

First Supplement to Memorandum 2007-20

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

Penal Code Section 12028 contains definitions of "abuse," "deadly weapon," and "domestic violence." It would be possible to keep those definitions with the remaining substance of Section 12028 in "Division 4. Seizure of Firearm or Other Deadly Weapon at Scene of Domestic Violence" of "Title 2. Weapons Generally" of new Part 6 of the Penal Code.

It seems preferable, however, to place them in "Division 1. Definitions" of "Title 1. Preliminary Provisions." The attached draft takes that approach. As explained in Staff Notes in the draft, the definitions of "abuse" and "domestic violence" could be extended to the entirety of new Part 6 of the Penal Code without effecting a substantive change. The definition of "deadly weapon" could not be so extended without risk of a substantive change, because some provisions in Title 2 now use that phrase without definition. But it is possible that in the future, the Legislature will want to make Section 12028's definition of "deadly weapon" apply to the entirety of new Part 6. Placing the definition in "Division 1. Definitions" of "Title 1. Preliminary Provisions," while maintaining its current scope, would preserve existing law but ensure that the definition is properly located if the Legislature eventually decides to apply it to the entirety of Part 6.

Respectfully submitted,

Barbara Gaal
Chief Deputy Counsel

ADDITIONS TO “DIVISION 1. DEFINITIONS” OF
“TITLE 1. PRELIMINARY PROVISIONS”

1 **☞ Staff Note.** The following provisions would be inserted in numerical order in the draft of
2 “Division 1. Definitions” of “Title 1. Preliminary Provisions” that is attached to CLRC
3 Memorandum 2007-20.

4 In a future draft, we will readjust the numbering of “Division 1. Definitions” to start with
5 Section 16000 and proceed by intervals of 5.

6 **§ 15990. “Abuse”**

7 15990. As used in this part, “abuse” means any of the following:

8 (a) Intentionally or recklessly to cause or attempt to cause bodily injury.

9 (b) Sexual assault.

10 (c) To place a person in reasonable apprehension of imminent serious bodily
11 injury to that person or to another.

12 (d) To molest, attack, strike, stalk, destroy personal property, or violate the
13 terms of a domestic violence protective order issued pursuant to Part 4
14 (commencing with Section 6300) of Division 10 of the Family Code.

15 **Comment.** Section 15990 continues former Section 12028.5(a)(1) without substantive change.

16 **☞ Staff Note.** Existing Section 12028.5(a)(1) defines “abuse” as used “in this section.” The
17 term “abuse” is not used elsewhere in Title 2 of Part 4. Consequently, the definition in Section
18 12028.5 could be extended to the entirety of new Part 6 as shown in proposed Section 15990,
19 without effecting a substantive change. See CLRC Memorandum 2007-20, pp. 2-4.

20 **§ 16012. “Deadly weapon”**

21 16012. As used in Division 4 (commencing with Section 17300) of Title 2,
22 “deadly weapon” means any weapon, the possession or concealed carrying of
23 which is prohibited by any provision listed in Section 16700.

24 **Comment.** Section 16012 continues former Section 12028.5(a)(3) without substantive change.

25 **☞ Staff Note.** Existing Section 12028.5(a)(3) defines “deadly weapon” as used “in this
26 section.” The term “deadly weapon” is used without definition in other places in Title 2 of Part 4
27 (see Sections 12021.1, 12022.3, 12024, 12029, 12036, 12590). To avoid any possibility of a
28 substantive change, proposed Section 16012 would only define “deadly weapon” for purposes of
29 the provisions that continue the substance of Section 12028. See CLRC Memorandum 2007-20,
30 pp. 2-4.

31 Because proposed Section 16012 would only define “deadly weapon” for purposes of the
32 provisions that continue the substance of Section 12028, it might be appropriate to place it in
33 proximity to those provisions, instead of in “Division 1. Definitions” of “Title 1. Preliminary
34 Provisions.” It is possible, however, that the term “deadly weapon” is intended to have the same
35 meaning in the other sections that use the term as in Section 12028. If so, then sometime in the
36 future the Legislature might want to make the definition applicable to the entirety of new Part 6
37 of the Penal Code. To ensure that the definition would be properly located if that change were
38 made, we have included it in “Division 1. Definitions” of “Title 1. Preliminary Provisions.”

39 We encourage comment on this approach.

1 § 16013. “Domestic violence”

2 16013. “Domestic violence” means abuse perpetrated against any of the
3 following persons:

4 (a) A spouse or former spouse.

5 (b) A cohabitant or former cohabitant, as defined in Section 6209 of the Family
6 Code.

7 (c) A person with whom the respondent is having or has had a dating or
8 engagement relationship.

9 (d) A person with whom the respondent has had a child, where the presumption
10 applies that the male parent is the father of the child of the female parent under the
11 Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of
12 the Family Code).

13 (e) A child of a party or a child who is the subject of an action under the
14 Uniform Parentage Act, where the presumption applies that the male parent is the
15 father of the child to be protected.

16 (f) Any other person related by consanguinity or affinity within the second
17 degree.

18 **Comment.** Section 16013 continues former Section 12028.5(a)(2) without substantive change.

19 **Staff Note.** Existing Section 12028.5(a)(2) defines “domestic violence” as used “in this
20 section.” The term “domestic violence” is only used in one other provision Title 2 of Part 4:
21 Section 12022.7. That provision uses a different definition, but it is a sentencing enhancement
22 provision, so it would remain where presently located and would not be placed in new Part 6.
23 Consequently, the definition of “abuse” in Section 12028.5 could be extended to the entirety of
24 new Part 6 as shown in proposed Section 16012, without effecting a substantive change. See
25 CLRC Memorandum 2007-20, pp. 2-4.