibit p. 1. In all likelihood, “Division 1. Definitions” will expand as this study progresses.

### **Scope of Definitions**

In directing the Commission to conduct this study, the Legislature asked the Commission to try to “use common definitions of terms” in preparing its

proposed legislation. 2006 Cal. Stat. res. ch. 73. The Legislature made clear, however, that the Commission should only use common definitions “to the extent compatible” with the objective of “[n]either expand[ing] nor contract[ing] the scope of criminal liability under current provisions.” *Id.*

In drafting “Title 1. Preliminary Provisions,” the staff used the following general principles to achieve those objectives:

#### **Principle #1**

- If an existing provision in Title 2 of Part 4 of the Penal Code defines a term for purposes of specified sections within Title 2, and
- that term is defined differently for purposes of other sections within Title 2, or
- is used elsewhere in Title 2 without being defined, then
- the provision that would continue the substance of the existing provision should define the term *only for purposes of* the provisions that would continue the substance of the sections specified in the existing provision.

#### **Example #1**

- Penal Code Section 12001(i) defines “application to purchase” as used “in Section 12071 or 12072.”
- The phrase “application to purchase” is also used elsewhere in Title 2 of Part 4 of the Penal Code, without definition. See Sections 12076, 12078.
- Consequently, proposed Penal Code Section 16000 would only define “application to purchase” for purposes of the provisions that would continue the substance of Sections 12071 and 12072. See Attachment p. 1.

#### **Rationale for Principle #1**

- The scope of the proposed new provision must be the same as the scope of the existing provision. If the scope of the proposed new provision were broader than the scope of the existing provision, the definition would extend to contexts where it did not previously apply, effecting a substantive change.

#### **Principle #2**

- If an existing provision in Title 2 of Part 4 of the Penal Code defines a term for purposes of specified sections within Title 2, and
- that term is not used elsewhere in Title 2, or

- the term is used elsewhere in Title 2 but always with the same definition,
- then the provision that would continue the substance of the existing provision should define the term *for purposes of the entirety of new Part 6*, not just for purposes of the provisions that would continue the substance of the sections specified in the existing provision.

#### **Example #2**

- Penal Code Section 12001(n) defines “personal handgun importer” as used “in this chapter.”
- Aside from Section 12001, Penal Code Sections 12072 and 12082 are the only provisions in Title 2 that use the term “personal handgun importer.” Both of those provisions are in the same chapter as Section 12001, so they are subject to the definition in Section 12001(n).
- Consequently, proposed Penal Code Section 16040 would define “personal handgun importer” for purposes of new Part 6, not just for purposes of the provisions that would continue the substance of the chapter containing Sections 12072 and 12082. See Attachment pp. 6-7.

#### **Rationale for Principle #2**

- Because the definition in question governs the only usages of the term in Title 2, the scope of the proposed new provision can be broader than the scope of the existing provision without effecting a substantive change. Extending the definition to the entirety of new Part 6 would help to ensure that it applies to future legislation (unless a different definition of the same term is really needed, in which case a special exception to the generally applicable definition could be crafted).

We encourage comment on these two general principles. Other details regarding the scope of the proposed new provisions are discussed in Staff Notes in the attached draft.

Respectfully submitted,

Barbara Gaal  
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## PROPOSED LEGISLATION

1 **Staff Note.** This is a work in progress. The material shown below may be changed.  
2 Additional material will be added as the Law Revision Commission proceeds with its study.

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

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

### 7 **Penal Code §§ 16000-\_\_\_\_\_ (added). Control of deadly weapons**

8 SEC. \_\_\_\_\_. Part 6 (commencing with Section 16000) is added to the Penal Code,  
9 to read:

## 10 PART 6. CONTROL OF DEADLY WEAPONS

### 11 TITLE 1. PRELIMINARY PROVISIONS

#### 12 DIVISION 1. DEFINITIONS

#### 13 **§ 16000. “Application to purchase”**

14 16000. As used in [Section 12071 or 12072], “application to purchase” means  
15 either of the following:

16 (a) The initial completion of the register by the purchaser, transferee, or person  
17 being loaned a firearm, as required by [subdivision (b) of Section 12076].

18 (b) The initial completion and transmission to the Department of Justice of the  
19 record of electronic or telephonic transfer by the dealer on the purchaser,  
20 transferee, or person being loaned a firearm, as required by [subdivision (c) of  
21 Section 12076].

22 **Comment.** Section 16000 continues former Section 12001(i) without substantive change.  
23 See Section 16015 (“firearm”).

24 **Staff Note.** Existing Section 12001(i) defines “application to purchase” as used “in Section  
25 12071 or 12072.” The phrase “application to purchase” is also used elsewhere in Title 2 of Part 4  
26 of the Penal Code, without definition. See Sections 12076, 12078. To avoid any possibility of a  
27 substantive change, proposed Section 16000 would only define “application to purchase” for  
28 purposes of the provisions that continue the substance of Sections 12071 and 12072.

29 Because Section 16000 would only define “application to purchase” for purposes of the  
30 provisions that continue the substance of Sections 12071 and 12072, it might be appropriate to  
31 place it in proximity to those provisions, instead of in “Division 1. Definitions” of “Title 1.  
32 Preliminary Provisions.” The staff suspects, however, that the term “application to purchase” is  
33 intended to have the same meaning in existing Sections 12076 and 12078 as in existing Sections  
34 12071 and 12072. If so, then sometime in the future the Legislature might want to make the  
35 definition applicable to the entirety of new Part 6 of the Penal Code. To ensure that the definition  
36 would be properly located if that change were made, we have included it in “Division 1.  
37 Definitions” of “Title 1. Preliminary Provisions.”

38 We encourage comment on this approach.

1 § 16005. “Basic firearms safety certificate”

2 16005. As used in this code, “basic firearms safety certificate” means a  
3 certificate issued by the Department of Justice pursuant to [Article 8 (commencing  
4 with Section 12800) of Chapter 6 of Title 2 of Part 4], before January 1, 2003.

5 **Comment.** Section 16005 continues former Section 12001(p) without substantive change.

6 **Staff Note.** Existing Section 12001(p) defines “basic firearms safety certificate” as used “in  
7 this code.” To ensure that there would be no substantive change, proposed Section 16005 would  
8 also define “basic firearms safety certificate” as used “in this code.”

9 § 16010. “BB device”

10 16010. As used in this part, the term “BB device” means any instrument that  
11 expels a projectile, such as a BB or a pellet, not exceeding 6mm caliber, through  
12 the force of air pressure, gas pressure, or spring action, or any spot marker gun.

13 **Comment.** Section 16010 continues former Section 12001(g) without substantive change.

14 **Staff Note.** Existing Section 12001(g) defines “BB device” for purposes of “Sections 12551  
15 and 12552.” By cross-referencing Section 12001(g), existing Section 12550(a) adopts the same  
16 definition for purposes of Article 1 (commencing with Section 12550) of Chapter 6 of Title 2 of  
17 Part 4 of the Penal Code. The term “BB device” is used in a number of provisions in that article  
18 (not just in Sections 12551 and 12552), but is not used elsewhere in Title 2.

19 Consequently, the definition can be applied to the entirety of new Part 6 of the Penal Code  
20 without effecting a substantive change. Proposed Section 16010 would therefore define “BB  
21 device” as used “in this part.”

22 We encourage comment on this approach.

23 § 16015. “Firearm”

24 16015. (a) As used in this part, “firearm” means any device, designed to be used  
25 as a weapon, from which is expelled through a barrel, a projectile by the force of  
26 any explosion or other form of combustion.

27 (b) As used in [Sections 12021, 12021.1, 12070, 12071, 12072, 12073, 12078,  
28 12101, and 12801 of this code], and Sections 8100, 8101, and 8103 of the Welfare  
29 and Institutions Code, the term “firearm” includes the frame or receiver of the  
30 weapon.

31 (c) As used in [Sections 12025 and 12031], the term “firearm” also shall include  
32 any rocket, rocket propelled projectile launcher, or similar device containing any  
33 explosive or incendiary material whether or not the device is designed for  
34 emergency or distress signaling purposes.

35 (d) As used in [Sections 12070, 12071, and paragraph (8) of subdivision (a), and  
36 subdivisions (b), (c), (d), and (f) of Section 12072], the term “firearm” does not  
37 include an unloaded firearm that is defined as an “antique firearm” in Section  
38 921(a)(16) of Title 18 of the United States Code.

39 **Comment.** Subdivision (a) of Section 16015 continues former Section 12001(b) without  
40 substantive change, for purposes of “Part 6. Control of Deadly Weapons.” See also Section  
41 \_\_\_\_\_, which continues former Section 12001(b) without substantive change, for purposes of  
42 “Title 2. Sentencing Enhancements” of “Part 4. Prevention of Crimes and Apprehension of  
43 Criminals.”

- 1 Subdivision (b) continues former Section 12001(c) without substantive change.
- 2 Subdivision (c) continues former Section 12001(d) without substantive change.
- 3 Subdivision (d) continues former Section 12001(e) without substantive change.

4 **☞ Staff Note.** Existing Section 12001(b) defines “firearm” as used “in this title” (i.e., Title 2 of  
5 Part 4 of the Penal Code). New Part 6 of the Penal Code would continue the substance of Title 2,  
6 except for the sentencing enhancement provisions (Penal Code §§ 12021.5-12022.95). The term  
7 “firearm” is currently used in some of the sentencing enhancement provisions, as well as  
8 elsewhere in Title 2.

9 Consequently, to ensure that Section 12001(b) is continued without substantive change, its  
10 substance should be included in: (1) a provision that defines “firearm” for purposes of the  
11 sentencing enhancement provisions, which will remain where they are in Title 2, and (2) a  
12 provision that defines “firearm” for purposes of new Part 6 of the Penal Code. Proposed Section  
13 16015 would serve the latter function; we have not yet drafted a provision to serve the former  
14 function.

15 We encourage comment on this approach.

16 **§ 16020. “Firearm capable of being concealed upon the person,” “pistol,” and “revolver”**

17 16020. (a) As used in this part, the terms “firearm capable of being concealed  
18 upon the person,” “pistol,” and “revolver” shall apply to and include any device  
19 designed to be used as a weapon, from which is expelled a projectile by the force  
20 of any explosion, or other form of combustion, and that has a barrel less than 16  
21 inches in length. These terms also include any device that has a barrel 16 inches or  
22 more in length which is designed to be interchanged with a barrel less than 16  
23 inches in length.

24 (b) Nothing shall prevent a device defined as a “firearm capable of being  
25 concealed upon the person,” “pistol,” or “revolver” from also being found to be a  
26 short-barreled shotgun or a short-barreled rifle.

27 **Comment.** Subdivision (a) of Section 16020 continues former Section 12001(a)(1) without  
28 substantive change.

29 With respect to a “firearm capable of being concealed upon the person,” “pistol,” and  
30 “revolver,” subdivision (b) continues former Section 12001(f) without substantive change. See  
31 also Section 16030(b), which continues former Section 12001(f) with respect to a “handgun.”

32 For guidance on what constitutes a short-barreled shotgun or short-barreled rifle, see [Section  
33 12020]. See also Section 16015 (“firearm”).

34 **☞ Staff Notes.**

35 We encourage comment on the following points:

36 (1) Existing Section 12001(a) says “[a]s used in this title, the terms ‘firearm capable of being  
37 concealed upon the person,’ ‘pistol,’ and ‘revolver’ shall apply to and include any device ....”  
38 Like existing Section 12001(a), proposed Section 16020(a) would refer to all three terms:  
39 “firearm capable of being concealed upon the person,” “pistol,” and “revolver.”

40 We considered the alternative of dealing with each term in a separate provision. We were  
41 concerned, however, that such an approach might inadvertently effect a substantive change. We  
42 therefore decided to keep all three terms together.

43 Consequently, proposed Section 16020 would deviate from the principle of listing terms in  
44 alphabetical order within “Division 1. Definitions” of “Title 1. Preliminary Provisions.” To help  
45 persons find the rules relating to a “pistol” or a “revolver,” we have included a provision entitled  
46 “pistol” (proposed Section 16045) and a provision entitled “revolver” (proposed Section 16050),  
47 which would simply cross-refer to proposed Section 16020.

1 (2) Existing Section 12001(a) governs how the terms “firearm capable of being concealed upon  
 2 the person,” “pistol,” and “revolver” are used “in this title” (i.e., Title 2 of Part 4 of the Penal  
 3 Code). New Part 6 of the Penal Code would continue the substance of Title 2, except for the  
 4 sentencing enhancement provisions (Penal Code §§ 12021.5-12022.95). The terms “firearm  
 5 capable of being concealed upon the person” and “revolver” are not used in any of the sentencing  
 6 enhancement provisions, but the term “pistol” is used in one of those provisions (Section  
 7 12021.5).

8 Consequently, to ensure that Section 12001(a) is continued without substantive change, its  
 9 substance should be included in: (1) a provision that governs how the term “pistol” is used in the  
 10 sentencing enhancement provisions, which will remain where they are in Title 2, and (2) a  
 11 provision that governs how the terms “firearm capable of being concealed upon the person”  
 12 “pistol,” and “revolver” are used in new Part 6 of the Penal Code. Proposed Section 16020 would  
 13 serve the latter function; we have not yet drafted a provision to serve the former function.

14 (3) Existing Section 12001(f) says “[n]othing shall prevent a device defined as a ‘firearm  
 15 capable of being concealed upon the person,’ ‘handgun,’ ‘pistol,’ or ‘revolver’ from also being  
 16 found to be a short-barreled shotgun or a short-barreled rifle ...” Proposed Section 16020(a)  
 17 would only refer to a “firearm capable of being concealed upon the person,” a “pistol,” and a  
 18 “revolver,” because it would continue the substance of existing Section 12001(a) and that  
 19 provision only mentions those items.

20 Consequently, we have drafted proposed Section 16020(b) such that it only refers to a “firearm  
 21 capable of being concealed upon the person,” a “pistol,” and a “revolver.” With respect to a  
 22 “handgun,” Section 12001(f) would be continued in proposed Section 16030(b).

23 (4) Existing Section 12001(f) says “[n]othing shall prevent a device defined as a ‘firearm  
 24 capable of being concealed upon the person,’ ... ‘pistol,’ or ‘revolver’ from also being found to be  
 25 a short-barreled shotgun or a short-barreled rifle, *as defined in Section 12020.*” (Emphasis added.)  
 26 Unlike existing Section 12001(f), proposed Section 16020 would not include a cross-reference to  
 27 the provision(s) defining short-barreled shotgun and short-barreled rifle.

28 Instead, the Comment would include such a cross-reference and would also state that “[w]ith  
 29 respect to a ‘firearm capable of being concealed upon the person,’ ‘pistol,’ and ‘revolver,’  
 30 subdivision (b) continues former Section 12001(f) without substantive change.” When we redraft  
 31 the provision defining short-barreled shotgun and short-barreled rifle (Section 12020), we will  
 32 make clear that the definition applies to proposed Section 16020.

33 We chose this approach because it would further the Legislature’s directive to “[a]void  
 34 unnecessary use of cross-references” while “[n]either expand[ing] nor contract[ing] the scope of  
 35 criminal liability under current provisions.” 2006 Cal. Stat. res. ch. 128. Because courts give great  
 36 weight to the Commission’s Comments, we think this would be sufficient to preserve the  
 37 substance of former Section 12001(f) with respect to a “firearm capable of being concealed upon  
 38 the person,” “pistol,” and “revolver.” See *2006-2007 Annual Report*, 36 Cal. L. Revision  
 39 Comm’n Reports 1, 18-24 (2006).

40 **§ 16025. “Gunsmith”**

41 16025. As used in this part, “gunsmith” means any person who is licensed as a  
 42 dealer pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the  
 43 United States Code and the regulations issued pursuant thereto, who is engaged  
 44 primarily in the business of repairing firearms, or making or fitting special barrels,  
 45 stocks, or trigger mechanisms to firearms, or the agent or employee of that person.

46 **Comment.** Section 16025 continues former Section 12001(r) without substantive change.

47 See Section 16015 (“firearm”).

48 **Staff Note.** Existing Section 12001(r) defines “gunsmith” as used “in this title” (i.e., Title 2  
 49 of Part 4 of the Penal Code). New Part 6 of the Penal Code would continue the substance of Title

1 2, except for the sentencing enhancement provisions (Penal Code §§ 12021.5-12022.95), which  
2 do not use the term “gunsmith.” Proposed Section 16025 would therefore define “gunsmith” as  
3 used “in this part.”

4 We encourage comment on this approach.

5 **§ 16030. “Handgun”**

6 16030. (a) As used in this part, the term “handgun” means any pistol, revolver,  
7 or firearm capable of being concealed upon the person.

8 (b) Nothing shall prevent a device defined as a “handgun” from also being found  
9 to be a short-barreled shotgun or a short-barreled rifle.

10 **Comment.** Subdivision (a) of Section 16030 continues former Section 12001(a)(2) without  
11 substantive change. See Sections 16015 (“firearm”), 16020 (“firearm capable of being concealed  
12 upon the person,” “pistol,” and “revolver”).

13 With respect to a “handgun,” subdivision (b) continues former Section 12001(f) without  
14 substantive change. See also Section 16020(b), which continues former Section 12001(f) with  
15 respect to a “firearm capable of being concealed upon the person,” “pistol,” and “revolver.”

16 For guidance on what constitutes a short-barreled shotgun or short-barreled rifle, see [Section  
17 12020].

18 **☞ Staff Notes.**

19 We encourage comment on the following points:

20 (1) Existing Section 12001(a)(2) defines the term “handgun” as used “in this title” (i.e., Title 2  
21 of Part 4 of the Penal Code). New Part 6 of the Penal Code would continue the substance of Title  
22 2, except for the sentencing enhancement provisions (Penal Code §§ 12021.5-12022.95), which  
23 do not use the term “handgun.” Proposed Section 16030 would therefore define “handgun” as  
24 used “in this part.”

25 (2) Existing Section 12001(f) says “[n]othing shall prevent a device defined as a ... ‘handgun’  
26 ... from also being found to be a short-barreled shotgun or a short-barreled rifle, *as defined in*  
27 *Section 12020.*” (Emphasis added.) Unlike existing Section 12001(f), proposed Section 16030  
28 would not include a cross-reference to the provision(s) defining short-barreled shotgun and short-  
29 barreled rifle.

30 Instead, the Comment would include such a cross-reference and would also state that “[w]ith  
31 respect to a ‘handgun,’ subdivision (b) continues former Section 12001(f) without substantive  
32 change.” When we redraft the provision defining short-barreled shotgun and short-barreled rifle  
33 (Section 12020), we will make clear that the definition applies to proposed Section 16030.

34 We chose this approach because it would further the Legislature’s directive to “[a]void  
35 unnecessary use of cross-references” while “[n]either expand[ing] nor contract[ing] the scope of  
36 criminal liability under current provisions.” 2006 Cal. Stat. res. ch. 128. Because courts give great  
37 weight to the Commission’s Comments, we think this would be sufficient to preserve the  
38 substance of former Section 12001(f) with respect to a “handgun.” See *2006-2007 Annual Report*,  
39 36 Cal. L. Revision Comm’n Reports 1, 18-24 (2006).

40 **§ 16035. “Handgun safety certificate”**

41 16035. As used in this code, “handgun safety certificate” means a certificate  
42 issued by the Department of Justice pursuant to [Article 8 (commencing with  
43 Section 12800) of Chapter 6 of Title 2 of Part 4, as that article is operative on or  
44 after January 1, 2003].

45 **Comment.** Section 16035 continues former Section 12001(q) without substantive change.  
46 See Section 16030 (“handgun”).

1 **☞ Staff Note.** Existing Section 12001(q) defines “handgun safety certificate” as used “in this  
2 code.” To ensure that there would be no substantive change, proposed Section 16035 would also  
3 define “handgun safety certificate” as used “in this code.”

4 **§ 16040. “Personal handgun importer”**

5 16040. (a) As used in this part, a “personal handgun importer” means an  
6 individual who meets all of the following criteria:

7 (1) The individual is not a person licensed pursuant to [Section 12071].

8 (2) The individual is not a licensed manufacturer of firearms pursuant to Chapter  
9 44 (commencing with Section 921) of Title 18 of the United States Code.

10 (3) The individual is not a licensed importer of firearms pursuant to Chapter 44  
11 (commencing with Section 921) of Title 18 of the United States Code and the  
12 regulations issued pursuant thereto.

13 (4) The individual is the owner of a pistol, revolver, or other firearm capable of  
14 being concealed upon the person.

15 (5) The individual acquired that pistol, revolver, or other firearm capable of  
16 being concealed upon the person outside of California.

17 (6) The individual moved into this state on or after January 1, 1998, as a resident  
18 of this state.

19 (7) The individual intends to possess that pistol, revolver, or other firearm  
20 capable of being concealed upon the person within this state on or after January 1,  
21 1998.

22 (8) The pistol, revolver, or other firearm capable of being concealed upon the  
23 person was not delivered to the individual by a person licensed pursuant to  
24 [Section 12071] who delivered that firearm following the procedures set forth in  
25 [Section 12071] and [subdivision (c) of Section 12072].

26 (9) The individual, while a resident of this state, had not previously reported  
27 ownership of that pistol, revolver, or other firearm capable of being concealed  
28 upon the person to the Department of Justice in a manner prescribed by the  
29 department that included information concerning the individual and a description  
30 of the firearm.

31 (10) The pistol, revolver, or other firearm capable of being concealed upon the  
32 person is not a firearm that is prohibited by [subdivision (a) of Section 12020].

33 (11) The pistol, revolver, or other firearm capable of being concealed upon the  
34 person is not an assault weapon.

35 (12) The pistol, revolver, or other firearm capable of being concealed upon the  
36 person is not a machinegun.

37 (13) The person is 18 years of age or older.

38 (b) For purposes of paragraph (6) of subdivision (a):

39 (1) Except as provided in paragraph (2), residency shall be determined in the  
40 same manner as is the case for establishing residency pursuant to Section 12505 of  
41 the Vehicle Code.

1 (2) In the case of a member of the Armed Forces of the United States, residency  
2 shall be deemed to be established when the individual was discharged from active  
3 service in this state.

4 **Comment.** Subdivision (a) of Section 16040 continues former Section 12001(n) without  
5 substantive change. For guidance on what constitutes an assault weapon, see [Sections 12276,  
6 12276.1]. For guidance on what constitutes a machinegun, see [Section 12200].

7 Subdivision (b) continues former Section 12001(o) without substantive change.

8 See Sections 16015 (“firearm”), 16020 (“firearm capable of being concealed upon the person,”  
9 “pistol,” and “revolver”), 16030 (“handgun”).

10 **Staff Notes.**

11 We encourage comment on the following points:

12 (1) Existing Section 12001(n) defines “personal handgun importer” as used “in this chapter.”  
13 Aside from Section 12001, existing Sections 12072 and 12082 are the only provisions in Title 2  
14 of Part 4 of the Penal Code that use the term “personal handgun importer.” Both of those  
15 provisions are in the same chapter as Section 12001.

16 Consequently, the definition in Section 12001(n) can be applied to the entirety of new Part 6 of  
17 the Penal Code without effecting a substantive change. Proposed Section 16040 would therefore  
18 define “personal handgun importer” as used “in this part.”

19 (2) Existing Section 12001(n)(11) says “[t]he pistol, revolver, or other firearm capable of being  
20 concealed upon the person is not an assault weapon, *as defined in Section 12276 or 12276.1.*”  
21 (Emphasis added.) Similarly, existing Section 12001(n)(12) says “[t]he pistol, revolver, or other  
22 firearm capable of being concealed upon the person is not a machinegun, *as defined in Section*  
23 *12200.*” (Emphasis added.) Unlike existing Section 12001(n)(11)-(12), proposed Section 16040  
24 would not cross-refer to the provisions defining an assault weapon and the provision defining a  
25 machinegun.

26 Instead, the Comment would include such cross-references and would also state that  
27 “[s]ubdivision (a) of Section 16040 continues former Section 12001(n) without substantive  
28 change.” When we redraft the provisions defining an assault weapon (Sections 12276 and  
29 12276.1) and the provision defining a machinegun (Section 12200), we will make clear that those  
30 definitions apply to proposed Section 16040.

31 We chose this approach because it would further the Legislature’s directive to “[a]void  
32 unnecessary use of cross-references” while “[n]either expand[ing] nor contract[ing] the scope of  
33 criminal liability under current provisions.” 2006 Cal. Stat. res. ch. 128. Because courts give great  
34 weight to the Commission’s Comments, we think this would be sufficient to preserve the  
35 substance of former Section 12001(n)(11)-(12). See *2006-2007 Annual Report*, 36 Cal. L.  
36 Revision Comm’n Reports 1, 18-24 (2006).

37 **§ 16045. “Pistol”**

38 16045. Use of the term “pistol” is governed by Section 16020.

39 **Comment.** Section 16045 is new. It is intended to help persons locate key rules relating to use  
40 of the term “pistol.”

41 **§ 16050. “Revolver”**

42 16050. Use of the term “revolver” is governed by Section 16020.

43 **Comment.** Section 16050 is new. It is intended to help persons locate key rules relating to use  
44 of the term “revolver.”

1 § 16055. “Wholesaler”

2 16055. (a) As used in this part, “wholesaler” means any person who is licensed  
3 as a dealer pursuant to Chapter 44 (commencing with Section 921) of Title 18 of  
4 the United States Code and the regulations issued pursuant thereto, who sells,  
5 transfers, or assigns firearms, or parts of firearms, to persons who are licensed as  
6 manufacturers, importers, or gunsmiths pursuant to Chapter 44 (commencing with  
7 Section 921) of Title 18 of the United States Code, or persons licensed pursuant to  
8 [Section 12071], and includes persons who receive finished parts of firearms and  
9 assemble them into completed or partially completed firearms in furtherance of  
10 that purpose.

11 (b) “Wholesaler” shall not include a manufacturer, importer, or gunsmith who is  
12 licensed to engage in those activities pursuant to Chapter 44 (commencing with  
13 Section 921) of Title 18 of the United States Code or a person licensed pursuant to  
14 [Section 12071] and the regulations issued pursuant thereto. A wholesaler also  
15 does not include a person dealing exclusively in grips, stocks, and other parts of  
16 firearms that are not frames or receivers thereof.

17 **Comment.** Section 16055 continues former Section 12001(h) without substantive change.

18 See Sections 16015 (“firearm”), 16025 (“gunsmith”).

19 **Staff Note.** Existing Section 12001(h) defines “wholesaler” as used “in this title” (i.e., Title 2  
20 of Part 4 of the Penal Code). New Part 6 of the Penal Code would continue the substance of Title  
21 2, except for the sentencing enhancement provisions (Penal Code §§ 12021.5-12022.95), which  
22 do not use the term “wholesaler.” Proposed Section 16055 would therefore define “wholesaler” as  
23 used “in this part.”

24 We encourage comment on this approach.