

Memorandum 2007-21

**Nonsubstantive Reorganization of Deadly Weapon Statutes:
"Title 2. Weapons Generally" of New Part 6 of the Penal Code**

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, which would be divided into four different titles:

- Title 1. Preliminary Provisions
- Title 2. Weapons Generally
- Title 3. Weapons Other Than Firearms
- Title 4. Firearms and Similar Weapons

Attached for review is a draft of Divisions 1-4 of "Title 2. Weapons Generally." We have not yet drafted Divisions 5-6; we expect to have a complete draft of "Title 2. Weapons Generally" by August.

Staff Notes 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.

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.

For an outline of new Part 6 of the Penal Code, see CLRC Memorandum 2007-19. For a draft of "Title 1. Preliminary Provisions," see CLRC Memorandum 2007-20 and its First Supplement.

The text of Penal Code Sections 12001-12809 is reproduced in CLRC Memorandum 2007-17. For reference purposes, **Commissioners and other**

interested persons should bring their copy of this memorandum to the upcoming meeting.

Respectfully submitted,

Barbara Gaal
Chief Deputy Counsel

Contents

PROPOSED LEGISLATION	1
§ 830.95 (added). Picketing in uniform of peace officer.....	1
PART 6. CONTROL OF DEADLY WEAPONS	1
TITLE 2. WEAPONS GENERALLY	1
DIVISION 1. MISCELLANEOUS RULES RELATING TO WEAPONS GENERALLY	1
§ 16500. Bearing deadly weapon with intent to assault	2
§ 16505. Advertising sale of prohibited weapon or device	2
§ 16510. Picketing with deadly weapon	2
DIVISION 2. GENERALLY PROHIBITED WEAPONS	3
CHAPTER 1. DEFINITIONS	3
§ 16700. “Generally prohibited weapon”	3
CHAPTER 2. EXEMPTIONS	4
§ 16800. Exemption for antique firearm	4
§ 16805. Exemption for firearm or ammunition constituting curio or relic	5
§ 16810. Exemption for “any other weapon” in possession of person permitted to possess it under federal Gun Control Act of 1968	6
§ 16815. Exemption for historical society, museum, or institutional collection	6
§ 16820. Exemption for motion picture, television, video production, or entertainment event	6
§ 16825. Exemption for person who sells to historical society, museum, or institutional collection, or for purposes of entertainment event	7
§ 16830. Exemption for law enforcement or person who sells to law enforcement.....	7
§ 16835. Exemption for transportation of non-firearm to law enforcement for disposition according to law	7
§ 16840. Exemption for transportation of firearm to law enforcement for disposition according to law	8
§ 16845. Exemption for possession by forensic laboratory	8
CHAPTER 3. MISCELLANEOUS PROVISIONS	8
§ 16900. Distinct and separate offense	8
DIVISION 3. WEAPONS CONSTITUTING A NUISANCE	9
§ 17100. Firearm constituting nuisance.....	9
§ 17105. Surrender of specified weapons constituting nuisance	10
§ 17110. Disposal of weapons constituting nuisance	11
§ 17115. Treatment of other weapons constituting nuisance	11
DIVISION 4. SEIZURE OF FIREARM OR OTHER DEADLY WEAPON AT SCENE OF DOMESTIC VIOLENCE.....	12
CHAPTER 1. SEIZURE AND SUBSEQUENT PROCEDURES	12
§ 17300. Seizure of firearm or other deadly weapon at scene of domestic violence.....	12
§ 17305. Receipt for weapon.....	13
§ 17310. Delivery of deadly weapon seized by peace officer for community college or school district.....	13
§ 17315. Holding period.....	14
§ 17320. Return of stolen weapon	15
§ 17325. Sale or destruction of deadly weapon held longer than one year	15
CHAPTER 2. PROCEDURE WHERE AGENCY BELIEVES RETURN OF WEAPON WOULD CREATE DANGER	16
§ 17400. Petition to determine whether weapon should be returned.....	16
§ 17405. Notice of petition.....	16
§ 17410. Hearing on petition.....	17

§ 17415. Order of default	18
§ 17420. Petition for second hearing	18
CHAPTER 3. LIABILITY	19
§ 17500. No liability for act in good faith under this division	19



PROPOSED LEGISLATION

Staff Note. This is a work in progress. The material shown below may be changed. For an outline of new Part 6 of the Penal Code, see CLRC Memorandum 2007-19. For a draft of “Title 1. Preliminary Provisions,” see CLRC Memorandum 2007-20 and its First Supplement. Additional material will be drafted as the Law Revision Commission proceeds with its study.

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 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.

§ 830.95 (added). Picketing in uniform of peace officer

830.95. (a) Any person who wears the uniform of a peace officer while engaged in picketing, or other informational activities in a public place relating to a concerted refusal to work, is guilty of a misdemeanor, whether or not the person is a peace officer.

(b) This section shall not be construed to authorize or ratify any picketing or other informational activities not otherwise authorized by law.

Comment. Subdivision (a) of Section 830.95 continues former Section 12590(a)(4) without substantive change.

With respect to picketing in the uniform of a peace officer, subdivision (b) continues former Section 12590(b) without substantive change. See also Section 16510(b), which continues former Section 12590(b) with respect to certain other acts.

Staff Note. The substance of proposed Section 830.95 is now located in Section 12590, together with material relating to control of deadly weapons. It seems inappropriate to place a restriction on picketing in the uniform of a peace officer in the part of the code relating to control of deadly weapons. We suggest relocating it to “Chapter 4.5 Peace Officers” of Title 3 of Part 2, next to a provision requiring any uniformed peace officer to wear a badge, nameplate, or other identification device (Section 830.10).

Penal Code §§ 16000-_____ (added). Control of deadly weapons

SEC. _____. Part 6 (commencing with Section 16000) is added to the Penal Code, to read:

PART 6. CONTROL OF DEADLY WEAPONS

....

TITLE 2. WEAPONS GENERALLY

DIVISION 1. MISCELLANEOUS RULES RELATING TO WEAPONS GENERALLY

1 **§ 16500. Bearing deadly weapon with intent to assault**

2 16500. Every person having upon the person any deadly weapon, with intent to
3 assault another, is guilty of a misdemeanor.

4 **Comment.** Section 16500 continues former Section 12024 without substantive change.

5 **§ 16505. Advertising sale of prohibited weapon or device**

6 16505. It shall be unlawful for any person, as defined in [Section 12277], to
7 advertise the sale of any weapon or device, the possession of which is prohibited
8 by [Section 12020, 12220, 12280, 12303, 12320, 12321, 12355, or 12520], in any
9 newspaper, magazine, circular, form letter, or open publication that is published,
10 distributed, or circulated in this state, or on any billboard, card, label, or other
11 advertising medium, or by means of any other advertising device.

12 **Comment.** Section 16505 continues former Section 12020.5 without substantive change.

13 **§ 16510. Picketing with deadly weapon**

14 16510. (a) Any person who does any of the following acts while engaged in
15 picketing, or other informational activities in a public place relating to a concerted
16 refusal to work, is guilty of a misdemeanor:

17 (1) Carries concealed upon the person, or within any vehicle which is under the
18 person's control or direction, any pistol, revolver, or other firearm capable of
19 being concealed upon the person.

20 (2) Carries a loaded firearm upon the person or within any vehicle that is under
21 the person's control or direction.

22 (3) Carries a deadly weapon.

23 (b) This section shall not be construed to authorize or ratify any picketing or
24 other informational activities not otherwise authorized by law.

25 (c) [Section 12027] shall not be construed to authorize any conduct described in
26 paragraph (1) of subdivision (a), nor shall [subdivision (b) of Section 12031] be
27 construed to authorize any conduct described in paragraph (2) of subdivision (a).

28 **Comment.** Subdivision (a) of Section 16510 continues former Section 12590(a)(1)-(3) without
29 substantive change.

30 With respect to the acts enumerated in subdivision (a), subdivision (b) continues former
31 Section 12590(b) without substantive change. See also Section 830.95(b), which continues former
32 Section 12590(b) with respect to picketing in the uniform of a peace officer.

33 Subdivision (c) continues former Section 12590(c) without substantive change.

34 See Sections 16015 ("firearm"), 16020 ("firearm capable of being concealed upon the person,"
35 "pistol," and "revolver").

36 **Staff Note.** Existing Section 12590 relates to (1) picketing with a deadly weapon and (2)
37 picketing in the uniform of a peace officer. It seems inappropriate to place a restriction on
38 picketing in the uniform of a peace officer in the part of the code relating to control of deadly
39 weapons. We suggest relocating that restriction to "Chapter 4.5 Peace Officers" of Title 3 of Part
40 2, next to a provision requiring any uniformed peace officer to wear a badge, nameplate, or other
41 identification device. See proposed Section 830.95 above.

DIVISION 2. GENERALLY PROHIBITED WEAPONS

Staff Note. Existing Section 12020 is an extremely long provision that generally prohibits the manufacture, import, sale, gift, loan, or possession of a long list of weapons and associated equipment. To improve clarity and readability, the Commission decided to divide up the substance of Section 12020 according to the type of weapon or equipment covered. CLRC Minutes (April 2007), p. 10; see also CLRC Memorandum 2007-15, pp. 7-9. Implementation of that decision is discussed at pages 2-8 of CLRC Memorandum 2007-19.

This draft of “Division 2. Generally Prohibited Weapons” follows the approach recommended by the staff at pages 6-8 of CLRC Memorandum 2007-19 — i.e., it includes the substance of the broad exemptions to Section 12020. This approach is not as user-friendly as we would like, but it is the safest means of ensuring there is no inadvertent substantive change.

CHAPTER 1. DEFINITIONS

§ 16700. “Generally prohibited weapon”

16700. As used in this part, “generally prohibited weapon” means any of the following:

- (a) An air gauge knife, as prohibited by Section _____.
- (b) Ammunition that contains or consists of a flechette dart, as prohibited by Section _____.
- (c) A ballistic knife, as prohibited by Section _____.
- (d) A belt buckle knife, as prohibited by Section _____.
- (e) A bullet containing or carrying an explosive agent, as prohibited by Section _____.
- (f) A camouflaging firearm container, as prohibited by Section _____.
- (g) A cane gun, as prohibited by Section _____.
- (h) A cane sword, as prohibited by Section _____.
- (i) A concealed dirk or dagger, as prohibited by Section _____.
- (j) A concealed explosive substance, other than fixed ammunition, as prohibited by Section _____.
- (k) A firearm that is not immediately recognizable as a firearm, as prohibited by Section _____.
- (l) A large-capacity magazine, as prohibited by Section _____.
- (m) A leaded cane, as prohibited by Section _____.
- (n) A lipstick case knife, as prohibited by Section _____.
- (o) Metal knuckles, as prohibited by Section _____.
- (p) A metal military practice handgrenade or a metal replica handgrenade, as prohibited by Section _____.
- (q) A multiburst trigger activator, as prohibited by Section _____.
- (r) A nunchaku, as prohibited by Section _____.
- (s) A shobi-zue, as prohibited by Section _____.
- (t) A short-barreled rifle, as prohibited by Section _____.
- (u) A short-barreled shotgun, as prohibited by Section _____.

- 1 (v) A shuriken, as prohibited by Section _____.
- 2 (w) An unconventional pistol, as prohibited by Section _____.
- 3 (x) An undetectable firearm, as prohibited by Section _____.
- 4 (y) A wallet gun, as prohibited by Section _____.
- 5 (z) A writing pen knife, as prohibited by Section _____.
- 6 (aa) A zip gun, as prohibited by Section _____.
- 7 (bb) An instrument or weapon of the kind commonly known as a billy,
- 8 blackjack, sandbag, sandclub, sap, or slungshot, as prohibited by Section _____.

9 **Comment.** Section 16700 is new. It defines the term “generally prohibited weapon” for
10 drafting convenience. Each of the items listed in this section was formerly listed in subdivision
11 (a) of former Section 12020.

12 **Staff Note.** Because proposed Section 16700 is a definition, we considered the possibility of
13 placing its content in “Division 1. Definitions” of “Title 1. Preliminary Provisions.” We decided
14 to place it here instead, to provide context for the exemptions that follow.

15 CHAPTER 2. EXEMPTIONS

16 § 16800. Exemption for antique firearm

17 16800. (a) The provisions listed in Section 16700 do not apply to an antique
18 firearm.

19 (b) For purposes of this section, “antique firearm” means either of the following:

20 (1) Any firearm not designed or redesigned for using rimfire or conventional
21 center fire ignition with fixed ammunition and manufactured in or before 1898.
22 This includes any matchlock, flintlock, percussion cap, or similar type of ignition
23 system or replica thereof, whether actually manufactured before or after the year
24 1898.

25 (2) Any firearm using fixed ammunition manufactured in or before 1898, for
26 which ammunition is no longer manufactured in the United States and is not
27 readily available in the ordinary channels of commercial trade.

28 **Comment.** Subdivision (a) of Section 16800 continues the first sentence of former Section
29 12020(b)(5) without substantive change.

30 Subdivision (b) continues the second sentence of former Section 12020(b)(5) without
31 substantive change.

32 See Section 16015 (“firearm”).

33 **Staff Note.** In drafting proposed Section 16800, we considered the possibility of placing the
34 definition of “antique firearm” in “Division 1. Definitions” of “Title 1. Preliminary Provisions.”
35 We decided against that because the term “antique firearm” is used in a variety of different ways
36 in Title 2 of Part 4. Specifically,

37 (1) For purposes of Section 12020, “antique firearm” is defined as shown above in proposed
38 Section 16800.

39 (2) For purposes of Sections 12276.1 and 12278, “antique firearm” means “any firearm
40 manufactured prior to January 1, 1899.

41 (3) In Section 12071.1, the term “antique firearm” is used but is not defined.

1 (4) In Sections 12001, 12078(p)(6)(B), 12085(d)(3), 12088.8, and 12801(b), “antique firearm”
2 is defined for purposes of those sections by reference to 18 U.S.C. § 921(a)(16), which
3 says:

4 (16) The term “antique firearm” means —

5 (A) Any firearm (including any firearm with a matchlock, flintlock, percussion cap,
6 or similar type of ignition system) manufactured in or before 1898; or

7 (B) Any replica of any firearm described in subparagraph (A) if such replica —

8 (i) is not designed or redesigned for using rimfire or conventional centerfire fixed
9 ammunition, or

10 (ii) uses rimfire or conventional centerfire fixed ammunition which is no longer
11 manufactured in the United States and which is not readily available in the
12 ordinary channels of commercial trade; or

13 (C) Any muzzle loading rifle, muzzle loading shotgun, or muzzle loading pistol,
14 which is designed to use black powder, or a black powder substitute, and which
15 cannot use fixed ammunition. For purposes of this subparagraph, the term “antique
16 firearm” shall not include any weapon which incorporates a firearm frame or
17 receiver, any firearm which is converted into a muzzle loading weapon, or any
18 muzzle loading weapon which can be readily converted to fire fixed ammunition by
19 replacing the barrel, bolt, breechblock, or any combination thereof.

20 (5) Section 12301 defines “antique rifle” to be a firearm conforming to the definition of an
21 “antique firearm” in 27 C.F.R. § 479.11. The definition in 27 C.F.R. § 479.11 is much like
22 proposed Section 16800 but is worded somewhat differently:

23 **Antique firearm.** Any firearm not designed or redesigned for using rim fire or
24 conventional center fire ignition with fixed ammunition and manufactured in or before
25 1898 (including any matchlock, flintlock, percussion cap, or similar type of ignition system
26 or replica thereof, whether actually manufactured before or after the year 1898) and also
27 any firearm using fixed ammunition manufactured in or before 1898, for which ammunition
28 is no longer manufactured in the United States and is not readily available in the ordinary
29 channels of commercial trade.

30 Because several different definitions of “antique firearm” are used in Title 2 of Part 4, none of
31 those definitions could be extended to the entirety of new Part 6 of the Penal Code without
32 effecting a substantive change. For that reason, none of those definitions should be placed in
33 “Division 1. Definitions” of “Title 1. Preliminary Provisions.” At some point in the future,
34 however, the Legislature may want to examine whether the various usages of the term “antique
35 firearm” are really necessary or could be replaced with a single definition.

36 **§ 16805. Exemption for firearm or ammunition constituting curio or relic**

37 16805. (a) The provisions listed in Section 16700 do not apply to any firearm or
38 ammunition that is a curio or relic as defined in Section 478.11 of Title 27 of the
39 Code of Federal Regulations and that is in the possession of a person permitted to
40 possess the items under Chapter 44 (commencing with Section 921) of Title 18 of
41 the United States Code and the regulations issued pursuant thereto.

42 (b) Any person prohibited by [Section 12021, 12021.1, or 12101 of this code] or
43 Section 8100 or 8103 of the Welfare and Institutions Code from possessing
44 firearms or ammunition who obtains title to these items by bequest or intestate
45 succession may retain title for not more than one year, but actual possession of
46 these items at any time is punishable under [Section 12021, 12021.1, or 12101 of
47 this code] or Section 8100 or 8103 of the Welfare and Institutions Code. Within

1 the year, the person shall transfer title to the firearms or ammunition by sale, gift,
2 or other disposition. The exemption provided by subdivision (a) does not apply to
3 any person who violates this subdivision.

4 **Comment.** Section 16805 continues former Section 12020(b)(7) without substantive change.
5 See Section 16015 (“firearm”).

6 **§ 16810. Exemption for “any other weapon” in possession of person permitted to possess it**
7 **under federal Gun Control Act of 1968**

8 16810. (a) The provisions listed in Section 16700 do not apply to “any other
9 weapon” as defined in subsection (e) of Section 5845 of Title 26 of the United
10 States Code, which is in the possession of a person permitted to possess the
11 weapons under the federal Gun Control Act of 1968 (Public Law 90-618), as
12 amended, and the regulations issued pursuant thereto.

13 (b) Any person prohibited by [Section 12021, 12021.1, or 12101 of this code] or
14 Section 8100 or 8103 of the Welfare and Institutions Code from possessing these
15 weapons who obtains title to these weapons by bequest or intestate succession may
16 retain title for not more than one year, but actual possession of these weapons at
17 any time is punishable under [Section 12021, 12021.1, or 12101 of this code] or
18 Section 8100 or 8103 of the Welfare and Institutions Code. Within the year, the
19 person shall transfer title to the weapons by sale, gift, or other disposition. The
20 exemption provided by subdivision (a) does not apply to any person who violates
21 this subdivision.

22 (c) The exemption provided by this section does not apply to a pen gun.

23 **Comment.** Section 16810 continues former Section 12020(b)(8) without substantive change.

24 **§ 16815. Exemption for historical society, museum, or institutional collection**

25 16815. The provisions listed in Section 16700 do not apply to an instrument or
26 device that is possessed by a federal, state, or local historical society, museum, or
27 institutional collection that is open to the public if all of the following conditions
28 are satisfied:

29 (a) The instrument or device is properly housed.

30 (b) The instrument or device is secured from unauthorized handling.

31 (c) If the instrument or device is a firearm, it is unloaded.

32 **Comment.** Section 16815 continues former Section 12020(b)(9) without substantive change.
33 See Section 16015 (“firearm”).

34 **§ 16820. Exemption for motion picture, television, video production, or entertainment event**

35 16820. The provisions listed in Section 16700 do not apply to an instrument or
36 device, other than a short-barreled shotgun or a short-barreled rifle, which is
37 possessed or used during the course of a motion picture, television, or video
38 production or entertainment event by an authorized participant therein in the
39 course of making that production or event or by an authorized employee or agent
40 of the entity producing that production or event.

1 **Comment.** Section 16820 continues former Section 12020(b)(10) without substantive change.

2 **§ 16825. Exemption for person who sells to historical society, museum, or institutional**
3 **collection, or for purposes of entertainment event**

4 16825. The provisions listed in Section 16700 do not apply to an instrument or
5 device, other than a short-barreled shotgun or a short-barreled rifle, which is sold
6 by, manufactured by, exposed or kept for sale by, possessed by, imported by, or
7 lent by a person who is in the business of selling instruments or devices listed in
8 Section 16700 solely to the entities referred to in Sections 16815 and 16820 when
9 engaging in transactions with those entities.

10 **Comment.** Section 16825 continues former Section 12020(b)(11) without substantive change.

11 **§ 16830. Exemption for law enforcement or person who sells to law enforcement**

12 16830. The provisions listed in Section 16700 do not apply to any of the
13 following:

14 (a) The sale to, possession of, or purchase of any weapon, device, or
15 ammunition, other than a short-barreled rifle or a short-barreled shotgun, by any
16 federal, state, county, city and county, or city agency that is charged with the
17 enforcement of any law for use in the discharge of its official duties.

18 (b) The possession of any weapon, device, or ammunition, other than a short-
19 barreled rifle or short-barreled shotgun, by a peace officer of any federal, state,
20 county, city and county, or city agency that is charged with the enforcement of any
21 law, when the officer is on duty and the use is authorized by the agency and is
22 within the course and scope of the officer's duties.

23 (c) A weapon, device, or ammunition, other than a short-barreled rifle or a short-
24 barreled shotgun, which is sold by, manufactured by, exposed or kept for sale by,
25 possessed by, imported by, or lent by, a person who is in the business of selling
26 weapons, devices, and ammunition listed in Section 16700 solely to the entities
27 referred to in subdivision (a) when engaging in transactions with those entities.

28 **Comment.** Subdivisions (a) and (b) of Section 16830 continue former Section 12020(b)(12)
29 without substantive change.

30 Subdivision (c) continues former Section 12020(b)(13) without substantive change.

31 **§ 16835. Exemption for transportation of non-firearm to law enforcement for disposition**
32 **according to law**

33 16835. The provisions listed in Section 16700 do not apply to an instrument,
34 ammunition, weapon, or device that is not a firearm and is found and possessed by
35 a person who meets all of the following:

36 (A) The person is not prohibited from possessing firearms or ammunition under
37 [Section 12021 or 12021.1 or paragraph (1) of subdivision (b) of Section 12316 of
38 this code] or Section 8100 or 8103 of the Welfare and Institutions Code.

39 (B) The person possessed the instrument, ammunition, weapon, or device no
40 longer than was necessary to deliver or transport it to a law enforcement agency
41 for that agency's disposition according to law.

1 (C) If the person is transporting the item, the person is transporting it to a law
2 enforcement agency for disposition according to law.

3 **Comment.** Section 16835 continues former Section 12020(b)(16) without substantive change.
4 See Section 16015 (“firearm”).

5 **§ 16840. Exemption for transportation of firearm to law enforcement for disposition**
6 **according to law**

7 16840. The provisions listed in Section 16700 do not apply to a firearm, other
8 than a short-barreled rifle or short-barreled shotgun, which is found and possessed
9 by a person who meets all of the following:

10 (a) The person is not prohibited from possessing firearms or ammunition under
11 [Section 12021 or 12021.1 or paragraph (1) of subdivision (b) of Section 12316 of
12 this code] or Section 8100 or 8103 of the Welfare and Institutions Code.

13 (b) The person possessed the firearm no longer than was necessary to deliver or
14 transport it to a law enforcement agency for that agency’s disposition according to
15 law.

16 (c) If the person is transporting the firearm, the person is transporting it to a law
17 enforcement agency for disposition according to law.

18 (d) Before transporting the firearm to a law enforcement agency, the person has
19 given prior notice to that law enforcement agency that the person is transporting
20 the firearm to that law enforcement agency for disposition according to law.

21 (e) The firearm is transported in a locked container as defined in [subdivision (d)
22 of Section 12026.2].

23 **Comment.** Section 16840 continues former Section 12020(b)(17) without substantive change.
24 See Section 16015 (“firearm”).

25 **§ 16845. Exemption for possession by forensic laboratory**

26 16845. The provisions listed in Section 16700 do not apply to the possession of
27 any weapon, device, or ammunition by a forensic laboratory or by any authorized
28 agent or employee thereof in the course and scope of the person’s authorized
29 activities.

30 **Comment.** Section 16845 continues former Section 12020(b)(17) without substantive change.

31 **CHAPTER 3. MISCELLANEOUS PROVISIONS**

32 **§ 16900. Distinct and separate offense**

33 16900. For purposes of the provisions listed in Section 16700, a violation as to
34 each firearm, weapon, or device enumerated in any of those provisions shall
35 constitute a distinct and separate offense.

36 **Comment.** Section 16900 continues former Section 12001(l) without substantive change.

37 **Staff Note.** Section 12001(l) states:

38 (l) For purposes of Section 12020, a violation of that section as to each firearm, weapon, or
39 device enumerated therein shall constitute a distinct and separate offense.

1 Revising the material in this section in a nonsubstantive manner to reflect the proposed reorganization of
2 Section 12020 (which we have not yet completely drafted) is tricky. We encourage comment on whether
3 proposed Section 16900 would achieve that objective and whether there would be a better means of
4 achieving that objective.

5 The staff has not yet researched how the courts are interpreting Section 12001(l). It may be necessary
6 to conduct such research before deciding how to preserve the substance of that provision. Persons familiar
7 with the case law in this area are invited to alert us to any relevant decisions.

8 DIVISION 3. WEAPONS CONSTITUTING A NUISANCE

9  **Staff Note.** Existing Sections 12028 and 12029 specify that certain weapons constitute a
10 nuisance and provide procedures for surrender and disposal of such weapons. To improve clarity
11 and readability, the Commission decided to divide up the substance of these provisions according
12 to the type of weapon or equipment covered, with generally applicable language placed in “Title
13 2. Weapons Generally.” CLRC Minutes (April 2007), p. 10; see also CLRC Memorandum 2007-
14 15, pp. 9-12. Implementation of that approach is discussed at pages 8-10 of CLRC Memorandum
15 2007-19.

16 § 17100. Firearm constituting nuisance

17 17100. (a) Except as provided in subdivision (c), a firearm of any nature owned
18 or possessed in violation of [Section 12021, 12021.1, or 12101 of this code], or
19 Chapter 3 (commencing with Section 8100) of Division 5 of the Welfare and
20 Institutions Code, or used in the commission of any misdemeanor as provided in
21 this code, any felony, or an attempt to commit any misdemeanor as provided in
22 this code or any felony, is, upon a conviction of the defendant or upon a juvenile
23 court finding that an offense that would be a misdemeanor or felony if committed
24 by an adult was committed or attempted by the juvenile with the use of a firearm,
25 a nuisance.

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

28 (c) A firearm is not a nuisance under this section if the firearm owner disposes
29 of the firearm pursuant to [paragraph (2) of subdivision (d) of Section 12021].

30 (d) This section does not apply to any firearm in the possession of the
31 Department of Fish and Game or which was used in the violation of any provision
32 of the Fish and Game Code or any regulation adopted pursuant thereto, or which is
33 forfeited pursuant to Section 5008.6 of the Public Resources Code.

34 **Comment.** Subdivision (a) of Section 17100 continues the first sentence of former Section
35 12028(b)(1) without substantive change.

36 Subdivision (b) continues the second sentence of former Section 12028(b)(1) without
37 substantive change.

38 Subdivision (c) continues former Section 12028(b)(2) without substantive change.

39 For purposes of this section, subdivision (d) continues former Section 12028(e) without
40 substantive change. See also Section _____, which continues former Section 12028(e) with
41 regard to unlawful concealed carrying of a handgun as a nuisance.

42 See Section 16015 (“firearm”).

43 **Staff Notes.**

44 We encourage comment on the following points:

1 (1) Instead of placing proposed Section 17100 in “Division 3. Weapons Constituting a
2 Nuisance” of “Title 2. Weapons Generally,” the Commission could place the provision in
3 “Division 9. Miscellaneous Rules Relating to Firearms Generally” of “Title 4. Firearms and
4 Similar Weapons.” Would that be an improvement?

5 (2) Subdivision (e) of Section 12028 provides:

6 (e) This section does not apply to any firearm in the possession of the Department of Fish
7 and Game or which was used in the violation of any provision of the Fish and Game Code or
8 any regulation adopted pursuant thereto, or which is forfeited pursuant to Section 5008.6 of
9 the Public Resources Code.

10 The exception stated in this subdivision potentially applies to (1) whether a firearm constitutes a
11 nuisance under Section 12028(b), which would be continued without substantive change in
12 proposed Section 17100(a)-(c), and (2) whether unlawful concealed carrying of a handgun
13 constitutes a nuisance under Section 12028(a), the pertinent part of which we plan to continue in
14 “Chapter 2. Carrying Concealed Firearm” of “Division 5. Carrying Firearms” of “Title 4.
15 Firearms and Similar Weapons” of new Part 6.

16 Consequently, the substance of Section 12028(e) should be continued both in proposed Section
17 17100 (as shown above) and in the new section that continues the substance of Section 12028(a)
18 with regard to unlawful concealed carrying of a handgun as a nuisance. The outline attached to
19 CLRC Memorandum 2007-19 should therefore be revised to list Section 12028(e) under “Chapter
20 2. Carrying Concealed Firearm” of “Division 5. Carrying Firearms” of “Title 4. Firearms and
21 Similar Weapons.”

22 We originally planned to continue the substance of Section 12028(e) only in “Division 3.
23 Weapons Constituting a Nuisance” of “Title 2. Weapons Generally,” and cross-reference that
24 material in “Chapter 2. Carrying Concealed Firearm” of “Division 5. Carrying Firearms” of “Title
25 4. Firearms and Similar Weapons.” We now think it would be simpler and more readily
26 comprehensible to repeat the material in both places.

27 **§ 17105. Surrender of specified weapons constituting nuisance**

28 17105. (a) Any weapon described in [Section 12028(a)], or, upon conviction of
29 the defendant or upon a juvenile court finding that an offense that would be a
30 misdemeanor or felony if committed by an adult was committed or attempted by
31 the juvenile with the use of a firearm, any weapon described in Section 17100,
32 shall be surrendered to one of the following:

33 (1) The sheriff of a county.

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

36 (3) The chief of police of any campus of the University of California or the
37 California State University.

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

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

42 **Comment.** Subdivision (a) of Section 17105 continues the first sentence of former Section
43 12028(c) without substantive change.

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

46 See Section 16015 (“firearm”).

1 **§ 17110. Disposal of weapons constituting nuisance**

2 17110. (a) An officer to whom weapons are surrendered under Section 17105,
3 except upon the certificate of a judge of a court of record, or of the district
4 attorney of the county, that the retention thereof is necessary or proper to the ends
5 of justice, may annually, between the 1st and 10th days of July, in each year, offer
6 the weapons, which the officer in charge of them considers to have value with
7 respect to sporting, recreational, or collection purposes, for sale at public auction
8 to persons licensed pursuant to [Section 12071] to engage in businesses involving
9 any weapon purchased.

10 (b) If any weapon has been stolen and is thereafter recovered from the thief or
11 the thief's transferee, or is used in a manner as to constitute a nuisance under
12 [Section 12028(a)] or Section 17100 without the prior knowledge of its lawful
13 owner that it would be so used, it shall not be offered for sale under subdivision
14 (a) but shall be restored to the lawful owner, as soon as its use as evidence has
15 been served, upon the lawful owner's identification of the weapon and proof of
16 ownership, and after the law enforcement agency has complied with [Section
17 12021.3].

18 (c) If, under this section, a weapon is not of the type that can be sold to the
19 public, generally, or is not sold under subdivision (b), the weapon, in the month of
20 July, next succeeding, or sooner, if necessary to conserve local resources,
21 including space and utilization of personnel who maintain files and security of
22 those weapons, shall be destroyed so that it can no longer be used as such a
23 weapon, except upon the certificate of a judge of a court of record, or of the
24 district attorney of the county, that the retention of it is necessary or proper to the
25 ends of justice.

26 (d) No stolen weapon shall be sold or destroyed pursuant to subdivision (b) or
27 (c) unless reasonable notice is given to its lawful owner, if the lawful owner's
28 identity and address can be reasonably ascertained.

29 **Comment.** Subdivision (a) of Section 17110 continues the third sentence of former Section
30 12028(c) without substantive change.

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

33 Subdivision (c) continues former Section 12028(d) without substantive change.

34 Subdivision (d) continues former Section 12028(f) without substantive change.

35 **§ 17115. Treatment of other weapons constituting nuisance**

36 17115. (a) The Attorney General, district attorney, or city attorney may bring an
37 action to enjoin the manufacture of, importation of, keeping for sale of, offering or
38 exposing for sale, giving, lending, or possession of, any item that constitutes a
39 nuisance under [Section 12029].

40 (b) These weapons shall be subject to confiscation and summary destruction
41 whenever found within the state.

42 (c) These weapons shall be destroyed in the same manner described in Section
43 17110, except that upon the certification of a judge or of the district attorney that

1 the ends of justice will be served thereby, the weapon shall be preserved until the
2 necessity for its use ceases.

3 **Comment.** Subdivision (a) of Section 17115 continues the end of the first sentence of former
4 Section 12029 without substantive change.

5 Subdivision (b) continues the second sentence of former Section 12029 without substantive
6 change.

7 Subdivision (c) continues the third sentence of former Section 12029 without substantive
8 change.

9 DIVISION 4. SEIZURE OF FIREARM OR OTHER DEADLY
10 WEAPON AT SCENE OF DOMESTIC VIOLENCE

11 CHAPTER 1. SEIZURE AND SUBSEQUENT PROCEDURES

12 **§ 17300. Seizure of firearm or other deadly weapon at scene of domestic violence**

13 17300. If any of the following persons is at the scene of a domestic violence
14 incident involving a threat to human life or a physical assault, that person shall
15 take temporary custody of any firearm or other deadly weapon in plain sight or
16 discovered pursuant to a consensual or other lawful search as necessary for the
17 protection of the peace officer or other persons present:

18 (a) A sheriff, undersheriff, deputy sheriff, marshal, deputy marshal, or police
19 officer of a city, as defined in subdivision (a) of Section 830.1.

20 (b) A peace officer of the Department of the California Highway Patrol, as
21 defined in subdivision (a) of Section 830.2.

22 (c) A member of the University of California Police Department, as defined in
23 subdivision (b) of Section 830.2.

24 (d) An officer listed in Section 830.6, while acting in the course and scope of the
25 officer's employment as a peace officer.

26 (e) A member of a California State University Police Department, as defined in
27 subdivision (c) of Section 830.2.

28 (f) A peace officer of the Department of Parks and Recreation, as defined in
29 subdivision (f) of Section 830.2.

30 (g) A peace officer, as defined in subdivision (d) of Section 830.31.

31 (h) A peace officer, as defined in subdivisions (a) and (b) of Section 830.32.

32 (i) A peace officer, as defined in Section 830.5.

33 **Comment.** Section 17300 continues the first sentence of former Section 12028.5(b) without
34 substantive change.

35 For what constitutes a domestic violence incident, see Sections 15990 ("abuse"), 16013
36 ("domestic violence"). For what constitutes a deadly weapon, see Section 16012 ("deadly
37 weapon"); see also Section 16015 ("firearm").

38 See Sections 17305 (receipt for weapon), 17310 (delivery of deadly weapon seized by peace
39 officer for community college or school district), 17315 (holding period), 17320 (return of stolen
40 weapon), 17325 (sale or destruction of deadly weapon held longer than one year), 17500 (no
41 liability for act in good faith under this division). For procedures applicable when a law

1 enforcement agency has reasonable cause to believe that return of a weapon would endanger the
2 victim of a domestic violence incident or a person who reported the incident, see Sections 17400-
3 17420.

4 **§ 17305. Receipt for weapon**

5 17305. (a) Upon taking custody of a firearm or other deadly weapon pursuant to
6 this division, the officer shall give the owner or person who possessed the firearm
7 a receipt.

8 (b) The receipt shall describe the firearm or other deadly weapon and list any
9 identification or serial number on the firearm.

10 (c) The receipt shall indicate where the firearm or other deadly weapon can be
11 recovered, the time limit for recovery as required by this division, and the date
12 after which the owner or possessor can recover the firearm or other deadly
13 weapon.

14 **Comment.** Subdivision (a) of Section 17305 continues the second sentence of former Section
15 12028.5(b) without substantive change.

16 Subdivision (b) continues the third sentence of former Section 12028.5(b) without substantive
17 change.

18 Subdivision (c) continues the fourth sentence of former Section 12028.5(b) without substantive
19 change.

20 For what constitutes a deadly weapon, see Section 16012 (“deadly weapon”). See also Section
21 16015 (“firearm”).

22 See Sections 17300 (seizure of firearm or other deadly weapon at scene of domestic violence),
23 17310 (delivery of deadly weapon seized by peace officer for community college or school
24 district), 17315 (holding period), 17320 (return of stolen weapon), 17325 (sale or destruction of
25 deadly weapon held longer than one year), 17500 (no liability for act in good faith under this
26 division). For procedures applicable when a law enforcement agency has reasonable cause to
27 believe that return of a weapon would endanger the victim of a domestic violence incident or a
28 person who reported the incident, see Sections 17400-17420.

29 **Staff Note.** In some places, existing Section 12028.5 refers to “the owner or person who
30 possessed the firearm” or to “the owner or person who was in lawful possession.” See, e.g., subd.
31 (b), 1st sent. of (e), (g), (j). In other places, the provision only refers to “the owner” or to “the
32 lawful owner.” See, e.g., subd. (d), 2d sent. of (e), (f). It is not clear why the provision is
33 inconsistent with respect to including a person who lawfully possessed a weapon; we suspect the
34 intent was to include such a person in all instances.

35 Because this is a strictly nonsubstantive project, this draft would preserve the existing language
36 rather than attempting to impose consistency on this point. The matter might warrant future
37 legislative attention.

38 In working on this study, it might be helpful for the Commission to compile a list of minor
39 clean-up issues like this one, and include the list in its report to the Governor and the Legislature.
40 We invite comment on whether preparation of such a list is a good idea.

41 **§ 17310. Delivery of deadly weapon seized by peace officer for community college or school**
42 **district**

43 17310. Any peace officer, as defined in subdivisions (a) and (b) of Section
44 830.32, who takes custody of a firearm or deadly weapon pursuant to this division,
45 shall deliver the firearm within 24 hours to the city police department or county
46 sheriff’s office in the jurisdiction where the college or school is located.

1 **Comment.** Section 17310 continues former Section 12028.5(c) without substantive change.
2 For what constitutes a deadly weapon, see Section 16012 (“deadly weapon”). See also Section
3 16015 (“firearm”).

4 See Sections 17300 (seizure of firearm or other deadly weapon at scene of domestic violence),
5 17305 (receipt for weapon), 17315 (holding period), 17320 (return of stolen weapon), 17325 (sale
6 or destruction of deadly weapon held longer than one year), 17500 (no liability for act in good
7 faith under this division). For procedures applicable when a law enforcement agency has
8 reasonable cause to believe that return of a weapon would endanger the victim of a domestic
9 violence incident or a person who reported the incident, see Sections 17400-17420.

10 **Staff Note.** Existing Section 12028.5(c) says:

11 (c) Any peace officer, as defined in subdivisions (a) and (b) of Section 830.32, who takes
12 custody of *a firearm or deadly weapon* pursuant to this section shall deliver *the firearm*
13 within 24 hours to the city police department or county sheriff’s office in the jurisdiction
14 where the college or school is located.

15 (Emphasis added.) Read literally, the section only requires delivery of a firearm, not other deadly
16 weapons. It seems probable, however, that the section was meant to require delivery of any
17 deadly weapon. In all likelihood, the phrase “or deadly weapon” was accidentally omitted after
18 the second reference to “firearm.”

19 To avoid any risk of a substantive change, proposed Section 17310 would track the language of
20 the existing provision, requiring the peace officer to deliver “the firearm.” This is the safest
21 approach, least likely to raise concerns about substantively changing existing law.

22 In working on this study, it might be helpful for the Commission to compile a list of minor
23 clean-up issues like this one, and include the list in its report to the Governor and the Legislature.
24 We invite comment on whether preparation of such a list is a good idea.

25 **§ 17315. Holding period**

26 17315. (a) No firearm or other deadly weapon taken into custody pursuant to
27 this division shall be held less than 48 hours.

28 (b) Except as provided in 17400, if a firearm or other deadly weapon is not
29 retained for use as evidence related to criminal charges brought as a result of the
30 domestic violence incident or is not retained because it was illegally possessed, the
31 firearm or other deadly weapon shall be made available to the owner or person
32 who was in lawful possession 48 hours after the seizure, or as soon thereafter as
33 possible, but no later than five business days after the owner or person who was in
34 lawful possession demonstrates compliance with [Section 12021.3].

35 (c) In any civil action or proceeding for the return of firearms or ammunition or
36 other deadly weapon seized by any state or local law enforcement agency and not
37 returned within five business days after the initial seizure, except as provided in
38 Section 17320, the court shall allow reasonable attorney’s fees to the prevailing
39 party.

40 **Comment.** Subdivision (a) of Section 17315 continues the fifth sentence of former Section
41 12028.5(b) without substantive change.

42 Subdivision (b) continues the sixth sentence of former Section 12028.5(b) without substantive
43 change.

44 Subdivision (c) continues the seventh sentence of former Section 12028.5(b) without
45 substantive change.

1 For what constitutes a domestic violence incident, see Sections 15990 (“abuse”), 16013
2 (“domestic violence”). For what constitutes a deadly weapon, see Section 16012 (“deadly
3 weapon”); see also Section 16015 (“firearm”).

4 See Sections 17300 (seizure of firearm or other deadly weapon at scene of domestic violence),
5 17305 (receipt for weapon), 17310 (delivery of deadly weapon seized by peace officer for
6 community college or school district), 17320 (return of stolen weapon), 17325 (sale or
7 destruction of deadly weapon held longer than one year), 17500 (no liability for act in good faith
8 under this division). For procedures applicable when a law enforcement agency has reasonable
9 cause to believe that return of a weapon would endanger the victim of a domestic violence
10 incident or a person who reported the incident, see Sections 17400-17420.

11 **§ 17320. Return of stolen weapon**

12 17320. If a firearm or other deadly weapon has been stolen and has been seized
13 pursuant to this division, it shall be restored to the lawful owner upon satisfaction
14 of all of the following conditions:

15 (a) Its use for evidence has been served.

16 (b) The owner identifies the firearm or other deadly weapon and provides proof
17 of ownership.

18 (c) The law enforcement agency has complied with Section 12021.3.

19 **Comment.** Section 17320 continues former Section 12028.5(d) without substantive change.

20 For what constitutes a deadly weapon, see Section 16012 (“deadly weapon”); see also Section
21 16015 (“firearm”).

22 See Sections 17300 (seizure of firearm or other deadly weapon at scene of domestic violence),
23 17305 (receipt for weapon), 17310 (delivery of deadly weapon seized by peace officer for
24 community college or school district), 17315 (holding period), 17325 (sale or destruction of
25 deadly weapon held longer than one year), 17500 (no liability for act in good faith under this
26 division). For procedures applicable when a law enforcement agency has reasonable cause to
27 believe that return of a weapon would endanger the victim of a domestic violence incident or a
28 person who reported the incident, see Sections 17400-17420.

29 **§ 17325. Sale or destruction of deadly weapon held longer than one year**

30 17325. (a) Any firearm or other deadly weapon that has been taken into custody
31 and held by any of the following law enforcement authorities for longer than 12
32 months, and has not been recovered by the owner or person who had lawful
33 possession at the time it was taken into custody, shall be considered a nuisance
34 and sold or destroyed as provided in Section 17110:

35 (1) A police, university police, or sheriff’s department.

36 (2) A marshal’s office.

37 (3) A peace officer of the Department of the California Highway Patrol, as
38 defined in subdivision (a) of Section 830.2.

39 (4) A peace officer of the Department of Parks and Recreation, as defined in
40 subdivision (f) of Section 830.2.

41 (5) A peace officer, as defined in subdivision (d) of Section 830.31.

42 (6) A peace officer, as defined in Section 830.5.

43 (b) If a firearm or other deadly weapon is not recovered within 12 months due to
44 an extended hearing process as provided in Section § 17420, it is not subject to

1 destruction until the court issues a decision, and then only if the court does not
2 order the return of the firearm or other deadly weapon to the owner.

3 **Comment.** Section 17325 continues former Section 12028.5(e) without substantive change.

4 For what constitutes a deadly weapon, see Section 16012 (“deadly weapon”); see also Section
5 16015 (“firearm”).

6 See Sections 17300 (seizure of firearm or other deadly weapon at scene of domestic violence),
7 17305 (receipt for weapon), 17310 (delivery of deadly weapon seized by peace officer for
8 community college or school district), 17315 (holding period), 17320 (return of stolen weapon),
9 17500 (no liability for act in good faith under this division). For procedures applicable when a
10 law enforcement agency has reasonable cause to believe that return of a weapon would endanger
11 the victim of a domestic violence incident or a person who reported the incident, see Sections
12 17400-17420.

13 CHAPTER 2. PROCEDURE WHERE AGENCY BELIEVES RETURN OF
14 WEAPON WOULD CREATE DANGER

15 **§ 17400. Petition to determine whether weapon should be returned**

16 17400. (a) When a law enforcement agency has reasonable cause to believe that
17 the return of a firearm or other deadly weapon seized under this division would be
18 likely to result in endangering the victim or the person who reported the assault or
19 threat, the agency shall so advise the owner of the firearm or other deadly weapon,
20 and within 60 days of the date of seizure, initiate a petition in superior court to
21 determine if the firearm or other deadly weapon should be returned.

22 (b) The law enforcement agency may make an ex parte application stating good
23 cause for an order extending the time to file a petition.

24 (c) Including any extension of time granted in response to an ex parte request, a
25 petition must be filed within 90 days of the date of seizure of the firearm or other
26 deadly weapon.

27 **Comment.** Section 17400 continues former Section 12028.5(f) without substantive change.

28 For what constitutes a deadly weapon, see Section 16012 (“deadly weapon”); see also Section
29 16015 (“firearm”).

30 See Sections 17405 (notice of petition), 17410 (hearing on petition), 17415 (order of default),
31 17420 (petition for second hearing).

32 See also Sections 17300 (seizure of firearm or other deadly weapon at scene of domestic
33 violence), 17305 (receipt for weapon), 17310 (delivery of deadly weapon seized by peace officer
34 for community college or school district), 17315 (holding period), 17320 (return of stolen
35 weapon), 17325 (sale or destruction of deadly weapon held longer than one year), 17500 (no
36 liability for act in good faith under this division).

37 **§ 17405. Notice of petition**

38 17405. If a petition is filed under Section 17400, the law enforcement agency
39 shall inform the owner or person who had lawful possession of the firearm or other
40 deadly weapon, at that person’s last known address, by registered mail, return
41 receipt requested, that the person has 30 days from the date of receipt of the notice
42 to respond to the court clerk to confirm the person’s desire for a hearing, and that

1 the failure to respond shall result in a default order forfeiting the confiscated
2 firearm or other deadly weapon.

3 (b) For purposes of this section, the person’s last known address shall be
4 presumed to be the address provided to the law enforcement officer by that person
5 at the time of the family violence incident.

6 (c) In the event the person whose firearm or other deadly weapon was seized
7 does not reside at the last address provided to the agency, the agency shall make a
8 diligent, good faith effort to learn the whereabouts of the person and to comply
9 with these notification requirements.

10 **Comment.** Section 17405 continues former Section 12028.5(g) without substantive change.

11 For what constitutes a deadly weapon, see Section 16012 (“deadly weapon”); see also Section
12 16015 (“firearm”).

13 See Sections 17400 (petition to determine whether weapon should be returned), 17410 (hearing
14 on petition), 17415 (order of default), 17420 (petition for second hearing).

15 See also Sections 15990 (“abuse”), 16013 (“domestic violence”), 17300 (seizure of firearm or
16 other deadly weapon at scene of domestic violence), 17305 (receipt for weapon), 17310 (delivery
17 of deadly weapon seized by peace officer for community college or school district), 17315
18 (holding period), 17320 (return of stolen weapon), 17325 (sale or destruction of deadly weapon
19 held longer than one year), 17500 (no liability for act in good faith under this division).

20 **Staff Note.** The second sentence of existing Section 12028.5(g) says “[f]or the purposes of
21 this subdivision, the person’s last known address shall be presumed to be the address provided to
22 the law enforcement officer by that person at the time of the *family violence incident*.” (Emphasis
23 added.) Section 12028 does not define “family violence” but it does define “domestic violence.”
24 See Section 12028(a)(2); see also First Supplement to CLRC Memorandum 2007-20, Attachment
25 p. 2 (proposed Section 16013, which would continue Section 12028(a)(2) without substantive
26 change).

27 We do not know why Section 12028.5(g) refers to a “family violence incident” instead of a
28 “domestic violence incident.” We suspect that this was sloppy drafting.

29 To ensure that there is no substantive change, we have retained the term in proposed Section
30 17405, but have included a reference to the definition of “domestic violence” in the Comment. In
31 the future, the Legislature might want to substitute the term “domestic violence incident” for
32 “family violence incident” in the statutory text.

33 In working on this study, it might be helpful for the Commission to compile a list of minor
34 clean-up issues like this one, and include the list in its report to the Governor and the Legislature.
35 We invite comment on whether preparation of such a list is a good idea.

36 § 17410. Hearing on petition

37 17410. (a) If the person who receives a petition under Section 17405 requests a
38 hearing, the court clerk shall set a hearing no later than 30 days from receipt of
39 that request.

40 (b) The court clerk shall notify the person, the law enforcement agency
41 involved, and the district attorney of the date, time, and place of the hearing.

42 (c) Unless it is shown by a preponderance of the evidence that the return of the
43 firearm or other deadly weapon would result in endangering the victim or the
44 person reporting the assault or threat, the court shall order the return of the firearm
45 or other deadly weapon and shall award reasonable attorney’s fees to the
46 prevailing party.

1 **Comment.** Section 17410 continues former Section 12028.5(h) without substantive change.
2 For what constitutes a deadly weapon, see Section 16012 (“deadly weapon”); see also Section
3 16015 (“firearm”).

4 See Sections 17400 (petition to determine whether weapon should be returned), 17405 (notice
5 of petition), 17415 (order of default), 17420 (petition for second hearing).

6 See also Sections 15990 (“abuse”), 16013 (“domestic violence”), 17300 (seizure of firearm or
7 other deadly weapon at scene of domestic violence), 17305 (receipt for weapon), 17310 (delivery
8 of deadly weapon seized by peace officer for community college or school district), 17315
9 (holding period), 17320 (return of stolen weapon), 17325 (sale or destruction of deadly weapon
10 held longer than one year), 17500 (no liability for act in good faith under this division).

11 **§ 17415. Order of default**

12 17415. If the person who receives a petition under Section 17405 does not
13 request a hearing or does not otherwise respond within 30 days of the receipt of
14 the notice, the law enforcement agency may file a petition for an order of default
15 and may dispose of the firearm or other deadly weapon as provided in Section
16 17110.

17 **Comment.** Section 17415 continues former Section 12028.5(i) without substantive change.

18 For what constitutes a deadly weapon, see Section 16012 (“deadly weapon”); see also Section
19 16015 (“firearm”).

20 See Sections 17400 (petition to determine whether weapon should be returned), 17405 (notice
21 of petition), 17410 (hearing on petition), 17420 (petition for second hearing).

22 See also Sections 15990 (“abuse”), 16013 (“domestic violence”), 17300 (seizure of firearm or
23 other deadly weapon at scene of domestic violence), 17305 (receipt for weapon), 17310 (delivery
24 of deadly weapon seized by peace officer for community college or school district), 17315
25 (holding period), 17320 (return of stolen weapon), 17325 (sale or destruction of deadly weapon
26 held longer than one year), 17500 (no liability for act in good faith under this division).

27 **§ 17420. Petition for second hearing**

28 17420. (a) If, at a hearing under Section 17410, the court does not order the
29 return of the firearm or other deadly weapon to the owner or person who had
30 lawful possession, that person may petition the court for a second hearing within
31 12 months from the date of the initial hearing.

32 (b) If there is a petition for a second hearing, unless it is shown by clear and
33 convincing evidence that the return of the firearm or other deadly weapon would
34 result in endangering the victim or the person reporting the assault or threat, the
35 court shall order the return of the firearm or other deadly weapon and shall award
36 reasonable attorney’s fees to the prevailing party.

37 (c) If the owner or person who had lawful possession does not petition the court
38 within this 12-month period for a second hearing or is unsuccessful at the second
39 hearing in gaining return of the firearm or other deadly weapon, the firearm or
40 other deadly weapon may be disposed of as provided in Section 17110.

41 **Comment.** Section 17420 continues former Section 12028.5(j) without substantive change.

42 For what constitutes a deadly weapon, see Section 16012 (“deadly weapon”); see also Section
43 16015 (“firearm”).

44 See Sections 17400 (petition to determine whether weapon should be returned), 17405 (notice
45 of petition), 17410 (hearing on petition), 17415 (order of default).

1 See also Sections 17300 (seizure of firearm or other deadly weapon at scene of domestic
2 violence), 17305 (receipt for weapon), 17310 (delivery of deadly weapon seized by peace officer
3 for community college or school district), 17315 (holding period), 17320 (return of stolen
4 weapon), 17325 (sale or destruction of deadly weapon held longer than one year), 17500 (no
5 liability for act in good faith under this division).

6 CHAPTER 3. LIABILITY

7 **§ 17500. No liability for act in good faith under this division**

8 17500. The law enforcement agency, or the individual law enforcement officer,
9 shall not be liable for any act in the good faith exercise of this division.

10 **Comment.** Section 17500 continues former Section 12028.5(k) without substantive change.