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.


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
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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
§ 16500. Bearing deadly weapon with intent to assault
16500. Every person having upon the person any deadly weapon, with intent to
crush another, is guilty of a misdemeanor.
Comment. Section 16500 continues former Section 12024 without substantive change.

§ 16505. Advertising sale of prohibited weapon or device
16505. It shall be unlawful for any person, as defined in [Section 12277], to
advertise the sale of any weapon or device, the possession of which is prohibited
by [Section 12020, 12220, 12280, 12303, 12320, 12321, 12355, or 12520], in any
newspaper, magazine, circular, form letter, or open publication that is published,
distributed, or circulated in this state, or on any billboard, card, label, or other
advertising medium, or by means of any other advertising device.
Comment. Section 16505 continues former Section 12020.5 without substantive change.

§ 16510. Picketing with deadly weapon
16510. (a) Any person who does any of the following acts while engaged in
picketing, or other informational activities in a public place relating to a concerted
refusal to work, is guilty of a misdemeanor:
(1) Carries concealed upon the person, or within any vehicle which is under the
person’s control or direction, any pistol, revolver, or other firearm capable of
being concealed upon the person.
(2) Carries a loaded firearm upon the person or within any vehicle that is under
the person’s control or direction.
(3) Carries a deadly weapon.
(b) This section shall not be construed to authorize or ratify any picketing or
other informational activities not otherwise authorized by law.
(c) [Section 12027] shall not be construed to authorize any conduct described in
paragraph (1) of subdivision (a), nor shall [subdivision (b) of Section 12031] be
construed to authorize any conduct described in paragraph (2) of subdivision (a).
Comment. Subdivision (a) of Section 16510 continues former Section 12590(a)(1)-(3) without
substantive change.
With respect to the acts enumerated in subdivision (a), subdivision (b) continues former
Section 12590(b) without substantive change. See also Section 830.95(b), which continues former
Section 12590(b) with respect to picketing in the uniform of a peace officer.
Subdivision (c) continues former Section 12590(c) without substantive change.
See Sections 16015 (“firearm”), 16020 (“firearm capable of being concealed upon the person,”
“pistol,” and “revolver”).
☞ Staff Note. Existing Section 12590 relates to (1) picketing with a deadly weapon and (2)
picketing in the uniform of a peace officer. 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 that restriction 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. 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”

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

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

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

CHAPTER 2. EXEMPTIONS

§ 16800. Exemption for antique firearm

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

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

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

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

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

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

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

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

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

(3) In Section 12071.1, the term “antique firearm” is used but is not defined.
(4) In Sections 12001, 12078(p)(6)(B), 12085(d)(3), 12088.8, and 12801(b), “antique firearm” is defined for purposes of those sections by reference to 18 U.S.C. § 921(a)(16), which says:

(16) The term “antique firearm” means —
(A) Any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898; or
(B) Any replica of any firearm described in subparagraph (A) if such replica —
   (i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or
   (ii) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade; or
(C) Any muzzle loading rifle, muzzle loading shotgun, or muzzle loading pistol, which is designed to use black powder, or a black powder substitute, and which cannot use fixed ammunition. For purposes of this subparagraph, the term “antique firearm” shall not include any weapon which incorporates a firearm frame or receiver, any firearm which is converted into a muzzle loading weapon, or any muzzle loading weapon which can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breechblock, or any combination thereof.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The instrument or device is properly housed.

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

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

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

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

16820. The provisions listed in Section 16700 do not apply to an instrument or device, other than a short-barreled shotgun or a short-barreled rifle, which is possessed or used during the course of a motion picture, television, or video production or entertainment event by an authorized participant therein in the course of making that production or event or by an authorized employee or agent of the entity producing that production or event.
Comment. Section 16820 continues former Section 12020(b)(10) without substantive change.

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

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

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

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

16830. The provisions listed in Section 16700 do not apply to any of the following:
(a) The sale to, possession of, or purchase of any weapon, device, or ammunition, other than a short-barreled rifle or a short-barreled shotgun, by any federal, state, county, city and county, or city agency that is charged with the enforcement of any law for use in the discharge of its official duties.
(b) The possession of any weapon, device, or ammunition, other than a short-barreled rifle or short-barreled shotgun, by a peace officer of any federal, state, county, city and county, or city agency that is charged with the enforcement of any law, when the officer is on duty and the use is authorized by the agency and is within the course and scope of the officer’s duties.
(c) A weapon, device, or ammunition, other than a short-barreled rifle or a short-barreled shotgun, which is sold by, manufactured by, exposed or kept for sale by, possessed by, imported by, or lent by, a person who is in the business of selling weapons, devices, and ammunition listed in Section 16700 solely to the entities referred to in subdivision (a) when engaging in transactions with those entities.

Comment. Subdivisions (a) and (b) of Section 16830 continue former Section 12020(b)(12) without substantive change.
Subdivision (c) continues former Section 12020(b)(13) without substantive change.

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

16835. The provisions listed in Section 16700 do not apply to an instrument, ammunition, weapon, or device that is not a firearm and is found and possessed by a person who meets all of the following:
(A) The person is not prohibited from possessing firearms or ammunition under Section 12021 or 12021.1 or paragraph (1) of subdivision (b) of Section 12316 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.
(B) The person possessed the instrument, ammunition, weapon, or device no longer than was necessary to deliver or transport it to a law enforcement agency for that agency’s disposition according to law.
(C) If the person is transporting the item, the person is transporting it to a law
enforcement agency for disposition according to law.

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

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

16840. The provisions listed in Section 16700 do not apply to a firearm, other
than a short-barreled rifle or short-barreled shotgun, which is found and possessed
by a person who meets all of the following:
    (a) The person is not prohibited from possessing firearms or ammunition under
[Section 12021 or 12021.1 or paragraph (1) of subdivision (b) of Section 12316 of
this code] or Section 8100 or 8103 of the Welfare and Institutions Code.
    (b) The person possessed the firearm no longer than was necessary to deliver or
transport it to a law enforcement agency for that agency’s disposition according to
law.
    (c) If the person is transporting the firearm, the person is transporting it to a law
enforcement agency for disposition according to law.
    (d) Before transporting the firearm to a law enforcement agency, the person has
given prior notice to that law enforcement agency that the person is transporting
the firearm to that law enforcement agency for disposition according to law.
    (e) The firearm is transported in a locked container as defined in [subdivision (d)
of Section 12026.2].

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

§ 16845. Exemption for possession by forensic laboratory

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

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

CHAPTER 3. MISCELLANEOUS PROVISIONS

§ 16900. Distinct and separate offense

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

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

Staff Note. Section 12001(l) states:
(l) For purposes of Section 12020, a violation of that section as to each firearm, weapon, or
device enumerated therein shall constitute a distinct and separate offense.
Revising the material in this section in a nonsubstantive manner to reflect the proposed reorganization of Section 12020 (which we have not yet completely drafted) is tricky. We encourage comment on whether proposed Section 16900 would achieve that objective and whether there would be a better means of achieving that objective.

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

DIVISION 3. WEAPONS CONSTITUTING A NUISANCE

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

§ 17100. Firearm constituting nuisance

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

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

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

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

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

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

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

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

See Section 16015 (“firearm”).

Staff Notes.

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

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

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

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

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

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

§ 17105. Surrender of specified weapons constituting nuisance

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

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

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

Comment. Subdivision (a) of Section 17105 continues the first sentence of former Section 12028(c) without substantive change.
Subdivision (b) continues the second sentence of former Section 12028(c) without substantive change.
See Section 16015 (“firearm”).
§ 17110. Disposal of weapons constituting nuisance

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

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

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

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

Comment. Subdivision (a) of Section 17110 continues the third sentence of former Section 12028(c) without substantive change.
Subdivision (b) continues the fourth sentence of former Section 12028(c) without substantive change.
Subdivision (c) continues former Section 12028(d) without substantive change.
Subdivision (d) continues former Section 12028(f) without substantive change.

§ 17115. Treatment of other weapons constituting nuisance

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

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

(c) These weapons shall be destroyed in the same manner described in Section 17110, except that upon the certification of a judge or of the district attorney that
the ends of justice will be served thereby, the weapon shall be preserved until the
necessity for its use ceases.

Comment. Subdivision (a) of Section 17115 continues the end of the first sentence of former
Section 12029 without substantive change.
Subdivision (b) continues the second sentence of former Section 12029 without substantive
change.
Subdivision (c) continues the third sentence of former Section 12029 without substantive
change.

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

CHAPTER 1. SEIZURE AND SUBSEQUENT PROCEDURES

§ 17300. Seizure of firearm or other deadly weapon at scene of domestic violence
17300. If any of the following persons is at the scene of a domestic violence
incident involving a threat to human life or a physical assault, that person shall
take temporary custody of any firearm or other deadly weapon in plain sight or
discovered pursuant to a consensual or other lawful search as necessary for the
protection of the peace officer or other persons present:
(a) A sheriff, undersheriff, deputy sheriff, marshal, deputy marshal, or police
officer of a city, as defined in subdivision (a) of Section 830.1.
(b) A peace officer of the Department of the California Highway Patrol, as
defined in subdivision (a) of Section 830.2.
(c) A member of the University of California Police Department, as defined in
subdivision (b) of Section 830.2.
(d) An officer listed in Section 830.6, while acting in the course and scope of the
officer’s employment as a peace officer.
(e) A member of a California State University Police Department, as defined in
subdivision (c) of Section 830.2.
(f) A peace officer of the Department of Parks and Recreation, as defined in
subdivision (f) of Section 830.2.
(g) A peace officer, as defined in subdivision (d) of Section 830.31.
(h) A peace officer, as defined in subdivisions (a) and (b) of Section 830.32.
(i) A peace officer, as defined in Section 830.5.

Comment. Section 17300 continues the first sentence of former Section 12028.5(b) without
substantive change.
For what constitutes a domestic violence incident, see Sections 15990 (“abuse”), 16013
(“domestic violence”). For what constitutes a deadly weapon, see Section 16012 (“deadly
weapon”); see also Section 16015 (“firearm”).
See Sections 17305 (receipt for weapon), 17310 (delivery of deadly weapon seized by peace
officer for community college or school district), 17315 (holding period), 17320 (return of stolen
weapon), 17325 (sale or destruction of deadly weapon held longer than one year), 17500 (no
liability for act in good faith under this division). For procedures applicable when a law
enforcement agency has reasonable cause to believe that return of a weapon would endanger the victim of a domestic violence incident or a person who reported the incident, see Sections 17400-17420.

§ 17305. Receipt for weapon

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

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

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

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

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

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

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

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

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

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

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

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

17310. Any peace officer, as defined in subdivisions (a) and (b) of Section 830.32, who takes custody of a firearm or deadly weapon pursuant to this division, shall deliver the firearm within 24 hours to the city police department or county sheriff’s office in the jurisdiction where the college or school is located.
Comment. Section 17310 continues former Section 12028.5(c) without substantive change.

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

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

☞ Staff Note. Existing Section 12028.5(c) says:

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

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

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

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

§ 17315. Holding period

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

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

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

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

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

Subdivision (c) continues the seventh sentence of former Section 12028.5(b) without substantive change.
For what constitutes a domestic violence incident, see Sections 15990 (“abuse”), 16013 (“domestic violence”). For what constitutes a deadly weapon, see Section 16012 (“deadly weapon”); see also Section 16015 (“firearm”).

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

§ 17320. Return of stolen weapon
17320. If a firearm or other deadly weapon has been stolen and has been seized pursuant to this division, it shall be restored to the lawful owner upon satisfaction of all of the following conditions:
(a) Its use for evidence has been served.
(b) The owner identifies the firearm or other deadly weapon and provides proof of ownership.
(c) The law enforcement agency has complied with Section 12021.3.

Comment. Section 17320 continues former Section 12028.5(d) without substantive change. For what constitutes a deadly weapon, see Section 16012 (“deadly weapon”); see also Section 16015 (“firearm”).

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

§ 17325. Sale or destruction of deadly weapon held longer than one year
17325. (a) Any firearm or other deadly weapon that has been taken into custody and held by any of the following law enforcement authorities for longer than 12 months, and has not been recovered by the owner or person who had lawful possession at the time it was taken into custody, shall be considered a nuisance and sold or destroyed as provided in Section 17110:
(1) A police, university police, or sheriff’s department.
(2) A marshal’s office.
(3) A peace officer of the Department of the California Highway Patrol, as defined in subdivision (a) of Section 830.2.
(4) A peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2.
(5) A peace officer, as defined in subdivision (d) of Section 830.31.
(6) A peace officer, as defined in Section 830.5.
(b) If a firearm or other deadly weapon is not recovered within 12 months due to an extended hearing process as provided in Section § 17420, it is not subject to
destruction until the court issues a decision, and then only if the court does not
order the return of the firearm or other deadly weapon to the owner.

Comment. Section 17325 continues former Section 12028.5(c) without substantive change.
For what constitutes a deadly weapon, see Section 16012 (“deadly weapon”); see also Section
16015 (“firearm”).
See Sections 17300 (seizure of firearm or other deadly weapon at scene of domestic violence),
17305 (receipt for weapon), 17310 (delivery of deadly weapon seized by peace officer for
community college or school district), 17315 (holding period), 17320 (return of stolen weapon),
17500 (no liability for act in good faith under this division). For procedures applicable when a
law enforcement agency has reasonable cause to believe that return of a weapon would endanger
the victim of a domestic violence incident or a person who reported the incident, see Sections
17400-17420.

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

§ 17400. Petition to determine whether weapon should be returned
17400. (a) When a law enforcement agency has reasonable cause to believe that
the return of a firearm or other deadly weapon seized under this division would be
likely to result in endangering the victim or the person who reported the assault or
threat, the agency shall so advise the owner of the firearm or other deadly weapon,
and within 60 days of the date of seizure, initiate a petition in superior court to
determine if the firearm or other deadly weapon should be returned.
(b) The law enforcement agency may make an ex parte application stating good
cause for an order extending the time to file a petition.
(c) Including any extension of time granted in response to an ex parte request, a
petition must be filed within 90 days of the date of seizure of the firearm or other
deadly weapon.

Comment. Section 17400 continues former Section 12028.5(f) without substantive change.
For what constitutes a deadly weapon, see Section 16012 (“deadly weapon”); see also Section
16015 (“firearm”).
See Sections 17405 (notice of petition), 17410 (hearing on petition), 17415 (order of default),
17420 (petition for second hearing).
See also Sections 17300 (seizure of firearm or other deadly weapon at scene of domestic
violence), 17305 (receipt for weapon), 17310 (delivery of deadly weapon seized by peace officer
for community college or school district), 17315 (holding period), 17320 (return of stolen
weapon), 17325 (sale or destruction of deadly weapon held longer than one year), 17500 (no
liability for act in good faith under this division).

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

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

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

Comment. Section 17405 continues former Section 12028.5(g) without substantive change.
For what constitutes a deadly weapon, see Section 16012 (“deadly weapon”); see also Section
16015 (“firearm”).
See Sections 17400 (petition to determine whether weapon should be returned), 17410 (hearing
on petition), 17415 (order of default), 17420 (petition for second hearing).
See also Sections 15990 (“abuse”), 16013 (“domestic violence”), 17300 (seizure of firearm or
other deadly weapon at scene of domestic violence), 17305 (receipt for weapon), 17310 (delivery
of deadly weapon seized by peace officer for community college or school district), 17315
(holding period), 17320 (return of stolen weapon), 17325 (sale or destruction of deadly weapon
held longer than one year), 17500 (no liability for act in good faith under this division).

☞ Staff Note. The second sentence of existing Section 12028.5(g) says “[f]or the purposes of
this subdivision, the person’s last known address shall be presumed to be the address provided to
the law enforcement officer by that person at the time of the family violence incident.” (Emphasis
added.) Section 12028 does not define “family violence” but it does define “domestic violence.”
See Section 12028(a)(2); see also First Supplement to CLRC Memorandum 2007-20, Attachment
p. 2 (proposed Section 16013, which would continue Section 12028(a)(2) without substantive
change).
We do not know why Section 12028.5(g) refers to a “family violence incident” instead of a
“domestic violence incident.” We suspect that this was sloppy drafting.
To ensure that there is no substantive change, we have retained the term in proposed Section
17405, but have included a reference to the definition of “domestic violence” in the Comment. In
the future, the Legislature might want to substitute the term “domestic violence incident” for
“family violence incident” in the statutory text.
In working on this study, it might be helpful for the Commission to compile a list of minor
clean-up issues like this one, and include the list in its report to the Governor and the Legislature.
We invite comment on whether preparation of such a list is a good idea.

§ 17410. Hearing on petition

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

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

(c) Unless it is shown by a preponderance of the evidence that the return of the
firearm or other deadly weapon would result in endangering the victim or the
person reporting the assault or threat, the court shall order the return of the firearm
or other deadly weapon and shall award reasonable attorney’s fees to the
prevailing party.
Comment. Section 17410 continues former Section 12028.5(h) without substantive change.
For what constitutes a deadly weapon, see Section 16012 (“deadly weapon”); see also Section 16015 (“firearm”).

See Sections 17400 (petition to determine whether weapon should be returned), 17405 (notice of petition), 17410 (hearing on petition), 17415 (order of default), 17420 (petition for second hearing).
See also Sections 15990 (“abuse”), 16013 (“domestic violence”), 17300 (seizure of firearm or other deadly weapon at scene of domestic violence), 17305 (receipt for weapon), 17310 (delivery of deadly weapon seized by peace officer for community college or school district), 17315 (holding period), 17320 (return of stolen weapon), 17325 (sale or destruction of deadly weapon held longer than one year), 17500 (no liability for act in good faith under this division).

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

Comment. Section 17415 continues former Section 12028.5(i) without substantive change.
For what constitutes a deadly weapon, see Section 16012 (“deadly weapon”); see also Section 16015 (“firearm”).

See Sections 17400 (petition to determine whether weapon should be returned), 17405 (notice of petition), 17410 (hearing on petition), 17415 (order of default).
See also Sections 15990 (“abuse”), 16013 (“domestic violence”), 17300 (seizure of firearm or other deadly weapon at scene of domestic violence), 17305 (receipt for weapon), 17310 (delivery of deadly weapon seized by peace officer for community college or school district), 17315 (holding period), 17320 (return of stolen weapon), 17325 (sale or destruction of deadly weapon held longer than one year), 17500 (no liability for act in good faith under this division).

§ 17420. Petition for second hearing
17420. (a) If, at a hearing under Section 17410, the court does not order the return of the firearm or other deadly weapon to the owner or person who had lawful possession, that person may petition the court for a second hearing within 12 months from the date of the initial hearing.
(b) If there is a petition for a second hearing, unless it is shown by clear and convincing evidence that the return of the firearm or other deadly weapon would result in endangering the victim or the person reporting the assault or threat, the court shall order the return of the firearm or other deadly weapon and shall award reasonable attorney’s fees to the prevailing party.
(c) If the owner or person who had lawful possession does not petition the court within this 12-month period for a second hearing or is unsuccessful at the second hearing in gaining return of the firearm or other deadly weapon, the firearm or other deadly weapon may be disposed of as provided in Section 17110.

Comment. Section 17420 continues former Section 12028.5(j) without substantive change.
For what constitutes a deadly weapon, see Section 16012 (“deadly weapon”); see also Section 16015 (“firearm”).
See Sections 17400 (petition to determine whether weapon should be returned), 17405 (notice of petition), 17410 (hearing on petition), 17415 (order of default).
See also Sections 17300 (seizure of firearm or other deadly weapon at scene of domestic violence), 17305 (receipt for weapon), 17310 (delivery of deadly weapon seized by peace officer for community college or school district), 17315 (holding period), 17320 (return of stolen weapon), 17325 (sale or destruction of deadly weapon held longer than one year), 17500 (no liability for act in good faith under this division).

CHAPTER 3. LIABILITY

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

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

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