Memorandum 2007-33

Nonsubstantive Reorganization of Deadly Weapon Statutes:
Titles 1-2 of New Part 6 of the Penal Code

As directed by the Legislature, the Law Revision Commission is conducting a nonsubstantive study of the statutes relating to control of deadly weapons. The goal of the study is to reorganize the statutes in a manner that makes them more readily comprehensible and accessible, without changing their substantive effect. To that end, the Commission is exploring the possibility of creating a new Part 6 of the Penal Code, entitled “Control of Deadly Weapons.” Attached for the Commission and interested persons to review is a partial draft of Titles 1 and 2 of new Part 6. The Commission is working towards a tentative recommendation. A few points relating to the attached draft are discussed below.

Text of Title 2 of Part 4

The text of Title 2 of Part 4 of the Penal Code (Penal Code §§ 12000-12809) was attached to CLRC Memorandum 2007-17. Commissioners and other interested persons are encouraged to bring that document with them to the August meeting, so that they can refer to it if needed.

Content of the Attached Draft

The Commission plans to move to new Part 6 most of the material currently located in Title 2 of Part 4. The sentencing enhancement provisions (Penal Code §§ 12021.5-12022.95) would be left in Title 2 of Part 4, which would be relabeled “Sentence Enhancements.”

New Part 6 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
For further detail on the organization of new Part 6, see CLRC Memorandum 2007-32.

In June, the Commission considered a draft of “Title 1. Preliminary Provisions” and a draft of Divisions 1-4 of “Title 2. Weapons Generally.” See CLRC Memorandum 2007-20; First Supplement to CLRC Memorandum 2007-20; CLRC Memorandum 2007-21. At the time, the Commission’s approach was to place in “Title 1. Preliminary Provisions” the many definitions now found in Penal Code Section 12001. With respect to the other definitions scattered throughout Title 2 of Part 4, the Commission’s plan was to assess each definition as it reviewed the associated substantive material, determining whether the definition should go in “Title 1. Preliminary Provisions” or stay closer to the associated substantive material. The expectation was that the “Definitions” portion of “Title 1. Preliminary Provisions” would expand gradually as the study progressed. See CLRC Memorandum 2007-20, p. 2.

Thus, the draft of “Title 1. Preliminary Provisions” that the Commission reviewed in June consisted only of the definitions now located in Section 12001 and the definitions associated with the substantive material in Divisions 1-4 of “Title 2. Weapons Generally.” See CLRC Memorandum 2007-20; First Supplement to CLRC Memorandum 2007-20.

At the June meeting, however, the Commission decided to consolidate in “Title 1. Preliminary Provisions” all of the definitions now in Title 2 of Part 4. See CLRC Minutes (June 2007), pp. 9-10. Due to that decision, it became possible to draft the entirety of “Division 2. Definitions” at the outset, without waiting until the staff prepares and the Commission reviews the associated substantive material.

For a complete list of the definitions to be included in “Division 2. Definitions” of “Title 1. Preliminary Provisions,” see pages 2-6 of the attachment to CLRC Memorandum 2007-32. We prepared that list using the version of Title 2 of Part 4 that is attached to CLRC Memorandum 2007-17, in which all of the definitions are shown in boldface. If we inadvertently overlooked any definition in Title 2 of Part 4, please bring that omission to the Commission’s attention.

There more than a hundred definitions to be included in “Division 2. Definitions” of “Title 1. Preliminary Provisions.” Most of those definitions are included in the attached draft. Some of them have not yet been drafted. For a list of the definitions that have not yet been drafted, see Exhibit pages 1-2. We plan to draft the remaining definitions for the October meeting.
The attached draft also includes Divisions 1-4 of “Title 2. Weapons Generally,” as revised to reflect the Commission’s decision to consolidate all definitions in “Title 1. Preliminary Provisions.” We plan to draft the remainder of “Title 2. Weapons Generally” for the October meeting, as well as additional material.

Matters for Discussion at the August Meeting

The process of drafting the provisions in “Division 2. Definitions” of “Title 1. Preliminary Provisions” is difficult and time-consuming. For each definition, we must carefully determine its proper scope (i.e., whether the definition should apply to the entirety of new Part 6, or only to selected provisions).

For almost every provision in the attached draft, a Staff Note explains and memorializes the reasoning for the scope of the provision. Some of the Staff Notes also discuss additional issues. For a few provisions, there is no Staff Note, because the provision was already considered at the June meeting.

At the August meeting, we do not plan to discuss each point mentioned in the Staff Notes. Rather, Commissioners and interested 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.

Minor Clean-up Projects

At the June meeting, the Commission decided that in conducting this nonsubstantive study, it would maintain a list of minor clean-up issues for possible future legislative attention. The list will be included in the Commission’s report to the Governor and the Legislature. CLRC Minutes (June 2007), p. 11.

The current version of the list is attached as Exhibit page 3. Staff Notes in the attached draft recommend that various additional matters be included in the list. Unless the Commission otherwise directs, we will revise the list to include these matters after the August meeting.

2007 Legislation

Numerous bills to revise provisions within Title 2 of Part 4 were introduced this year. See, e.g., AB 334 (Levine), AB 362 (De Leon), AB 805 (Galgiani), AB 854 (Keene), AB 1013 (Krekorian), AB 1105 (Garrick), AB 1218 (Duvall), AB 1357 (Parra), AB 1471 (Feuer), AB 1705 (Niello), SB 248 (Padilla), SB 327 (Migden), SB 860 (Correa), SB 927 (Perata), SB 997 (Ridley-Thomas). Some of these bills have already been enacted.
The Legislature has not completed its work for the year, however, and a later-enacted bill might nullify the effect of legislation passed earlier in the year. See Gov’t Code § 9605. Consequently, we have made no attempt to incorporate 2007 legislation into the attached draft.

After the Legislature recesses for the year and the Governor acts on all relevant bills sent to him for approval, we will review the 2007 legislation and revise the attached draft as needed to reflect that legislation.

Next Step

The Commission’s final report for this study is due on July 1, 2009. See 2006 Cal. Stat. res. ch. 128. The Commission will have to work expeditiously to meet that deadline. We are giving this project priority and hope to have a tentative recommendation completed by next summer, so that it can be circulated for comment and the comments can be analyzed in ample time before the final deadline.

Input from Interested Persons

As always, we encourage interested persons to carefully review the material under consideration and share any concerns they might have about it. Although the staff tries to be careful in preparing draft legislation for the Commission to consider, mistakes such as a transposition of digits, an accidental omission, or the like, can easily occur. It is far better to catch such a mistake at this early stage of the Commission’s study process than to have to deal with it once a bill is pending or has even been enacted. We would much appreciate being notified of any problem detected in the draft legislation or accompanying Comments.

Respectfully submitted,

Barbara Gaal
Chief Deputy Counsel
Definitions Not Yet Drafted

Penal Code § 16400. “Immediate”
Penal Code § 16405. “Immediate family member”
Penal Code § 16410. “Infrequent”
Penal Code § 16415. “Large-capacity magazine”
Penal Code § 16420. “Lawful possession of the firearm”
Penal Code § 16425. “Leaded cane”
Penal Code § 16430. “Less lethal ammunition”
Penal Code § 16435. “Less lethal weapon”
Penal Code § 16445. “Licensed gun show producer”
Penal Code § 16450. “Licensed premises,” “licensed place of business,” “licensee’s place of business,” or “licensee’s business premises”
Penal Code § 16460. “Lipstick case knife”
Penal Code § 16465. “Loaded” and “loaded firearm”
Penal Code § 16470. “Locked container”
Penal Code § 16475. “Locking device”
Penal Code § 16480. “Long-gun safe”
Penal Code § 16490. “Magazine”
Penal Code § 16510. “Multiburst trigger activator”
Penal Code § 16515. “Nunchaku”
Penal Code § 16520. “Off-premises”
Penal Code § 16525. “Operation of law”
Penal Code § 16530. “Person”
Penal Code § 16555. “Principal place of employment or business”
Penal Code § 16560. “Prohibited area”
Penal Code § 16565. “Public place”
Penal Code § 16570. “Purchase”
Penal Code § 16575. “Purchaser”
Penal Code § 16580. “Responsible adult”
Penal Code § 16590. “Rifle”
Penal Code § 16595. “Sale”
Penal Code § 16600. “Secure facility”
Penal Code § 16605. “Secured”
Penal Code § 16610. “Seller”
Penal Code § 16615. “Semiautomatic pistol”
Penal Code § 16620. “Series”
Penal Code § 16625. “Shobi-zue”
Penal Code § 16640. “Shotgun”
Penal Code § 16645. “Shuriken”
Penal Code § 16650. “Silencer”
Penal Code § 16655. “SKS rifle”
Penal Code § 16660. “Stun gun”
Penal Code § 16675. “Transaction”
Penal Code § 16680. “Unconventional pistol”
Penal Code § 16685. “Undetectable firearm”
Penal Code § 16690. “Undetectable knife”
Penal Code § 16695. “Unsafe handgun”
Penal Code § 16700. “Used firearm”
Penal Code § 16705. “Violent felony”
MINOR CLEAN-UP ISSUES FOR POSSIBLE FUTURE LEGISLATIVE ATTENTION (8/14/07)

(1) Consider whether to expand the definition of “application to purchase” to the entirety of new Part 6 of the Penal Code. See CLRC Memorandum 2007-20, Attachment p. 1.

(2) Consider whether to expand the definition of “deadly weapon” to the entirety of new Part 6 of the Penal Code. See First Supplement to CLRC Memorandum 2007-20, p. 1 & Attachment p. 1.

(3) Consider whether it is really necessary to have multiple definitions of the term “antique firearm.” See CLRC Memorandum 2007-21, Attachment pp. 4-5.

(4) In some places, Penal Code Section 12028.5 refers to “the owner or person who possessed the firearm” or to “the owner or person who was in lawful possession.” In other places, the provision refers only to “the owner” or to “the lawful owner.” These references should be reviewed to determine whether they are appropriate as is, or should be revised to achieve greater consistency. See CLRC Memorandum 2007-21, Attachment p. 13.

(5) Read literally, Penal Code Section 12028.5(c) only requires delivery of a firearm, not other deadly weapons. Consider whether this is due to an oversight that should be corrected. See CLRC Memorandum 2007-21, Attachment p. 14.

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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 2007-32. Additional material will be added 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 references to sections that have not yet been drafted (e.g., “Section _____”). Ellipses (....) are used to indicate places where statutory material has been omitted because it has not yet been drafted.

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 16810(b), which continues former Section 12590(b) with respect to certain other acts.

Penal Code §§ 16100-_____ (added). Control of deadly weapons

SEC. ___. Part 6 (commencing with Section 16100) is added to the Penal Code, to read:

PART 6. CONTROL OF DEADLY WEAPONS

TITLE 1. PRELIMINARY PROVISIONS

DIVISION 1. GENERAL PROVISIONS [RESERVED]

DIVISION 2. DEFINITIONS

§ 16100. “.50 BMG cartridge”

16100. As used in this part, “.50 BMG cartridge” means a cartridge that is designed and intended to be fired from a center fire rifle and that meets all of the following criteria:
(a) It has an overall length of 5.54 inches from the base to the tip of the bullet.
(b) The bullet diameter for the cartridge is from .510 to, and including, .511 inch.
(c) The case base diameter for the cartridge is from .800 inch to, and including, .804 inch.
(d) The cartridge case length is 3.91 inches.

Comment. Section 16100 continues former Section 12278(b) without substantive change.

☞ Staff Note. Existing Section 12278(b) defines “.50 BMG cartridge” as used “in this chapter” (i.e., Sections 12275-12290). Section 12278 is the only provision in Title 2 of Part 4 that uses the term “.50 BMG cartridge.” Consequently, the definition in Section 12278(b) can be applied to the entirety of new Part 6 of the Penal Code without effecting a substantive change. Proposed Section 16100 would therefore define “.50 BMG cartridge” as used “in this part.”

§ 16105. “.50 BMG rifle”

16105. (a) As used in this part, “.50 BMG rifle” means a center fire rifle that can fire a .50 BMG cartridge and is not already an assault weapon or a machinegun.
(b) A “.50 BMG rifle” does not include any antique firearm, nor any curio or relic as defined in Section 178.11 of Title 27 of the Code of Federal Regulations.

Comment. Subdivision (a) of Section 16105 continues former Section 12278(a) without substantive change. See Sections 16150 (“assault weapon”), 16151 (further clarification of “assault weapon”), 16152 (exemptions from definition of “assault weapon”), 16485 (“machinegun”). Subdivision (b) continues former Section 12278(c) without substantive change. See Section 16135 (“antique firearm”).

☞ Staff Notes.

We encourage comment on the following points:

(1) Existing Section 12278(a) defines “.50 BMG rifle” as used “in this chapter” — i.e., the Roberti-Roos Assault Weapons Control Act of 1989 (Sections 12275-12290). Aside from that chapter, the only provisions in Title 2 of Part 4 that use the term “.50 BMG rifle” are:
   • Section 12011, which refers repeatedly to a “.50 BMG rifle registration.” Because a “.50 BMG rifle registration” would have to be obtained pursuant to the Roberti-Roos Assault Weapons Control Act of 1989, the definition of “.50 BMG rifle” in that act necessarily applies in this context.
   • Section 12022, a sentencing enhancement provision that expressly incorporates the definition in Section 12278(a).

Consequently, the definition in Section 12278(a) can be applied to the entirety of new Part 6 of the Penal Code without effecting a substantive change. Proposed Section 16105 would therefore define “.50 BMG rifle” as used “in this part.”

(2) Existing Section 12278(a) refers to “a machinegun, as defined in Section 12200.” (Emphasis added.) Unlike existing Section 12278(a), proposed Section 16105 would not cross-refer to the provision defining a machinegun.

   Similarly, existing Section 12278(a) refers to “an assault weapon pursuant to Section 12276, 12276.1, or 12276.5.” (Emphasis added.) Unlike existing Section 12278(a), proposed Section 16105 would not cross-refer to the provisions defining an assault weapon.

   Instead, the Comment would cross-refer to the provision defining a machinegun and the provisions defining an assault weapon. The Comment would also state that “[s]ubdivision (a) of Section 16105 continues former Section 12278(a) without substantive change.” The provision
defining a machinegun (proposed Section 16485) is drafted to encompass Section 16105, as are
the provisions defining an assault weapon (Sections 16150, 16151, and 16152).

We chose this approach because it would further the Legislature’s directive to “[a]void
unnecessary use of cross-references” while “[n]either expand[ing] nor contract[ing] the scope of
weight to the Commission’s comments, we think this would be sufficient to preserve the
substance of Section 12278(a). See 2006-2007 Annual Report, 36 Cal. L. Revision Comm’n

§ 16110. “Abuse”

16110. As used in this part, “abuse” means any of the following:
(a) Intentionally or recklessly to cause or attempt to cause bodily injury.
(b) Sexual assault.
(c) To place a person in reasonable apprehension of imminent serious bodily
injury to that person or to another.
(d) To molest, attack, strike, stalk, destroy personal property, or violate the
terms of a domestic violence protective order issued pursuant to Part 4
(commencing with Section 6300) of Division 10 of the Family Code.

Comment. Section 16110 continues former Section 12028.5(a)(1) without substantive change.

§ 16115. “Agent”

16115. As used in [Section 12071], “agent” means an employee of the licensee.

Comment. Section 16115 continues former Section 12071(b)(20)(G)(i) without substantive
change.

☞ Staff Note. Existing Section 12071(b)(2)(G)(i) defines “agent” as used in that section. The
term “agent” is also used elsewhere in Title 2 of Part 4, without definition. See, e.g., Sections
12001(r), 12026.2, 12031. From the context of some of those provisions, it is clear that the term
is being used with a different meaning than in Section 12071 (e.g., Section 12031 refers to “the
retired federal officer or agent”). Consequently, proposed Section 16115 would only define
“agent” for purposes of the provisions that continue the substance of Section 12071.

Because proposed Section 16115 would only define “agent” for purposes of the provisions that
continue the substance of Section 12071, it might be appropriate to place it in proximity to those
discussed a similar situation at the June meeting, however, and decided that all of the definitions
currently in Title 2 of Part 4 should be placed in “Title 1. Preliminary Provisions.” See CLRC
Memorandum 2007-20, p. 2 (discussing Section 12001(j)); CLRC Minutes (June 2008), p. 9. We
have followed that approach here.

§ 16120. “Air gauge knife”

16120. As used in this part, “air gauge knife” means a device that appears to be
an air gauge but has concealed within it a pointed, metallic shaft that is designed to
be a stabbing instrument which is exposed by mechanical action or gravity which
locks into place when extended.

Comment. Section 16120 continues former Section 12020(c)(18) without substantive change.

☞ Staff Note. Existing Section 12020(c)(18) defines “air gauge knife” as used “in this section.”
The term is not used in any other section in Title 2 of Part 4.
Consequently, the definition in Section 12020(c)(18) can be applied to the entirety of new Part 6 without effecting a substantive change. Proposed Section 16120 would therefore define “air gauge knife” as used “in this part.”

§ 16125. “Ammunition”

16125. (a) As used in [Section 12316(a)(1)(b)], “ammunition” means handgun ammunition as defined in Section 16370.

(b) As used in [Section 12316(b)(2)], “ammunition” includes, but is not limited to, any bullet, cartridge, magazine, clip, speed loader, autoloader, or projectile capable of being fired from a firearm with a deadly consequence.

Comment. Subdivision (a) of Section 16125 continues the second sentence of former Section 12316(a)(1)(b) without substantive change.

Subdivision (b) continues former Section 12316(b)(2) without substantive change.

☞ Staff Note. The second sentence of existing Section 12316(a)(1)(b) defines “ammunition” as used “in this subparagraph.” Existing Section 12316(b)(2) provides a different definition of “ammunition” for purposes of “this subdivision.” The term “ammunition” is also used elsewhere in Title 2 of Part 4, without definition. See, e.g., Sections 12001(k), 12020, 12127.

Consequently, it would not be possible to apply a single definition of “ammunition” to the entirety of new Part 6 without effecting a substantive change. Proposed Section 16125(a) would therefore define “ammunition” only as used in the provision that would continue Section 12316(a)(1)(b). Similarly, proposed Section 16125(b) would define “ammunition” only as used in the provision that would continue Section 12316(b)(2).

Because proposed Section 16125 (a) and (b) would only define “ammunition” for purposes of the specified provisions, it might be appropriate to place those definitions in proximity to the specified provisions, instead of in “Title 1. Preliminary Provisions.” The Commission extensively discussed a similar situation at the June meeting, however, and decided that all of the definitions currently in Title 2 of Part 4 should be placed in “Title 1. Preliminary Provisions.” See CLRC Memorandum 2007-20, p. 2 (discussing Section 12001(j)); CLRC Minutes (June 2008), p. 9. We have followed that approach here.

§ 16130. “Antique cannon”

16130. As used in this part, “antique cannon” means any cannon manufactured before January 1, 1899, which has been rendered incapable of firing or for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

Comment. Section 16130 continues the second sentence of former Section 12301(a)(3) without substantive change.

☞ Staff Note. Existing Section 12301(a)(3) defines “antique cannon” for purposes of “this section.” The term is not used in any other section in Title 2 of Part 4.

Consequently, the definition in Section 12301(a)(3) can be applied to the entirety of new Part 6 without effecting a substantive change. Proposed Section 16130 would therefore define “antique cannon” as used “in this part.”

§ 16135. “Antique firearm”

16135. (a) As used in [Sections 12276.1] and 16105, “antique firearm” means any firearm manufactured before January 1, 1899.
(b) As used in [Sections 12001(e), 12078(p)(6)(B), 12085(d)(3), 12088.8(a), and 12801(b)], “antique firearm” has the same meaning as in Section 921(a)(16) of Title 18 of the United States Code.

c) As used in Section 17000, “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 16135 continues former Section 12276.1(d)(3) and former Section 12278(d) without substantive change.

Subdivision (b) continues without substantive change the definition of “antique firearm” that was used in former Sections 12001(e), 12078(p)(6)(B), 12085(d)(3), 12088.8(a), and 12801(b).

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

See Section 16305 (“firearm”).

☞ Staff Note. As proposed Section 16135 reflects, the term “antique firearm” is defined in several different ways in Title 2 of Part 4. In addition, the term is used but not defined in Section 12071.1. See also Section 301 (“antique rifle” means a firearm conforming to the definition of an “antique firearm” in 27 C.F.R. § 479.11).

At the June meeting, the Commission decided that in conducting this nonsubstantive study, it would maintain a list of minor clean-up issues for possible future legislative attention. The list will be included in the Commission’s report to the Governor and the Legislature. CLRC Minutes (June 2007), p. 11. Among the items on the list is whether it is necessary to have multiple definitions of the term “antique firearm.” See Exhibit p. 1.

§ 16140. “Antique rifle”

16140. As used in this part, “antique rifle” means a firearm conforming to the definition of an “antique firearm” in Section 479.11 of Title 27 of the Code of Federal Regulations.

Comment. Section 16140 continues the third sentence of former Section 12301(a)(3) without substantive change.

See Section 16305 (“firearm”).

☞ Staff Note. Existing Section 12301(a)(3) defines “antique rifle” for purposes of that section. The term is not used in any other section in Title 2 of Part 4.

Consequently, the definition in Section 12301(a)(3) can be applied to the entirety of new Part 6 without effecting a substantive change. Proposed Section 16140 would therefore define “antique rifle” as used “in this part.”

§ 16145. “Application to purchase”

16145. As used in [Section 12071 or 12072], “application to purchase” means either of the following:
(a) The initial completion of the register by the purchaser, transferee, or person
being loaned a firearm, as required by [subdivision (b) of Section 12076].
(b) The initial completion and transmission to the Department of Justice of the
record of electronic or telephonic transfer by the dealer on the purchaser,
transferee, or person being loaned a firearm, as required by [subdivision (c) of
Section 12076].
Comment. Section 16145 continues former Section 12001(i) without substantive change.
See Section 16305 (“firearm”).

§ 16150. “Assault weapon”
16150. As used in [Sections 12011(a), 12072, 12601], 16105, and 16545 and in
[Chapter 2.3 (commencing with Section 12275) of Title 2 of Part 4], “assault
weapon” means the following designated semiautomatic firearms:
(a) All of the following specified rifles:
(1) All AK series including, but not limited to, the models
identified as follows:
(A) Made in China AK, AKM, AKS, AK47, AK47S, 56, 56S, 84S, and 86S.
(B) Norinco 56, 56S, 84S, and 86S.
(C) Poly Technologies AKS and AK47.
(D) MAADI AK47 and ARM.
(2) UZI and Galil.
(3) Beretta AR-70.
(4) CETME Sporter.
(6) Daewoo K-1, K-2, Max 1, Max 2, AR 100, and AR 110C.
(7) Fabrique Nationale FAL, LAR, FNC, 308 Match, and Sporter.
(8) MAS 223.
(9) HK-91, HK-93, HK-94, and HK-PSG-1.
(10) The following MAC types:
(A) RPB Industries Inc. sM10 and sM11.
(B) SWD Incorporated M11.
(11) SKS with detachable magazine.
(12) SIG AMT, PE-57, SG 550, and SG 551.
(14) Sterling MK-6.
(15) Steyer AUG.
(16) Valmet M62S, M71S, and M78S.
(17) Armalite AR-180.
(18) Bushmaster Assault Rifle.
(19) Calico M-900.
(20) J&R ENG M-68.
(21) Weaver Arms Nighthawk.
(b) All of the following specified pistols:
(1) UZI.
(2) Encom MP-9 and MP-45.
(3) The following MAC types:
(A) RPB Industries Inc. m10 and m11.
(B) SWD Incorporated M-11.
(C) Advance Armament Inc. M-11.
(D) Military Armament Corp. Ingram M-11.
(4) Intratec TEC-9.
(5) Sites Spectre.
(6) Sterling MK-7.
(7) Calico M-950.
(8) Bushmaster Pistol.
(c) All of the following specified shotguns:
(1) Franchi SPAS 12 and LAW 12.
(2) Striker 12.
(3) The Streetsweeper type S/S Inc. SS/12.
(d) Any firearm declared by the court pursuant to [Section 12276.5] to be an
assault weapon that is specified as an assault weapon in a list promulgated
pursuant to [Section 12276.5].
(e) This section is declaratory of existing law and a clarification of the law and
the Legislature’s intent which bans the weapons enumerated in this section, the
weapons included in the list promulgated by the Attorney General pursuant to
[Section 12276.5], and any other models which are only variations of those
weapons with minor differences, regardless of the manufacturer. The Legislature
has defined assault weapons as the types, series, and models listed in this section
because it was the most effective way to identify and restrict a specific class of
semiautomatic weapons.

Comment. Subdivisions (a)-(d) and the introductory clause of Section 16150 continue former
Section 12276(a)-(d) and its introductory clause without substantive change.
Subdivision (e) continues former Section 12276(f) without substantive change.
See Sections 16151 (further clarification of “assault weapon”), 16152 (exemptions from
definition of “assault weapon”), 16620 (“series”).

Staff Notes.
We encourage comment on the following points:
(1) Existing Sections 12276 and 12276.1 define “assault weapon” as used “in this chapter” —
i.e., the Roberti-Roos Assault Weapons Control Act of 1989 (Sections 12275-12290). Aside from
that chapter, the only provisions in Title 2 of Part 4 that use the term “assault weapon” are:
• Sections 12001(n)(11) and 12601, which expressly incorporate the definition in Sections
12276 and 12276.1.
• Section 12011(a), which refers repeatedly to an “assault weapon registration.” Because an
“assault weapon registration” would have to be obtained pursuant to the Roberti-Roos Assault
Weapons Control Act of 1989, the definition of “assault weapon” in that act necessarily applies
in this context.
• Sections 12022 and 12022.5, which are sentencing enhancement provisions that expressly
incorporate the definition in Sections 12276 and 12276.1.
• Section 12072, which expressly incorporates the definitions in Sections 12276, 12276.1, and 12276.5. The reference to Section 12276.5 is immaterial because the list of weapons compiled pursuant to Section 12276.5 is incorporated by reference in Section 12276(d). The definition used in Section 12072 is thus the same as in the preceding sections.

• Section 12039, which directs the Attorney General to annually report on usage of “assault weapons” and other firearms, but does not define the term “assault weapon.”

Because Section 12039 uses the term “assault weapon” without defining it, the definition in Sections 12276 and 12276.1 could not be applied to the entirety of new Part 6 without creating a risk of a substantive change. Accordingly, the definition in proposed Section 16150 would only apply to specified code sections.

The staff suspects, however, that the term “assault weapon” is intended to have the same meaning in Section 12039 as in the other sections. At some point in the future, the Legislature might want to consider extending the definition to the entirety of new Part 6. Unless the Commission otherwise directs, we will add this issue to the list of minor clean-up issues that the Commission plans to include in its report to the Governor and the Legislature.

(2) Section 12276(f) is not a definition but rather an explanatory statement relating to the definition of “assault weapon” in Section 12276(a)-(d). Proposed Section 16150(e) would continue Section 12276(f) without substantive change. We considered placing the material with the substantive provisions on assault weapons, but decided that it would be better to keep it with the definition of “assault weapon.”

(3) Section 12276(f) says that “this section is declaratory of existing law, as amended, and a clarification of the law ....” (Emphasis added.) Proposed Section 16150(e) does not include the phrase “as amended.” That phrase is now surplusage, although it might have been necessary in 1991, when Section 12276 was amended to add subdivisions (e) and (f) and make other changes.

§ 16151. Further clarification of “assault weapon”

16151. (a) Notwithstanding Section 16150, “assault weapon” also means any of the following:

(1) A semiautomatic, centerfire rifle that has the capacity to accept a detachable magazine and any one of the following:
   (A) A pistol grip that protrudes conspicuously beneath the action of the weapon.
   (B) A thumbhole stock.
   (C) A folding or telescoping stock.
   (D) A grenade launcher or flare launcher.
   (E) A flash suppressor.
   (F) A forward pistol grip.

(2) A semiautomatic, centerfire rifle that has a fixed magazine with the capacity to accept more than 10 rounds.

(3) A semiautomatic, centerfire rifle that has an overall length of less than 30 inches.

(4) A semiautomatic pistol that has the capacity to accept a detachable magazine and any one of the following:
   (A) A threaded barrel, capable of accepting a flash suppressor, forward handgrip, or silencer.
   (B) A second handgrip.
(C) A shroud that is attached to, or partially or completely encircles, the barrel that allows the bearer to fire the weapon without burning his or her hand, except a slide that encloses the barrel.

(D) The capacity to accept a detachable magazine at some location outside of the pistol grip.

(5) A semiautomatic pistol with a fixed magazine that has the capacity to accept more than 10 rounds.

(6) A semiautomatic shotgun that has both of the following:

(A) A folding or telescoping stock.

(B) A pistol grip that protrudes conspicuously beneath the action of the weapon, thumbhole stock, or vertical handgrip.

(7) A semiautomatic shotgun that has the ability to accept a detachable magazine.

(8) Any shotgun with a revolving cylinder.

Comment. Section 16151 continues former Section 12276.1(a) without substantive change. See Sections 16150 (“assault weapon”), 16152 (exemptions from definition of “assault weapon”).

§ 16152. Exemptions from definition of “assault weapon”

16152. (a) The Legislature finds a significant public purpose in exempting from the definition of “assault weapon” pistols that are designed expressly for use in Olympic target shooting events. Therefore, those pistols that are sanctioned by the International Olympic Committee and by USA Shooting, the national governing body for international shooting competition in the United States, and that were used for Olympic target shooting purposes as of January 1, 2001, and that would otherwise fall within the definition of “assault weapon” pursuant to Sections 16150 and 16151 are exempt, as provided in subdivision (b).

(b) “Assault weapon” does not include either of the following:

(1) Any antique firearm.

(2) Any of the following pistols, because they are consistent with the significant public purpose expressed in subdivision (a):

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<thead>
<tr>
<th>MANUFACTURER</th>
<th>MODEL</th>
<th>CALIBER</th>
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<tbody>
<tr>
<td>BENELLI</td>
<td>MP90</td>
<td>.22LR</td>
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<tr>
<td>BENELLI</td>
<td>MP90</td>
<td>.32 S&amp;W LONG</td>
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<tr>
<td>BENELLI</td>
<td>MP95</td>
<td>.22LR</td>
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<td>BENELLI</td>
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<td>.32 S&amp;W LONG</td>
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<td>280</td>
<td>.22LR</td>
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<tr>
<td>HAMMERLI</td>
<td>280</td>
<td>.32 S&amp;W LONG</td>
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(3) The Department of Justice shall create a program that is consistent with the purposes stated in subdivision (a) to exempt new models of competitive pistols that would otherwise fall within the definition of “assault weapon” pursuant to Sections 16150 and 16151 from being classified as an assault weapon. The exempt competitive pistols may be based on recommendations by USA Shooting consistent with the regulations contained in the USA Shooting Official Rules or may be based on the recommendation or rules of any other organization that the department deems relevant.

Comment. Subdivision (a) of Section 16152 continues former Section 12276.1(b) without substantive change. Subdivision (b) continues former Section 12276.1(c) without substantive change. See Sections 16150 (“assault weapon”), 16151 (further clarification of “assault weapon”).

Staff Notes.

We encourage comment on the following points:

(1) Section 12276.1(b) refers to “pistols that are ... used for Olympic target shooting purposes at the time the act adding this subdivision is enacted ....” Proposed Section 16152(a) would refer instead to “pistols that were used for Olympic target shooting purposes as of January 1, 2001....” We selected that date because the act adding subdivision (b) to Section 12276.1 became operative on January 1, 2001.

(2) Section 12276.1(c)(3) is not a definition. It is a substantive provision that relates to the list of exemptions from the definition of “assault weapon.” Proposed Section 16152(b)(3) would continue Section 12276(f) without substantive change. We considered placing the material with
the substantive provisions on assault weapons, but decided that it would be better to keep it with
the list of exemptions from the definition of “assault weapon.”

§ 16160. “Ballistic knife”
16160. As used in this part, “ballistic knife” means a device that propels a
knife-like blade as a projectile by means of a coil spring, elastic material, or
compressed gas. Ballistic knife does not include any device which propels an
arrow or a bolt by means of any common bow, compound bow, crossbow, or
underwater speargun.

Comment. Section 16160 continues former Section 12020(c)(8) without substantive change.
☞ Staff Note. Existing Section 12020(c)(8) defines “ballistic knife” for purposes of that section.
The term is not used in any other section in Title 2 of Part 4.
Consequently, the definition in Section 12020(c)(8) can be applied to the entirety of new Part 6
without effecting a substantive change. Proposed Section 16160 would therefore define “ballistic
knife” as used “in this part.”

§ 16165. “Ballistics identification system”
16165. As used in this part, “ballistics identification system” includes, but is not
limited to, any automated image analysis system that is capable of storing firearm
ballistic markings and tracing those markings to the firearm that produced them.

Comment. Section 16165 continues former Section 12072.5(a) without substantive change.
☞ Staff Note. Existing Section 12072.5(a) defines “ballistics identification systems” for
purposes of that section. The term is not used in any other section in Title 2 of Part 4.
Consequently, the definition in Section 12072.5 can be applied to the entirety of new Part 6
without effecting a substantive change. Proposed Section 16165 would therefore define “ballistics
identification system” as used “in this part.”

§ 16170. “Basic firearms safety certificate”
16170. As used in this part, “basic firearms safety certificate” means a certificate
issued by the Department of Justice pursuant to [Article 8 (commencing with
Section 12800) of Chapter 6 of Title 2 of Part 4], before January 1, 2003.

Comment. Section 16170 continues former Section 12001(p) without substantive change.
☞ Staff Note. Existing Section 12001(p) defines “basic firearms safety certificate” as used “in
this code.” At the June meeting, the Commission discussed (1) whether to move the provision to
the beginning of the Penal Code, instead of burying a codewide definition near the end of the
code, and (2) whether the term should be defined for purposes of the entire Penal Code or only
for purposes of new Part 6. To assist in answering these questions, the Commission directed the
staff to check whether the term is currently used outside of Title 2 of Part 4 of the Penal Code.
CLRC Minutes (June 2007), p. 10.
The staff found that the term “basic firearms safety certificate” is only used in Title 2 of Part 4,
not elsewhere in the Penal Code. The substance of that title would be continued in new Part 6
(except for the sentencing enhancement provisions, which do not use the term “basic firearms
safety certificate”). Consequently, the definition could be limited to new Part 6 without effecting
a substantive change. Proposed Section 16170 would therefore define “basic firearms safety
certificate” as used “in this part.”
We encourage comment on this approach.
§ 16175. “BB device”
16175. As used in this part, “BB device” means any instrument that expels a projectile, such as a BB or a pellet, not exceeding 6mm caliber, through the force of air pressure, gas pressure, or spring action, or any spot marker gun.

Comment. Section 16175 continues former Sections 12001(g) and 12550(a) without substantive change.

§ 16180. “Belt buckle knife”
16180. As used in this part, “belt buckle knife” is a knife which is made an integral part of a belt buckle and consists of a blade with a length of at least 2-1/2 inches.

Comment. Section 16180 continues former Section 12020(c)(13) without substantive change.

☞ Staff Note. Existing Section 12020(c)(13) defines “belt buckle knife” for purposes of that section. The term is not used in any other section in Title 2 of Part 4. Consequently, the definition in Section 12020(c)(13) can be applied to the entirety of new Part 6 without effecting a substantive change. Proposed Section 16180 would therefore define “belt buckle knife” as used “in this part.”

§ 16185. “Blowgun”
16185. As used in this part, “blowgun” means a hollow tube designed and intended to be used as a tube through which a dart is propelled by the force of the breath of the user.

Comment. Section 16185 continues former Section 12580 without substantive change.

☞ Staff Note. Existing Section 12580 defines “blowgun” for purposes of Article 4 of Chapter 6 of Title 2 of Part 4 (i.e., Sections 12580-12583). Aside from that article, the term is not used in Title 2 of Part 4. Consequently, the definition in Section 12580 can be applied to the entirety of new Part 6 without effecting a substantive change. Proposed Section 16185 would therefore define “blowgun” as used “in this part.”

§ 16190. “Blowgun ammunition”
16190. As used in this part, “blowgun ammunition” means a dart designed and intended for use in a blowgun.

Comment. Section 16190 continues former Section 12581 without substantive change.

☞ Staff Note. Existing Section 12581 defines “blowgun ammunition” for purposes of Article 4 of Chapter 6 of Title 2 of Part 4 (i.e., Sections 12580-12583). Aside from that article, the term is not used in Title 2 of Part 4. Consequently, the definition in Section 12581 can be applied to the entirety of new Part 6 without effecting a substantive change. Proposed Section 16190 would therefore define “blowgun ammunition” as used “in this part.”
§ 16195. “Body vest” or “body shield”

16195. As used in this part, “body vest” or “body shield” means any bullet-resistant material intended to provide ballistic and trauma protection for the wearer or holder.

Comment. Section 16195 continues former Section 12323(c) without substantive change.

☞ Staff Notes. Existing Section 12323(c) defines “body vest or shield” for purposes of Chapter 2.6 of Title 2 of Part 4. Aside from that chapter, the phrases “body vest,” “body shield,” and “body vest or shield” are not used in Title 2 of Part 4, with one exception. The exception is Section 12022.2, a sentencing enhancement provision that would not be moved to new Part 6.

Consequently, the definition in Section 12323(c) can be applied to the entirety of new Part 6 without effecting a substantive change. Proposed Section 16195 would therefore define “body vest” and “body shield” as used “in this part.”

§ 16200. “Bona fide evidence of majority and identity”

16200. As used in this part, “bona fide evidence of majority and identity” means a document issued by a federal, state, county, or municipal government, or subdivision or agency thereof, including, but not limited to, a motor vehicle operator’s license, California state identification card, identification card issued to a member of the armed forces, or other form of identification that bears the name, date of birth, description, and picture of the person.

Comment. Section 16200 continues the second sentence of former Section 12316(a)(2) without substantive change.

☞ Staff Notes.

We encourage comment on the following points:

(1) Existing Section 12316(a)(2) defines “bona fide evidence of majority and identity” for purposes of that subdivision. The term is not used elsewhere in Title 2 of Part 4.

Consequently, the definition in Section 12316(a)(2) can be applied to the entirety of new Part 6 without effecting a substantive change. Proposed Section 16200 would therefore define “bona fide evidence of majority and identity” as used “in this part.”

(2) Although Section 12316(a) is the only provision in Title 2 of Part 4 that uses the term “bona fide evidence of majority and identity,” another provision uses and defines the term “clear evidence of his or her identity and age” for purposes of other sections. The definition in that provision (Section 12071(c)(1)) differs from the definition in Section 12316(a).

Because this is a nonsubstantive study, we have maintained the distinction between the two terms. See proposed Section 16250 (“clear evidence of the person’s identity and age”).

At some point in the future, the Legislature should perhaps consider whether it is necessary to use two distinct terms with differing definitions. Unless the Commission otherwise directs, we will add this issue to the list of minor clean-up issues that the Commission plans to include in its report to the Governor and the Legislature.

§ 16205. “Boobytrap”

16205. As used in this part, “boobytrap” means any concealed or camouflaged device designed to cause great bodily injury when triggered by an action of any unsuspecting person coming across the device. Boobytraps may include, but are not limited to, guns, ammunition, or explosive devices attached to trip wires or
other triggering mechanisms, sharpened stakes, and lines or wire with hooks attached.

Comment. Section 16205 continues former Section 12355(c) without substantive change.

☞ Staff Notes.

We encourage comment on the following points:

(1) Existing Section 12355(c) defines “boobytrap” for purposes of that section. The term is not used in any other section in Title 2 of Part 4. Consequently, the definition in Section 12355 can be applied to the entirety of new Part 6 without effecting a substantive change. Proposed Section 16205 would therefore define “boobytrap” as used “in this part.”

(2) The second sentence of existing Section 12355(c) says: “Boobytraps may include, but are not limited to, guns, ammunition, or explosive devices attached to trip wires or other triggering mechanisms, sharpened stakes, and lines or wire with hooks attached.” (Emphasis added.) The Commission’s general practice is to draft statutes using the singular form rather than the plural. We considered revising the language in the second sentence of Section 12355(c) to use the singular form. But that proved difficult to do in a manner we were confident would create no risk of a substantive change. Proposed Section 16205 therefore tracks the existing language in Section 12355(c).

§ 16210. “Camouflaging firearm container”

16210. (a) As used in this part, “camouflaging firearm container” means a container that meets all of the following criteria:

(1) It is designed and intended to enclose a firearm.

(2) It is designed and intended to allow the firing of the enclosed firearm by external controls while the firearm is in the container.

(3) It is not readily recognizable as containing a firearm.

(b) “Camouflaging firearm container” does not include any camouflaging covering used while engaged in lawful hunting or while going to or returning from a lawful hunting expedition.

Comment. Section 16210 continues former Section 12020(c)(9) without substantive change. See Section 16305 (“firearm”).

☞ Staff Note. Existing Section 12020(c)(9) defines “camouflaging firearm container” for purposes of that section. The term is not used in any other section in Title 2 of Part 4. Consequently, the definition in Section 12020(c)(9) can be applied to the entirety of new Part 6 without effecting a substantive change. Proposed Section 16210 would therefore define “camouflaging firearm container” as used “in this part.”

§ 16215. “Cane gun”

16215. As used in this part, “cane gun” means any firearm mounted or enclosed in a stick, staff, rod, crutch, or similar device, designed to be, or capable of being used as, an aid in walking, if the firearm may be fired while mounted or enclosed therein.

Comment. Section 16215 continues former Section 12020(c)(5) without substantive change. See Section 16305 (“firearm”).
**Staff Note.** Existing Section 12020(c)(5) defines “cane gun” for purposes of that section. The term is not used in any other section in Title 2 of Part 4.

Consequently, the definition in Section 12020(c)(5) can be applied to the entirety of new Part 6 without effecting a substantive change. Proposed Section 16215 would therefore define “cane gun” as used “in this part.”

§ 16220. “Cane sword”

1620. As used in this part, “cane sword” means a cane, swagger stick, stick, staff, rod, pole, umbrella, or similar device, having concealed within it a blade that may be used as a sword or stiletto.

**Comment.** Section 16220 continues former Section 12020(c)(15) without substantive change.

**Staff Note.** Existing Section 12020(c)(15) defines “cane gun” for purposes of that section. The term is not used in any other section in Title 2 of Part 4.

Consequently, the definition in Section 12020(c)(15) can be applied to the entirety of new Part 6 without effecting a substantive change. Proposed Section 16220 would therefore define “cane sword” as used “in this part.”

§ 16225. “Capacity to accept more than 10 rounds”

16225. As used in Section 16151, “capacity to accept more than 10 rounds” means capable of accommodating more than 10 rounds. The term does not apply to a feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds.

**Comment.** Section 16225 continues former Section 12276.1(d)(2) without substantive change.

**Staff Note.** Existing Section 12276.1(d)(2) defines “capacity to accept more than 10 rounds” for purposes of that section. Existing Section 12020(c)(25) uses the phrase “capacity to accept more than 10 rounds” without defining it.

Because Section 12020(c)(25) uses the phrase without defining it, the definition in Section 12276.1(d)(2) could not be applied to the entirety of new Part 6 without creating a risk of a substantive change. Accordingly, the definition in proposed Section 16225 would only apply to proposed Section 16151, which would continue the portion of Section 12276.1 that uses the phrase “capacity to accept more than 10 rounds.”

The staff suspects, however, that the phrase “capacity to accept more than 10 rounds” is intended to have the same meaning in Section 1220 as in Section 12276.1. At some point in the future, the Legislature might want to consider extending the definition to the entirety of new Part 6. Unless the Commission otherwise directs, we will add this issue to the list of minor clean-up issues that the Commission plans to include in its report to the Governor and the Legislature.

§ 16230. “CCW”

1620. As used in this part, “CCW” means “carry concealed weapons.”

**Comment.** Section 16230 continues former Section 12027(a)(1)(E) without substantive change.

**Staff Note.** Existing Section 12027(a)(1)(E) defines “CCW” for purposes of that section and Section 12031. The only other section in Title 2 of Part 4 that uses the term is Section 12027.1. That provision uses the term without defining it, but it is clear from the content of the provision that “CCW” has the same meaning there (i.e., “carry concealed weapons”) as in Sections 12027 and 12031.
Consequently, the definition in Section 12027(a)(1)(E) can be applied to the entirety of new Part 6 of the Penal Code without effecting a substantive change. Proposed Section 16230 would therefore define “CCW” as used “in this part.”

§ 16235. “Certified instructor” or “DOJ Certified Instructor”

16235. As used in [Sections 12800-12809], “certified instructor” or “DOJ Certified Instructor” means a person designated as a handgun safety instructor by the Department of Justice pursuant to [subdivision (d) of Section 12804].

Comment. Section 16235 continues former Section 12801(a)(2) without substantive change.

Staff Notes.

We encourage comment on the following points:

(1) Existing Section 12801(a)(2) defines the terms “certified instructor” and “DOJ Certified Instructor” synonymously for purposes of Article 8 of Chapter 6 of Title 2 of Part 4 (i.e., Sections 12800-12809). That definition is problematic, however, because Article 8 is sloppy in referring to instructors.

In particular, the article not only uses the two defined terms, but also refers to a “handgun safety certificate instructor,” “National Rifle Association-Certified Instructor,” an “instructor certified by the department,” “Department Certified Instructor applicants,” “the instructor,” “the issuing instructor,” and a “managing officer or partner ... certified as an instructor pursuant to this article....” Although the definition itself refers to “a person designated as a handgun safety instructor by the Department of Justice pursuant to subdivision (d) of Section 12804,” the phrase “handgun safety instructor” is not used anywhere else in Title 2 of Part 4.

In addition, a provision in a different article (Section 12071) refers twice to a “department-certified instructor.” No definition is given.

This sloppiness in terminology should be corrected. We are reluctant to attempt as much in this study, however, because that would pose a risk of inadvertently making a substantive change. We recommend leaving the terminology unchanged and applying the existing definition of “certified instructor” and “DOJ Certified Instructor” only to the provisions that would continue the substance of Article 8. Unless the Commission otherwise directs, we will add this terminology issue to the list of minor clean-up issues that the Commission plans to include in its report to the Governor and the Legislature.

(2) Because the terms “certified instructor” and “DOJ Certified Instructor” are defined synonymously, we have kept them together in proposed Section 16235. To help persons find the definition of “DOJ Certified Instructor,” we have included a provision entitled “DOJ Certified Instructor” (proposed Section 16285), which would simply cross-refer to proposed Section 16235.

§ 16240. “Chamber load indicator”

16240. As used in this part, “chamber load indicator” means a device that plainly indicates that a cartridge is in the firing chamber. A device satisfies this definition if it is readily visible, has incorporated or adjacent explanatory text or graphics, or both, and is designed and intended to indicate to a reasonably foreseeable adult user of the pistol, without requiring the user to refer to a user’s manual or any other resource other than the pistol itself, whether a cartridge is in the firing chamber.

Comment. Section 16240 continues former Section 12126(c) without substantive change.
Staff Note. Existing Section 12126(c) defines “chamber load indicator” for purposes of that section. The only other section in Title 2 of Part 4 that uses the term is Section 12130, which cross-refers to the definition in Section 12126(c).

Consequently, the definition in Section 12126(c) can be applied to the entirety of new Part 6 of the Penal Code without effecting a substantive change. Proposed Section 16240 would therefore define “chamber load indicator” as used “in this part.”

§ 16245. “Child”

16245. As used in [Sections 12035 and 12036], “child” means a person under 18 years of age.

Comment. Section 16245 continues former Section 12035(a)(3) and former Section 12036(a)(2) without substantive change.

Staff Note. Existing Sections 12035 and 12036 define “child” as shown above for purposes of those sections, which impose restrictions on storage of a firearm. In addition to those sections, the following provisions in Title 2 of Part 4 use the term “child” or “children”:

- Section 12021.1, which refers to lewd acts on a child under the age of 14 years.
- Sections 12022.53, 12022.7, and 12022.95, which are sentencing enhancement provisions that would not be moved to new Part 6.
- Section 12028.5, which refers to “[a] Person with whom the respondent has had a child, where the presumption applies that the male parent is the father of the child of the female parent under the Uniform Parentage Act,” and “[a] child of a party or a child who is the subject of an action under the Uniform Parentage Act, where the presumption applies that the male parent is the father of the child.” The term “child” is not defined.
- Section 12078(c)(3), which defines “immediate family member” to include a parent and child relationship. The term “child” is not defined.
- Section 12080, which refers to “child proofing” without defining it.
- Section 12087.5, which refers to “children in the United States under the age of 15 years.”
- Section 12087.6, which refers to “children” without defining the term.
- Section 12088.2, which refers to “children 17 years of age and younger.”
- Section 12088.3, which mandates use of a warning label that refers to children. The term “children” is not defined.
- Section 12088.5, which refers to a “child 18 years of age or younger.”

From these usages, it is clear that it would not be possible to adopt a definition of “child” or “children” that would apply to the entirety of new Part 6. Consequently, proposed Section 16245 would only define “child” for purposes of the provisions that continue the substance of Sections 12035 and 12036.

§ 16250. “Clear evidence of the person’s identity and age”

16250. As used in this part, “clear evidence of the person’s identity and age” means either of the following:

(a) A valid California driver’s license.
(b) A valid California identification card issued by the Department of Motor Vehicles.

Comment. Section 16250 continues former Section 12071(c)(1) without substantive change.

Staff Notes.

We encourage comment on the following points:

(1) Existing Section 12071(c)(1) defines “clear evidence of his or her identity and age” for purposes of the article that contains that provision. Aside from that article, the term is not used in Title 2 of Part 4.
Consequently, the definition in Section 12071(c)(1) can be applied to the entirety of new Part 6 without effecting a substantive change. Proposed Section 16250 would therefore define the term as used “in this part.”

(2) Existing Section 12071 defines “clear evidence of his or her identity and age.” (Emphasis added.) In drafting statutes, the Law Revision Commission generally tries to avoid using awkward phrases like “his or her,” “he or she,” and “himself or herself.”

In drafting proposed Section 16250 we have replaced “his or her identity and age” with “the person’s identity and age.” We will make conforming changes in the provisions that use the phrase “clear evidence of his or her identity and age.”

(3) Although the term “clear evidence of his or her identity and age” is only used in the article containing Section 12071(c)(1), another provision in Title 2 of Part 4 uses the term “bona fide evidence of majority and identity” and defines it for purposes of that provision. The definition in that provision (Section 12316(a)) differs from the definition in Section 12071(c)(1).

Because this is a nonsubstantive study, we have maintained the distinction between the two terms. See proposed Section 16200 (“bona fide evidence of majority and identity”).

At some point in the future, the Legislature should perhaps consider whether it is necessary to use two distinct terms with differing definitions. Unless the Commission otherwise directs, we will add this issue to the list of minor clean-up issues that the Commission plans to include in its report to the Governor and the Legislature.

§ 16255. “Dagger” or “dirk”

16255. As used in this part, “dagger” or “dirk” means a knife or other instrument with or without a handguard that is capable of ready use as a stabbing weapon that may inflict great bodily injury or death. A nonlocking folding knife, a folding knife that is not prohibited by [Section 653k], or a pocketknife is capable of ready use as a stabbing weapon that may inflict great bodily injury or death only if the blade of the knife is exposed and locked into position.

Comment. Section 16255 continues former Section 12020(c)(24) without substantive change.

Staff Notes.

We encourage comment on the following points:

(1) Existing Section 12020(c)(24) defines “dagger” or “dirk” for purposes of that section. Aside from that section, the only provision in Title 2 of Part 4 that uses the terms “dagger” and “dirk” is Section 12028(a), which refers to the “unlawful concealed carrying upon the person of ... any dirk, or dagger, as provided in Section 12020 ....” (Emphasis added.) The definition used in Section 12020 is thus incorporated by reference in Section 12028.

Consequently, the definition in Section 12020(c)(24) can be applied to the entirety of new Part 6 of the Penal Code without effecting a substantive change. Proposed Section 16255 would therefore define “dagger” or “dirk” as used “in this part.”

(2) Because the terms “dagger” and “dirk” are defined synonymously, we have kept them together in proposed Section 16255. To help persons find the definition of “dirk,” we have included a provision entitled “dirk” (proposed Section 16280), which would simply cross-reference to proposed Section 16255.

§ 16260. “Deadly weapon”

16260. As used in Division 4 (commencing with Section 17300) of Title 2, “deadly weapon” means any weapon, the possession or concealed carrying of which is prohibited by any provision listed in Section 16340.
Comment. Section 16260 continues former Section 12028.5(a)(3) without substantive change.

§ 16265. “Dealer,” “licensee,” or “person licensed pursuant to [Section 12071]”

16265. (a) As used in [Sections 12000-12101, 12804, and 12809], “licensee,” “person licensed pursuant to [Section 12071],” or “dealer” means a person who has all of the following:

1. A valid federal firearms license.
2. Any regulatory or business license, or licenses, required by local government.
3. A valid seller’s permit issued by the State Board of Equalization.
4. A certificate of eligibility issued by the Department of Justice pursuant to [Section 12071(a)(4)].
5. A license issued in the format prescribed by [Section 12071(a)(6)].
6. Is among those recorded in the centralized list specified in [Section 12071(e)].

(b) As used in [Section 12086], “licensee” means a person, firm, or corporation that satisfies both of the following:

1. Has a license issued pursuant to [Section 12086(b)(2)].
2. Is among those recorded in the centralized list specified in [Section 12086(f)].

Comment. Subdivision (a) of Section 16265 continues former Section 12071(a)(1) without substantive change.

Subdivision (b) continues former Section 12086(a)(1) without substantive change.
See also Section 16440 (“licensed gun dealer”).

☞ Staff Notes.

We encourage comment on the following points:

(1) Because the terms “dealer,” “licensee,” and “person licensed pursuant to Section 12071” are defined synonymously in existing Section 12071(a)(1), we have kept them together in proposed Section 16265. To help persons find the definitions of “licensee” and “person licensed pursuant to Section 12071,” we have included provisions entitled “licensee” (proposed Section 16455) and “person licensed pursuant to Section 12071” (proposed Section 16535), which would simply cross-reference to proposed Section 16265.

(2) Existing Section 12071(a)(1) defines “licensee,” “person licensed pursuant to Section 12071,” and “dealer” synonymously for purposes of “this chapter” (i.e., Sections 12000-12101). Proposed Section 16265(a) would continue that definition without substantive change for purposes of the provisions in new Part 6 that would continue the substance of Sections 12000-12101. Proposed Section 16265(a) would also continue that definition without substantive change for purposes of the provisions in new Part 6 that would continue the substance of Sections 12804 and 12807, which incorporate the definition by reference. Because the terms “licensee,” “person licensed pursuant to Section 12071,” and “dealer” are not used in any of the sentencing enhancement provisions (Sections 12021.5-12022.95), it will not be necessary to define those terms in Title 2 of Part 4 once that title consists solely of the sentencing enhancement provisions.

(3) Existing Section 12086(a)(1) defines “licensee” for purposes of that section, which relates to firearm manufacturing. Proposed Section 16265(b) would continue that definition without substantive change for purposes of the provision in new Part 6 that would continue the substance of Section 12086. We placed that definition in the same section as the provision defining
“licensee” as a synonym of “dealer,” so that the two definitions of “licensee” would be juxtaposed. We hope that this placement might help to prevent confusion about which definition applies when the term “licensee” is used in new Part 6.

(4) Existing Section 12290 defines “licensed gun dealer” for purposes of the Roberti-Roos Assault Weapons Control Act of 1989 (Sections 12275-12290). That definition differs from the definition of “dealer,” “licensee,” and “person licensed pursuant to Section 12071” that would be continued in proposed Section 16265(a). Specifically, a “licensed gun dealer” is defined as a “person who is licensed pursuant to Section 12071 and who has a permit to sell assault weapons or .50 BMG rifles pursuant to Section 12287.” (Emphasis added.) That definition would be continued without substantive change in proposed Section 16440 (“licensed gun dealer”), for purposes of the provisions that would continue the substance of Sections 12275-12290. To help prevent confusion, the Comment to proposed Section 16265 would cross-reference to proposed Section 16440.

(5) In addition to the potential sources of confusion described above, there are other complexities relating to how the terms “licensee,” “dealer,” and similar terms are used in Title 2 of Part 4. Examples include:

- Section 12001(h) and (r) refer to “any person who is licensed as a dealer pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, who ...” Section 12001 is in the same chapter as Section 12071(a)(1), which defines “dealer,” “licensee,” or “person licensed pursuant to Section 12071” for purposes of that chapter. From the language of Section 12001(h) and (r), it appears that the chapter-wide definition of “dealer” is not meant to apply to those provisions.
- Section 12021(g)(3) refers to a “licensed gun dealer” but does not define the term. This provision is in the same chapter as Section 12071(a)(1), which defines “dealer,” “licensee,” or “person licensed pursuant to Section 12071” for purposes of that chapter.
- Section 12021.3(j)(1) refers to a “licensed firearms dealer” but does not define the term. This provision is in the same chapter as Section 12071(a)(1), which defines “dealer,” “licensee,” or “person licensed pursuant to Section 12071” for purposes of that chapter.
- Section 12095(b)(2) refers to “persons who are licensed as dealers ... under the provisions of Chapter 53 (commencing with Section 5801) of Title 26 of the United States Code, as amended, and the regulations issued pursuant thereto.” Section 12095 is in the same chapter as Section 12071(a)(1), which defines “dealer,” “licensee,” or “person licensed pursuant to Section 12071” for purposes of that chapter. From the language of Section 12095(b)(2), it appears that the chapter-wide definition of “dealer” is not meant to apply to that provision.
- Section 12289 refers to “dealers of .50 BMG rifles” but neither “dealer” nor “dealer of .50 BMG rifles” is defined for purposes of that section.
- Sections 12305 and 12316 refer to a “dealer,” but “dealer” is not defined for purposes of those sections.
- Section 12501 refers to “dealers ... registered under Chapter 53 (commencing with Section 5801) of Title 26 of the United States Code, and the regulations issued pursuant thereto.”

At some point in the future, the Legislature might want to consider cleaning up the usage of the terms “dealer,” “licensee,” and similar terms in the provisions relating to control of deadly weapons. Unless the Commission otherwise directs, we will add this issue to the list of minor clean-up issues that the Commission plans to include in its report to the Governor and the Legislature.

§ 16270. “Department”

16270. As used in [Sections 12086 and 12800-12809], “department” means the Department of Justice.

Comment. Section 16270 continues former Sections 12086(a)(2) and 12801(a)(1) without substantive change.
☞ Staff Note. Existing Section 12086(a)(2) defines “department” to mean the Department of Justice for purposes of that section. Similarly, existing Section 12801(a)(1) defines “department” to mean the Department of Justice for purposes of the article containing that section (i.e., Sections 12800-12809).

In addition to Sections 12086 and 12800-12809, numerous other sections in Title 2 of Part 4 use the term “department.” Often, it is clear from the usage (“Department of Justice”) or context (e.g., when a provision refers to “the department” shortly after referring to “the Department of Justice”) that the intent is to refer to the Department of Justice.

But that is not always the case. Title 2 of Part 4 also includes references to other departments, such as police departments, fire departments, sheriff’s departments, the Department of Consumer Affairs, the State Department of Mental Health, the Department of Fish and Game, the Department of Motor Vehicles, and so forth. Consequently, proposed Section 16270 would only define “department” for purposes of the provisions that would continue the substance of Sections 12086 and 12800-12809.

At some point in the future, the Legislature might want to consider whether the definition should be revised to state: “As used in this part, unless otherwise apparent from the context, ‘department’ means the Department of Justice.” (Emphasis added.) Unless the Commission otherwise directs, we will add this issue to the list of minor clean-up issues that the Commission plans to include in its report to the Governor and the Legislature.

§ 16275. “Destructive device”
16275. (a) As used in [Sections 12020(a)(4), 12030, 12302-12312, 12601], and 16300, “destructive device” includes any of the following weapons:
1. Any projectile containing any explosive or incendiary material or any other chemical substance, including, but not limited to, that which is commonly known as tracer or incendiary ammunition, except tracer ammunition manufactured for use in shotguns.
2. Any bomb, grenade, explosive missile, or similar device or any launching device therefor.
3. Any weapon of a caliber greater than 0.60 caliber which fires fixed ammunition, or any ammunition therefor, other than a shotgun (smooth or rifled bore) conforming to the definition of a “destructive device” found in subsection (b) of Section 479.11 of Title 27 of the Code of Federal Regulations, shotgun ammunition (single projectile or shot), antique rifle, or an antique cannon.
4. Any rocket, rocket-propelled projectile, or similar device of a diameter greater than 0.60 inch, or any launching device therefor, and any rocket, rocket-propelled projectile, or similar device containing any explosive or incendiary material or any other chemical substance, other than the propellant for that device, except those devices as are designed primarily for emergency or distress signaling purposes.
5. Any breakable container which contains a flammable liquid with a flashpoint of 150 degrees Fahrenheit or less and has a wick or similar device capable of being ignited, other than a device which is commercially manufactured primarily for the purpose of illumination.
6. Any sealed device containing dry ice (CO2) or other chemically reactive substances assembled for the purpose of causing an explosion by a chemical reaction.
(b) A bullet containing or carrying an explosive agent is not a destructive device as that term is used in subdivision (a).

Comment. Subdivision (a) of Section 16275 continues former Section 12301(a) without substantive change.

Subdivision (b) continues the second sentence of the second paragraph of former Section 12020(a)(4) without substantive change.

See Sections 16130 (“antique cannon”), 16140 (“antique rifle”).

Staff Notes.

We encourage comment on the following points:

(1) Existing Section 12301(a) defines “destructive device” as used “in this chapter” — i.e., for purposes of Sections 12301-12312. Aside from that chapter, only a few other provisions in Title 2 of Part 4 of the Penal Code use the term “destructive device.” See Sections 12020(a)(4), 12021.1(b)(15)-(17), 12030, 12601. All of those sections incorporate Section 12301’s definition by reference, except Section 12021.1(b)(15)-(17), which refer to a “destructive device” without defining the term.

To avoid any risk of a substantive change, the definition of “destructive device” in proposed Section 16275 would only apply to the provisions that would continue the substance of Sections 12301-12312 and the provisions that would continue the substance of the sections that incorporate Section 12301’s definition by reference (Sections 12020(a)(4), 12030, and 12601).

At some point in the future, the Legislature might want to consider extending the definition to the entirety of new Part 6. Unless the Commission otherwise directs, we will add this issue to the list of minor clean-up issues that the Commission plans to include in its report to the Governor and the Legislature.

(2) Existing Section 12301(a)(3) refers to “the definition of ‘destructive device’ found in subsection (b) of Section 479.11 of Title 27 of the Code of Federal Regulations.” That reference is potentially confusing, because Section 479.11 of Title 27 of the Code of Federal Regulations is not divided into subsections. Rather, Section 479.11 consists of a list of definitions in alphabetical order, including a definition of “destructive device.” That definition includes three components, which are labeled as “(a),” “(b),” and “(c).” The text of Section 479.11 refers to “paragraphs (a) and (b) of this definition.” Thus, Section 12301(a)(3)’s reference to “subsection (b) of Section 479.11 of Title 27 of the Code of Federal Regulations” should perhaps be replaced with a reference to “paragraph (b) of the definition of ‘destructive device’ in Section 479.11 of Title 27 of the Code of Federal Regulations.”

If this were the only issue relating to the wording of Section 12301(a)(3), we would recommend that the Commission correct the potentially confusing reference to “subsection (b) of Section 479.11 of Title 27 of the Code of Federal Regulations.” But there appears to be another issue as well.

In particular, Section 12301(a)(3) provides:

12301. (a) The term “destructive device,” as used in this chapter, shall include any of the following weapons:

....

(3) Any weapon of a caliber greater than 0.60 caliber which fires fixed ammunition, or any ammunition therefor, other than a shotgun (smooth or rifled bore) conforming to the definition of a “destructive device” found in subsection (b) of Section 479.11 of Title 27 of the Code of Federal Regulations, shotgun ammunition (single projectile or shot), antique rifle, or an antique cannon.

(Emphasis added.) The way the provision is currently worded, taken literally, seems to imply that a shotgun “conforming to the definition of a ‘destructive device’ found in subsection (b) of
Section 479.11 of Title 27 of the Code of Federal Regulations” is not a “destructive device” as defined in Section 12301.

We are not sure that makes sense. Under paragraph (b) of Section 479.11, the definition of “destructive device” includes “any type of weapon by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, the barrel or barrels of which have a bore of more than one-half inch in diameter, except a shotgun or shotgun shell which the Director finds is generally recognized as particularly suitable for sporting purposes....” (Emphasis added.)

It seems possible that the actual intent of Section 12301(a)(3) might be to exclude from the California definition of “destructive device” a shotgun that the Director of the Bureau of Alcohol, Tobacco, and Firearms has found to be “generally recognized as particularly suitable for sporting purposes,” pursuant to paragraph (b) of the federal definition of “destructive device” found in Section 479.11.

Alternatively, the intent might be to encompass within the California definition of “destructive device” any weapon that is greater than .60 caliber, fires fixed ammunition, and constitutes a “destructive device” under paragraph (b) of the federal definition of “destructive device” found in Section 479.11, but to exclude “a shotgun (smooth or rifled bore) ..., shotgun ammunition (single projectile or shot), antique rifle, or an antique cannon.” In other words, it is possible that the phrase “other than a shotgun (smooth or rifled bore)” was incorrectly positioned when Section 12301(a)(3) was drafted, and the provision was actually meant to read as follows:

12301. (a) The term “destructive device,” as used in this chapter, shall include any of the following weapons:

....

(3) Any weapon of a caliber greater than 0.60 caliber which fires fixed ammunition, or any ammunition therefor, conforming to the definition of a “destructive device” found in subsection (b) of Section 479.11 of Title 27 of the Code of Federal Regulations, other than a shotgun (smooth or rifled bore), shotgun ammunition (single projectile or shot), antique rifle, or an antique cannon.

(Emphasis added.)

We are curious to know what other people think about the proper interpretation of Section 12301(a)(3). Regardless of the proper interpretation, however, we recommend that the Commission leave the existing language intact for purposes of this nonsubstantive reorganization of the deadly weapons statutes.

Otherwise, there would be a risk of inadvertently making a substantive change. Instead of taking that risk, the Commission should include this issue in the list of minor clean-up issues it plans to include in its report to the Governor and the Legislature. Unless the Commission otherwise directs, we will add the issue to that list.

§ 16280. “Dirk”

16280. Use of the term “dirk” is governed by Section 16255.

Comment. Section 16280 is new. It is intended to help persons locate the definition of “dirk,” which is the same as the definition of “dagger.”

§ 16285. “DOJ Certified Instructor”

16285. Use of the term “DOJ Certified Instructor” is governed by Section 16235.

Comment. Section 16285 is new. It is intended to help persons locate the definition of “DOJ Certified Instructor,” which is the same as the definition of “certified instructor.”
§ 16290. “Domestic violence”

16290. As used in this part, “domestic violence” means abuse perpetrated against any of the following persons:

(a) A spouse or former spouse.
(b) A cohabitant or former cohabitant, as defined in Section 6209 of the Family Code.
(c) A person with whom the respondent is having or has had a dating or engagement relationship.
(d) A person with whom the respondent has had a child, where the presumption applies that the male parent is the father of the child of the female parent under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code).
(e) A child of a party or a child who is the subject of an action under the Uniform Parentage Act, where the presumption applies that the male parent is the father of the child to be protected.
(f) Any other person related by consanguinity or affinity within the second degree.

Comment. Section 16290 continues former Section 12028.5(a)(2) without substantive change.

§ 16295. “Drop safety requirement for handguns”

16295. As used in this part, the “drop safety requirement for handguns” means that at the conclusion of the firing requirements for handguns described in [Section 12127], the same certified independent testing laboratory shall subject the same three handguns of the make and model for which certification is sought, to the following test:

(a) A primed case (no powder or projectile) shall be inserted into the chamber. For a pistol, the slide shall be released, allowing it to move forward under the impetus of the recoil spring, and an empty magazine shall be inserted. For both a pistol and a revolver, the weapon shall be placed in a drop fixture capable of dropping the pistol from a drop height of 1m + 1cm (39.4 + 0.4 in.) onto the largest side of a slab of solid concrete having minimum dimensions of 7.5 x 15 x 15 cm (3 x 6 x 6 in.). The drop distance shall be measured from the lowermost portion of the weapon to the top surface of the slab. The weapon shall be dropped from a fixture and not from the hand. The weapon shall be dropped in the condition that it would be in if it were dropped from a hand (cocked with no manual safety applied). If the design of a pistol is such that upon leaving the hand a “safety” is automatically applied by the pistol, this feature shall not be defeated. An approved drop fixture is a short piece of string with the weapon attached at one end and the other end held in an air vise until the drop is initiated.

(b) The following six drops shall be performed:
(1) Normal firing position with barrel horizontal.
(2) Upside down with barrel horizontal.
(3) On grip with barrel vertical.
(4) On muzzle with barrel vertical.
(5) On either side with barrel horizontal.
(6) If there is an exposed hammer or striker, on the rearmost point of that device, otherwise on the rearmost point of the weapon.
(c) The primer shall be examined for indentations after each drop. If indentations are present, a fresh primed case shall be used for the next drop.
(d) The handgun shall pass this test if each of the three test guns does not fire the primer.

Comment. Section 16295 continues former Section 12128 without substantive change.

☞ Staff Note. Existing Section 12128 defines “drop safety requirement for handguns” for purposes of “this chapter” (i.e., Sections 12125-12133). Aside from that chapter, the term is not used in any other section in Title 2 of Part 4.
Consequently, the definition in Section 12128 can be applied to the entirety of new Part 6 without effecting a substantive change. Proposed Section 16295 would therefore define “drop safety requirement for handguns” as used “in this part.”

§ 16300. “Explosive”
16300. As used in [Sections 12302-12312] and 16275, “explosive” means any substance, or combination of substances, the primary or common purpose of which is detonation or rapid combustion, and which is capable of a relatively instantaneous or rapid release of gas and heat, or any substance, the primary purpose of which, when combined with others, is to form a substance capable of a relatively instantaneous or rapid release of gas and heat. “Explosive” includes, but is not limited to, any explosive as defined in Section 841 of Title 18 of the United States Code and published pursuant to Section 555.23 of Title 27 of the Code of Federal Regulations, and any of the following:
(a) Dynamite, nitroglycerine, picric acid, lead azide, fulminate of mercury, black powder, smokeless powder, propellant explosives, detonating primers, blasting caps, or commercial boosters.
(b) Substances determined to be division 1.1, 1.2, 1.3, or 1.6 explosives as classified by the United States Department of Transportation.
(c) Nitro carbo nitrate substances (blasting agent) classified as division 1.5 explosives by the United States Department of Transportation.
(d) Any material designated as an explosive by the State Fire Marshal. The designation shall be made pursuant to the classification standards established by the United States Department of Transportation. The State Fire Marshal shall adopt regulations in accordance with the Government Code to establish procedures for the classification and designation of explosive materials or explosive devices that are not under the jurisdiction of the United States Department of Transportation pursuant to provisions of Section 841 of Title 18 of the United States Code and published pursuant to Section 555.23 of Title 27 of the Code of Federal Regulations that define explosives.
(e) Certain division 1.4 explosives as designated by the United States Department of Transportation when listed in regulations adopted by the State Fire Marshal.

(f) As used in [Sections 12302-12312] and 16275, “explosive” does not include any destructive device, nor does it include ammunition or small arms primers manufactured for use in shotguns, rifles, and pistols.

Comment. Section 16300 continues former Section 12301(b) without substantive change. To make the provision more easily understandable, the definition of “explosive” in Health and Safety Code Section 12000 is repeated in Section 16300, rather than incorporated by reference as it was in the past. Case law construing the definition in Health and Safety Code Section 12000 is relevant in construing Section 16300.

See Section 16275 (“destructive device”).

Staff Notes.

We encourage comment on the following points:

(1) Existing Section 12301(b) defines “explosive” to mean “any explosive defined in Section 12000 of the Health and Safety Code.” The current definition thus requires a person to refer to the Health and Safety Code to determine what is meant.

It would be more user-friendly to state the definition directly in the Penal Code. Proposed Section 16300 follows that approach.

The drawback of the approach is that if the two definitions are to remain identical in the future, the definition in proposed Section 16300 will have to be amended each time the definition in Health and Safety Code Section 12000 is amended, and vice versa. Does that drawback outweigh the advantages of placing the definition directly in the Penal Code?

(2) Existing Section 12301(b) defines “explosive” as used “in this chapter” (i.e., Sections 12301-12312). Aside from that chapter, a number of other provisions in Title 2 of Part 4 use the term “explosive.” See Sections 12001(d), 12020(a)(1), (a)(3), (a)(4), (c)(20) & (c)(21), 12021.1, 12028, 12126. The term “explosive” is not defined for purposes of those provisions.

Because a number of provisions uses the term “explosive” without defining it, the definition in Section 12301(b) could not be applied to the entirety of new Part 6 without creating a risk of a substantive change. Accordingly, the definition in proposed Section 16300 would only apply to the provisions that would continue the substance of Sections 12301-12312.

It is possible that “explosive” is intended to have the same meaning in some or perhaps all of the other provisions that use the term. At some point in the future, the Legislature might want to explore the possibility of extending the definition to the entirety of new Part 6. Unless the Commission otherwise directs, we will add this issue to the list of minor clean-up issues that the Commission plans to include in its report to the Governor and the Legislature.

(3) Existing Health and Safety Code Section 12000(f), which is incorporated by reference in existing Penal Code Section 12301(b) says: “for purposes of this part, ‘explosives’ does not include any destructive device, as defined in Section 12301 of the Penal Code, nor does it include ....” Unlike existing Health and Safety Code Section 12000(f), proposed Section 16300 would not include a cross-reference to the provision defining a “destructive device.”

Instead, the Comment would include such a cross-reference and would also state that “Section 16300 continues former Section 12301(b) without substantive change.” The provision defining “destructive device” (proposed Section 16275) is drafted to encompass proposed Section 16300.

We chose this approach because it would further the Legislature’s directive to “[a]void unnecessary use of cross-references” while “[n]either expand[ing] nor contract[ing] the scope of criminal liability under current provisions.” 2006 Cal. Stat. res. ch. 128. Because courts give great weight to the Commission’s comments, we think this would be sufficient to preserve the
substance of Section 12301(b). See 2006-2007 Annual Report, 36 Cal. L. Revision Comm’n

§ 16305. “Firearm”

16305. (a) As used in this part, “firearm” means any device, designed to be used
as a weapon, from which is expelled through a barrel, a projectile by the force of
any explosion or other form of combustion.

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

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

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

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

Comment. Subdivision (a) of Section 16305 continues former Section 12001(b) without
substantive change, for purposes of “Part 6. Control of Deadly Weapons.” See also Section
______, which continues former Section 12001(b) without substantive change, for purposes of
“Title 2. Sentencing Enhancements” of “Part 4. Prevention of Crimes and Apprehension of
Criminals.”

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

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

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

Subdivision (e) continues the fourth sentence of former Section 12030(d) without substantive
change. See Section 16275 (“destructive device”).

Staff Note. Except for renumbering, subdivisions (a)-(d) of proposed Section 16305 are the
same as in the draft that the Commission considered in June. See Memorandum 2007-20,
Attachment pp. 2-3.

Subdivision (e) is new. It is added due to the Commission’s decision to consolidate at the
beginning of new Part 6 all of the definitions that are now in Title 2 of Part 4 of the Penal Code
(except definitions in the sentencing enhancement provisions, which will not be moved to new
Part 6).

Subdivision (e) stems from the fourth sentence of existing Section 12030(d), which says: “As
used in this section, the term ‘firearms’ shall not include destructive devices, as defined in Section
12301.” Unlike existing Section 12030(d), proposed Section 16305(e) would not include a cross-
reference to the provision defining a “destructive device.”

Instead, the Comment would include such a cross-reference and would also state that
subdivision (e) “continues the fourth sentence of former Section 12030(d) without substantive
change.” The provision defining “destructive device” (proposed Section 16275) is drafted to
encompass proposed Section 16305.

We chose this approach because it would further the Legislature’s directive to “[a]void
unnecessary use of cross-references” while “[n]either expand[ing] nor contract[ing] the scope of
weight to the Commission’s comments, we think this would be sufficient to preserve the substance of the fourth sentence of Section 12030(d). See 2006-2007 Annual Report, 36 Cal. L. Revision Comm’n Reports 1, 18-24 (2006).

§ 16310. “Firearm capable of being concealed upon the person,” “pistol,” and “revolver”

16310. (a) As used in this part, the terms “firearm capable of being concealed upon the person,” “pistol,” and “revolver” apply to and include any device designed to be used as a weapon, from which is expelled a projectile by the force of any explosion, or other form of combustion, and that has a barrel less than 16 inches in length. These terms also include any device that has a barrel 16 inches or more in length which is designed to be interchanged with a barrel less than 16 inches in length.

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

Comment. Subdivision (a) of Section 16310 continues former Section 12001(a)(1) without substantive change.

With respect to a “firearm capable of being concealed upon the person,” “pistol,” and “revolver,” subdivision (b) continues former Section 12001(f) without substantive change. See also Section 16365(b), which continues former Section 12001(f) with respect to a “handgun.”


§ 16315. “Firearm safety device”

16315. As used in [Sections 12087-12088.9], “firearm safety device” means a device other than a gun safe that locks and is designed to prevent children and unauthorized users from firing a firearm. The device may be installed on a firearm, be incorporated into the design of the firearm, or prevent access to the firearm.

Comment. Section 16315 continues former Section 12087.6(a) without substantive change.

See Sections 16305 (“firearm”), 16350 (“gun safe”).

☞ Staff Notes.

We encourage comment on the following points:

(1) Existing Section 12087.6(a) defines “firearms safety device” for purposes of the article containing that provision (Sections 12087-12088.9). Aside from that article, Section 12071 is the only provision in Title 2 of Part 4 that uses the term “firearms safety device.” The term is not defined for purposes of that section.

Because Section 12071 uses the term “firearms safety device” without defining it, the definition in Sections 12087.6(a) could not be applied to the entirety of new Part 6 without creating a risk of a substantive change. Accordingly, the definition in proposed Section 16305 would only apply to the provisions that would continue the substance of Sections 12087-12088.9.

The staff suspects, however, that the term “firearms safety device” is intended to have the same meaning in Section 12071 as in the other sections. At some point in the future, the Legislature might want to consider extending the definition to the entirety of new Part 6. Unless the Commission otherwise directs, we will add this issue to the list of minor clean-up issues that the Commission plans to include in its report to the Governor and the Legislature.
(2) The term “firearm safety device,” rather than “firearms safety device,” is used in numerous places in Section 12071, once in Section 12088.15, and once in Section 12088.4. For the sake of consistency, we recommend using just one of these terms in new Part 6.

Because the Commission's general practice is to draft statutes using the singular form rather than the plural, proposed Section 16315 would define “firearm safety device.” Our intent is to use that term, not “firearms safety device,” consistently throughout new Part 6.

§ 16320. “Firearm transaction record”

16320. As used in this part, “firearm transaction record” is a record containing the same information referred to in subdivision (a) of Section 478.124, Section 478.124a, and subdivision (e) of Section 478.125 of Title 27 of the Code of Federal Regulations.

Comment. Section 16320 continues former Section 12071(c)(4)(A) without substantive change.

☞ Staff Notes.

We encourage comment on the following points:

(1) Existing Section 12071(c)(4)(A) defines “firearms transaction record” for purposes of Section 12071(b)(17). Those two provisions are the only ones in Title 2 of Part 4 that use the term “firearms transaction record.” Consequently, the definition in Section 12071(c)(4)(A) can be applied to the entirety of new Part 6 of the Penal Code without affecting a substantive change. Proposed Section 16320 would therefore define the term as used “in this part.”

(2) The term “firearm transaction record” is not used in Title 2 of Part 4, just “firearms transaction record.” The Commission’s general practice is to draft statutes using the singular form rather than the plural. Consistent with that practice, proposed Section 16320 defines the term “firearm transaction record” instead of “firearms transaction record.” Our intent is to use that term, not “firearms transaction record,” consistently throughout new Part 6.

§ 16325. “Firing requirement for handguns”

16325. (a) As used in this part, “firing requirement for handguns” means a test in which the manufacturer provides three handguns of the make and model for which certification is sought to an independent testing laboratory certified by the Attorney General pursuant to [Section 12130]. These handguns may not be refined or modified in any way from those that would be made available for retail sale if certification is granted. The magazines of a tested pistol shall be identical to those that would be provided with the pistol to a retail customer.

(b) The test shall be conducted as follows:

(1) The laboratory shall fire 600 rounds from each gun, stopping after each series of 50 rounds has been fired for 5 to 10 minutes to allow the weapon to cool, stopping after each series of 100 rounds has been fired to tighten any loose screws and clean the gun in accordance with the manufacturer’s instructions, and stopping as needed to refill the empty magazine or cylinder to capacity before continuing.

(2) The ammunition used shall be of the type recommended by the handgun manufacturer in the user manual, or if none is recommended, any standard ammunition of the correct caliber in new condition that is commercially available.
(c) A handgun shall pass this test if each of the three test guns meets both of the following:

(1) Fires the first 20 rounds without a malfunction that is not due to ammunition that fails to detonate.

(2) Fires the full 600 rounds with no more than six malfunctions that are not due to ammunition that fails to detonate and without any crack or breakage of an operating part of the handgun that increases the risk of injury to the user.

(d) If a pistol or revolver fails the requirements of either paragraph (1) or (2) of subdivision (c) due to ammunition that fails to detonate, the pistol or revolver shall be retested from the beginning of the “firing requirement for handguns” test. A new model of the pistol or revolver that failed due to ammunition that fails to detonate may be submitted for the test to replace the pistol or revolver that failed.

Comment. Section 16325 continues former Section 12127(a)-(b) without substantive change. See Sections 16310 (“firearm capable of being concealed upon the person,” “pistol,” and “revolver”), 16365 (“handgun”), 16500 (“malfunction”).

☞ Staff Note. Existing Section 12127(a)-(b) defines “firing requirement for handguns” for purposes of that chapter that contains that section (i.e., Sections 12125-12133). Aside from that chapter, the term “firing requirement for handguns” is not used in Title 2 of Part 4.

Consequently, the definition in Section 12127(a)-(b) can be applied to the entirety of new Part 6 of the Penal Code without effecting a substantive change. Proposed Section 16325 would therefore define the term as used “in this part.”

§ 16330. “Flechette dart”

16330. As used in this part, “flechette dart” means a dart, capable of being fired from a firearm, that measures approximately one inch in length, with tail fins that take up approximately five-sixteenths of an inch of the body.

Comment. Section 16330 continues former Section 12020(c)(6) without substantive change. See Section 16305 (“firearm”).

☞ Staff Note. Existing Section 12020(c)(6) defines “flechette dart” for purposes of that section. The term is not used in any other section in Title 2 of Part 4.

Consequently, the definition in Section 12020(c)(6) can be applied to the entirety of new Part 6 without effecting a substantive change. Proposed Section 16330 would therefore define “flechette dart” as used “in this part.”

§ 16335. “Furnishes”

16335. As used in [Section 12552], “furnishes” means either of the following:

(a) A loan.

(b) A transfer that does not involve a sale.

Comment. Section 16335 continues former Section 12252(b) without substantive change.

☞ Staff Notes.

We encourage comment on the following points:

(1) Existing Section 12252(b) defines “furnishes” for purposes of that section, which relates to furnishing a BB device to a minor. The terms “furnish,” “furnishes,” and “furnishing” are also used elsewhere in Title 2 of Part 4, without definition. See, e.g., Sections 12052 (department shall “furnish” a report of all data and information pertaining to an applicant), 12054 (application fee
shall not exceed costs of “furnishing” report), 12076 (“knowingly furnishing any incorrect information”). In some of these provisions, it seems unlikely that “furnish,” “furnishes,” or “furnishing” is intended to have the meaning given in Section 12252(b). Consequently, proposed Section 16335 would only define “furnishes” for purposes of the provision that continues the substance of Section 12252.

(2) Among the provisions that use the terms “furnish,” “furnishes,” or “furnishing” are Section 12403.7(c), which relates to selling or furnishing tear gas or a tear gas weapon to a minor, and Section 12651(c), which relates to selling or furnishing a stun gun to a minor. At some point in the future, the Legislature might want to consider whether the same definition of “furnishes” should be used in these contexts as in the provision that relates to furnishing a BB device to a minor. Unless the Commission otherwise directs, we will add this issue to the list of minor clean-up issues that the Commission plans to include in its report to the Governor and the Legislature.

§ 16340. “Generally prohibited weapon”

16340. 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 hand grenade or a metal replica hand grenade, 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 16340 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.

§ 16345. “Great bodily injury”

16345. As used in [Section 12035], “great bodily injury” means a significant or
substantial physical injury.

Comment. Section 16345 continues former Section 12035(a)(4) without substantive change.
To make the provision more easily understandable, the definition of “great bodily injury” in
Section 12022.7 is repeated in Section 16345, rather than incorporated by reference as it was in
the past. Case law construing the definition in Section 12022.7 is relevant in construing Section
16345.

☞ Staff Notes.

We encourage comment on the following points:

(1) Existing Section 12035(a)(4) defines “great bodily injury” for purposes of that section. The
provision simply incorporates the definition in Section 12022.7, which is a sentencing
enhancement provision that would not be moved to new Part 6.

The term “great bodily injury” is also used elsewhere in Title 2 of Part 4, without definition.
See, e.g., Sections 12001.1, 12020(c)(24), 12021.1, 12036, 12310, 12355(c). In addition, several
sentencing enhancement provisions incorporate the definition in Section 12022.7. Like Section
12022.7, these sentencing enhancement provisions would not be moved to new Part 6.

Because several provisions to be recodified in new Part 6 use the term “great bodily injury”
without defining it, the definition in Sections 12305(a)(4) could not be applied to the entirety of
new Part 6 without creating a risk of a substantive change. Accordingly, the definition in
proposed Section 16345 would only apply to the provision that would continue the substance of
Section 12035.

At some point in the future, the Legislature might want to consider extending that definition to
the entirety of new Part 6. We do not know enough about how the term “great bodily injury” has
been used in different contexts to assess how complicated and controversial such an undertaking
would be. We suspect that it would not be a minor clean-up issue, and thus it should not be
included in the list of minor clean-up issues that the Commission plans to include in its report to
the Governor and the Legislature. We could check into this further if the Commission thinks such
research is warranted.

(2) Existing 12035(a)(4) says that for purposes of that section, “‘great bodily injury’ has the
same meaning as set forth in Section 12022.7.” The current definition thus requires a person to
refer to Section 12022.7 to determine what is meant.

Section 12022.7 is a sentencing enhancement provision that would not be moved to new Part 6.
Consequently, it would be more user-friendly to state the definition directly in proposed Section
16345, rather than incorporating it by reference. Proposed Section 16345 follows that approach.
The Comment to proposed Section 16345 would make clear that “[c]ase law construing the
definition in Section 12022.7 is relevant in construing Section 16345.”
§ 16350. “Gun safe”

16350. As used in this part, “gun safe” means a locking container that fully contains and secures one or more firearms, and that meets the standards for gun safes adopted pursuant to [Section 12088.2].

Comment. Section 16350 continues former Section 12087.6(b) without substantive change.

☞ Staff Note. Existing Section 12087.6(b) defines “gun safe” for purposes of the article that contains that section (i.e., Sections 12087-12088.9). Aside from that article, Section 12071(b)(20)(G)(ii)(II) is the only other provision in Title 2 of Part 4 that uses the term “gun safe.” Like Section 12087.6(b), that provision refers to the standards in Section 12088.2.

Consequently, the definition in Section 12087.6 can be applied to the entirety of new Part 6 without effecting a substantive change. Proposed Section 16350 would therefore define “gun safe” as used “in this part.”

§ 16355. “Gun Show Trader”

16355. As used in this part, “Gun Show Trader” means a person described in [Section 12070(b)(5)].

Comment. Section 16355 continues former Section 12070(b)(5) without substantive change.

☞ Staff Note. Existing Section 12070(b)(5) says that “[a] person described in this paragraph shall be known as a “Gun Show Trader.” No other provision in Title 2 of Part 4 uses the term “Gun Show Trader.”

Consequently, the definition in Section 12070(b)(5) can be applied to the entirety of new Part 6 without effecting a substantive change. Proposed Section 16355 would therefore define “Gun Show Trader” as used “in this part.”

§ 16360. “Gunsmith”

16360. As used in this part, “gunsmith” means any person who is licensed as a dealer pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, who is engaged primarily in the business of repairing firearms, or making or fitting special barrels, stocks, or trigger mechanisms to firearms, or the agent or employee of that person.

Comment. Section 16360 continues former Section 12001(r) without substantive change.

See Section 16305 (“firearm”).

§ 16365. “Handgun”

16365. (a) As used in this part, “handgun” means any pistol, revolver, or firearm capable of being concealed upon the person.

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

Comment. Subdivision (a) of Section 16365 continues former Section 12001(a)(2) without substantive change. See Sections 16305 (“firearm”), 16310 (“firearm capable of being concealed upon the person,” “pistol,” and “revolver”).

With respect to a “handgun,” subdivision (b) continues former Section 12001(f) without substantive change. See also Section 16310(b), which continues former Section 12001(f) with respect to a “firearm capable of being concealed upon the person,” “pistol,” and “revolver.”
See Sections 16305 ("firearm"), 16310 ("firearm capable of being concealed upon the person," “pistol,” and “revolver”), 16630 ("short-barreled shotgun"), 16635 ("short-barreled rifle").

§ 16370. "Handgun ammunition"

16370. As used in this part, “handgun ammunition” means ammunition principally for use in pistols, revolvers, and other firearms capable of being concealed upon the person, notwithstanding that the ammunition may also be used in some rifles.

Comment. Section 16370 continues former Section 12323(a) without substantive change.

See Sections 16305 ("firearm"), 16310 ("firearm capable of being concealed upon the person," “pistol,” and “revolver”).

☞ Staff Notes.

We encourage comment on the following points:

(1) Existing Section 12323(a) defines “handgun ammunition” as used “in this chapter” (i.e., Sections 12316-12323). Aside from that chapter, the term is not used in Title 2 of Part 4.

Consequently, the definition in Section 12323(a) can be applied to the entirety of new Part 6 of the Penal Code without effecting a substantive change. Proposed Section 16370 would therefore define “handgun ammunition” as used “in this part.”

(2) Existing Section 12323(a) refers to “pistols, revolvers, and other firearms capable of being concealed upon the person, as defined in subdivision (a) of Section 12001.” (Emphasis added.) Unlike existing Section 12323(a), proposed Section 16370 would not cross-refer to the provision on defining the characteristics of a pistol, revolver, or other firearm capable of being concealed upon the person.

Instead, the Comment would include such a cross-reference and would also state that “Section 16370 continues former Section 12323(a) without substantive change.” The provision defining the characteristics of a pistol, revolver, or other firearm capable of being concealed upon the person (proposed Section 16310) is drafted to encompass Section 16370.

We chose this approach because it would further the Legislature’s directive to “[a]void unnecessary use of cross-references” while “[n]either expand[ing] nor contract[ing] the scope of criminal liability under current provisions.” 2006 Cal. Stat. res. ch. 128. Because courts give great weight to the Commission’s comments, we think this would be sufficient to preserve the substance of Section 12323(a). See 2006-2007 Annual Report, 36 Cal. L. Revision Comm’n Reports 1, 18-24 (2006).

§ 16375. “Handgun ammunition designed primarily to penetrate metal or armor”

16375. As used in this part, “handgun ammunition designed primarily to penetrate metal or armor” means any ammunition, except a shotgun shell or ammunition primarily designed for use in a rifle, that is designed primarily to penetrate a body vest or body shield, and has either of the following characteristics:

(1) Has projectile or projectile core constructed entirely, excluding the presence of traces of other substances, from one or a combination of tungsten alloys, steel, iron, brass, beryllium copper, or depleted uranium, or any equivalent material of similar density or hardness.

(2) Is primarily manufactured or designed, by virtue of its shape, cross-sectional density, or any coating applied thereto, including, but not limited to, ammunition
commonly known as “KTW ammunition,” to breach or penetrate a body vest or body shield when fired from a pistol, revolver, or other firearm capable of being concealed upon the person.

**Comment.** Section 16375 continues former Section 12323(b) without substantive change.

See Sections 16195 (“body vest” or “body shield”), 16305 (“firearm”), 16310 (“firearm capable of being concealed upon the person,” “pistol,” and “revolver”), 16370 (“handgun ammunition”).

☞ **Staff Note.** Existing Section 12323(b) defines “handgun ammunition designed primarily to penetrate metal or armor” as used “in this chapter” (i.e., Sections 12316-12323). Aside from that chapter, the term is not used in Title 2 of Part 4.

Consequently, the definition in Section 12323(b) can be applied to the entirety of new Part 6 of the Penal Code without effecting a substantive change. Proposed Section 16375 would therefore define “handgun ammunition designed primarily to penetrate metal or armor” as used “in this part.”

§ 16380. “Handgun safety certificate”

16380. As used in this part, “handgun safety certificate” means a certificate issued by the Department of Justice pursuant to [Article 8 (commencing with Section 12800) of Chapter 6 of Title 2 of Part 4, as that article is operative on or after January 1, 2003].

**Comment.** Section 16380 continues former Section 12001(q) without substantive change.

See Section 16365 (“handgun”).

☞ **Staff Note.** Existing Section 12001(q) defines “handgun safety certificate” as used “in this code.” At the June meeting, the Commission discussed (1) whether to move the provision to the beginning of the Penal Code, instead of burying a codewide definition near the end of the code, and (2) whether the term should be defined for purposes of the entire Penal Code or only for purposes of new Part 6. To assist in answering these questions, the Commission directed the staff to check whether the term is currently used outside of Title 2 of Part 4 of the Penal Code. CLRC Minutes (June 2007), p. 10.

The staff found that the term “handgun safety certificate” is only used in Title 2 of Part 4, not elsewhere in the Penal Code. The substance of that title would be continued in new Part 6 (except for the sentencing enhancement provisions, which do not use the term “handgun safety certificate”). Consequently, the definition could be limited to new Part 6 without effecting a substantive change. Proposed Section 16380 would therefore define “handgun safety certificate” as used “in this part.”

We encourage comment on this approach.

§ 16385. “Hard plastic knuckles”

16385. As used in this part, “hard plastic knuckles” means any device or instrument made wholly or partially of plastic that is not metal knuckles, that is worn for purposes of offense or defense in or on the hand, and that either protects the wearer’s hand while striking a blow or increases the force of impact from the blow or injury to the individual receiving the blow. The plastic contained in the device may help support the hand or fist, provide a shield to protect it, or consist of projections or studs that would contact the individual receiving a blow.

**Comment.** Section 16385 continues the second and third sentences of former Section 12020.1 without substantive change.
See Section 16505 ("metal knuckles").

☞ Staff Notes.

(1) Existing Section 12020.1 defines “hard plastic knuckles” for purposes of that section. The term is not used elsewhere in Title 2 of Part 4.

Consequently, the definition in Section 12020.1 can be applied to the entirety of new Part 6 without effecting a substantive change. Proposed Section 16385 would therefore define the term as used “in this part.”

(2) Existing Section 12020.1 refers to “a metal knuckle as defined in paragraph (7) of subdivision (c) of Section 12020.” (Emphasis added.) Unlike existing Section 12020.1, proposed Section 16385 would not cross-ref to the provision defining metal knuckles.

Instead, the Comment would include such a cross-reference and would also state that “Section 16385 continues the second and third sentences of former Section 12020.1 without substantive change.” The provision defining metal knuckles (proposed Section 16505) is drafted to encompass Section 16385.

We chose this approach because it would further the Legislature’s directive to “[a]void unnecessary use of cross-references” while “[n]either expand[ing] nor contract[ing] the scope of criminal liability under current provisions.” 2006 Cal. Stat. res. ch. 128. Because courts give great weight to the Commission’s comments, we think this would be sufficient to preserve the substance of Section 12020.1. See 2006-2007 Annual Report, 36 Cal. L. Revision Comm’n Reports 1, 18-24 (2006).

§ 16390. “Honorably retired”

16390. As used in [Sections 12027 and 12031], “honorably retired” includes any peace officer who has qualified for, and has accepted, a service or disability retirement. As used in [Sections 12027 and 12031], “honorably retired” does not include an officer who has agreed to a service retirement in lieu of termination.

Comment. Section 16390 continues the fourth and fifth sentences of former Section 12027(a)(1)(A) without substantive change.

☞ Staff Note. Existing Section 12027(a)(1)(A) defines “honorably retired” for purposes of that section and Section 12031. The only other section in Title 2 of Part 4 that uses the term is Section 12807.

That provision refers to an “honorably retired peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.” It also refers without definition to an “honorably retired federal officer or law enforcement agent,” and an “honorably retired member of the United States Armed Forces, the National Guard, the Air National Guard, the active reserve components of the United States, where individuals of those organizations are properly identified.”

Consequently, the definition in Section 12027(a)(1)(A) could not be applied to the entirety of new Part 6 of the Penal Code without creating a risk of a substantive change. Proposed Section 16390 would therefore define “honorably retired” only for purposes of the provisions that would continue the substance of Sections 12027 and 12031.

At some point in the future, the Legislature might want to consider whether a single definition of “honorably retired” could be applied to the entirety of new Part 6. Unless the Commission otherwise directs, we will add this issue to the list of minor clean-up issues that the Commission plans to include in its report to the Governor and the Legislature.

§ 16395. “Imitation firearm”

16395. (a) As used in this part, “imitation firearm” means any BB device, toy gun, replica of a firearm, or other device that is so substantially similar in
coloration and overall appearance to an existing firearm as to lead a reasonable person to perceive that the device is a firearm.

(b) As used in [Section 12555], “imitation firearm” does not include any of the following:

(1) A nonfiring collector’s replica that is historically significant, and is offered for sale in conjunction with a wall plaque or presentation case.

(2) A BB device.

(3) A device where the entire exterior surface of the device is white, bright red, bright orange, bright yellow, bright green, bright blue, bright pink, or bright purple, either singly or as the predominant color in combination with other colors in any pattern, as provided by federal regulations governing imitation firearms, or where the entire device is constructed of transparent or translucent materials which permits unmistakable observation of the device’s complete contents, as provided by federal regulations governing imitation firearms.

Comment. Subdivision (a) of Section 16395 continues former Section 12550(c) without substantive change.

Subdivision (b) continues former Section 12555(c) without substantive change.

See Sections 16175 (“BB device”), 16305 (“firearm”).

Staff Notes.

We encourage comment on the following points:

(1) Existing Section 12550(c) defines “imitation firearm” as used “in this article” (i.e., Sections 12550–12556). Aside from that article, the term is not used in Title 2 of Part 4. Consequently, the definition in Section 12550(c) can be applied to the entirety of new Part 6 of the Penal Code without effecting a substantive change. Subdivision (a) of proposed Section 16395 would therefore define “imitation firearm” as used “in this part.” However, one of the provisions in the article containing Section 12550(c) includes special rules regarding what constitutes an “imitation firearm.” Section 12555(c) states:

(c) As used in this section, “imitation firearm” does not include any of the following:

(1) A nonfiring collector’s replica that is historically significant, and is offered for sale in conjunction with a wall plaque or presentation case.

(2) A BB device, as defined in subdivision (g) of Section 12001.

(3) A device where the entire exterior surface of the device is white, bright red, bright orange, bright yellow, bright green, bright blue, bright pink, or bright purple, either singly or as the predominant color in combination with other colors in any pattern, as provided by federal regulations governing imitation firearms, or where the entire device is constructed of transparent or translucent materials which permits unmistakable observation of the device’s complete contents, as provided by federal regulations governing imitation firearms.

Subdivision (b) of proposed Section 16395 would preserve these special rules for purposes of the provision that continues the substance of Section 12555.

(2) Existing Section 12550(c) refers to “[a] BB device, as defined in subdivision (b) of Section 12001.” (Emphasis added.) Unlike existing Section 12550(c), proposed Section 16395(b) would not cross-reference to the provision defining a BB device.

Instead, the Comment would include such a cross-reference and would also state that Section 16395(b) “continues former Section 12555(c) without substantive change.” The definition of “BB device” (proposed Section 16175) is drafted to encompass Section 16395.
We chose this approach because it would further the Legislature’s directive to “[a]void unnecessary use of cross-references” while “[n]either expand[ing] nor contract[ing] the scope of criminal liability under current provisions.” 2006 Cal. Stat. res. ch. 128. Because courts give great weight to the Commission’s comments, we think this would be sufficient to preserve the substance of Section 12550(c). See 2006-2007 Annual Report, 36 Cal. L. Revision Comm’n Reports 1, 18-24 (2006).

....

§ 16440. “Licensed gun dealer”

16440. As used in [Sections 12275-12290], “licensed gun dealer” means a person who is licensed pursuant to [Section 12071] and who has a permit to sell assault weapons or .50 BMG rifles pursuant to [Section 12287].

Comment. Section 16440 continues former Section 12290(c) without substantive change.

See Sections 16105 (“.50 BMG rifle”), 16150 (“assault weapon”), 16151 (further clarification of “assault weapon”), 16152 (exemptions from definition of “assault weapon”).

See also Section 16265 (“dealer,” “licensee,” or “person licensed pursuant to [Section 12071].”

☞ Staff Notes.

We encourage comment on the following points:

(1) Existing Section 12290 defines “licensed gun dealer” for purposes of the Roberti-Roos Assault Weapons Control Act of 1989 (Sections 12275-12290). That definition would be continued without substantive change in proposed Section 16440 for purposes of the provisions that would continue the substance of Sections 12275-12290.

That definition of “licensed gun dealer” differs from the definition of “dealer,” “licensee,” and “person licensed pursuant to [Section 12071]” that would be continued in proposed Section 16265(a). Specifically, a “licensed gun dealer” not only has to satisfy the requirements listed in the provision defining “dealer,” “licensee,” and “person licensed pursuant to [Section 12071],” but also needs “a permit to sell assault weapons or .50 BMG rifles pursuant to Section 12287.” To help prevent confusion, the Comment to proposed Section 16440 would cross-refer to proposed Section 16265.

(2) For discussion of other complexities relating to how the terms “licensee,” “dealer,” and similar terms are used in Title 2 of Part 4, see the Staff Note to proposed Section 16440.

....

§ 16455. “Licensee”

16455. Use of the term “licensee” is governed by Section 16265.

Comment. Section 16455 is new. It is intended to help persons locate the definition of “licensee,” which is the same as the definition of “dealer” for certain purposes.

....
§ 16485. “Machinegun”

16485. As used in this part, “machinegun” means any weapon that shoots, is designed to shoot, or can readily be restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term also includes the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun, and any combination of parts from which a machinegun can be assembled if those parts are in the possession or under the control of a person. The term also includes any weapon deemed by the federal Bureau of Alcohol, Tobacco, and Firearms as readily convertible to a machinegun under Chapter 53 (commencing with Section 5801) of Title 26 of the United States Code.

Comment. Section 16485 continues former Section 12200 without substantive change.

☞ Staff Note. Existing Section 12200 defines “machinegun” for purposes of the chapter that contains that section (i.e., Sections 12200-12551). Aside from that chapter, the only other sections in Title 2 of Part 4 that use the term are (1) sentencing enhancement provisions, which would not be moved to new Part 6, and (2) Sections 12001(n)(12), 12072(f)(1)(A), 12278(a), and 12601(b)(2), all of which expressly incorporate the definition in Section 12200.

Consequently, the definition in Section 12200 can be applied to the entirety of new Part 6 of the Penal Code without effecting a substantive change. Proposed Section 16485 would therefore define “machinegun” as used “in this part.”

....

§ 16495. “Magazine disconnect mechanism”

16495. As used in this part, “magazine disconnect mechanism” means a mechanism that prevents a semiautomatic pistol that has a detachable magazine from operating to strike the primer of ammunition in the firing chamber when a detachable magazine is not inserted in the semiautomatic pistol.

Comment. Section 16495 continues former Section 12126(d) without substantive change.

☞ Staff Note. Existing Section 12126(d) defines “magazine disconnect mechanism” for purposes of that section. The only other section in Title 2 of Part 4 that uses the term is Section 12130, which expressly incorporates the definition in Section 12126(d).

Consequently, the definition in Section 12126(d) can be applied to the entirety of new Part 6 of the Penal Code without effecting a substantive change. Proposed Section 16495 would therefore define “magazine disconnect mechanism” as used “in this part.”

§ 16500. “Malfunction”

16500. As used in Section 16325, “malfunction” means a failure to properly feed, fire, or eject a round, or failure of a pistol to accept or eject the magazine, or failure of a pistol’s slide to remain open after the magazine has been expended.

Comment. Section 16500 continues former Section 12127(c) without substantive change.
See Section 16310 (“firearm capable of being concealed upon the person,” “pistol,” and “revolver”).

☞ Staff Note. Existing Section 12127(c) defines “malfunction” for purposes of that section, which describes a test known as the “firing requirement for handguns.” Aside from that provision, Section 12072(f)(1)(A) is the only provision in Title 2 of Part 4 that uses the term “malfunction.” In that section, the term is not defined. It is used to refer to an Internet malfunction, not a handgun malfunction.

Because Sections 12127(c) and 12072(f)(1)(A) uses the term “malfunction” to refer to different things, the definition in Sections 12127(c) cannot be applied to the entirety of new Part 6. Accordingly, the definition in proposed Section 16500 would only apply to Section 16325(“firing requirement for handguns”), which would continue Section 12127(a)-(b) without substantive change.

§ 16505. “Metal knuckles”

16505. As used in this part, “metal knuckles” means any device or instrument made wholly or partially of metal that is worn for purposes of offense or defense in or on the hand and that either protects the wearer’s hand while striking a blow or increases the force of impact from the blow or injury to the individual receiving the blow. The metal contained in the device may help support the hand or fist, provide a shield to protect it, or consist of projections or studs which would contact the individual receiving a blow.

Comment. Section 16505 continues former Section 12020(c)(7) without substantive change.

☞ Staff Note. Existing Section 12020(c)(7) defines “metal knuckles” for purposes of that section. The only other sections in Title 2 of Part 4 that use the term are Section 12020.1, which expressly incorporates the definition in Section 12020(c)(7), and Section 12029, which also appears to incorporate the definition given in Section 12020.

Consequently, the definition in Section 12020(c)(7) can be applied to the entirety of new Part 6 of the Penal Code without effecting a substantive change. Proposed Section 16505 would therefore define “metal knuckles” as used “in this part.”

§ 16535. “Person licensed pursuant to [Section 12071]”

16535. Use of the term “person licensed pursuant to [Section 12071]” is governed by Section 16265.

Comment. Section 16535 is new. It is intended to help persons locate the definition of “person licensed pursuant to [Section 12071],” which is the same as the definition of “dealer.”

§ 16540. “Person taking title or possession of a firearm by operation of law”

16540. As used in [Section 12078], the phrase “a person taking title or possession of a firearm by operation of law” includes, but is not limited to, any of the following instances in which an individual receives title to, or possession of, a firearm:

(a) The executor or administrator of an estate if the estate includes a firearm.
(b) A secured creditor or an agent or employee of a secured creditor when the firearm is possessed as collateral for, or as a result of, a default under a security agreement under the Commercial Code.

c) A levying officer, as defined in Section 481.140, 511.060, or 680.260 of the Code of Civil Procedure.

d) A receiver performing the functions of a receiver if the receivership estate includes a firearm.

e) A trustee in bankruptcy performing the duties of a trustee if the bankruptcy estate includes a firearm.

(f) An assignee for the benefit of creditors performing the functions of an assignee, if the assignment includes a firearm.

g) A transmutation of property consisting of a firearm pursuant to Section 850 of the Family Code.

(h) A firearm passing to a surviving spouse pursuant to Chapter 1 (commencing with Section 13500) of Part 2 of Division 8 of the Probate Code.

(i) A firearm received by the family of a police officer or deputy sheriff from a local agency pursuant to Section 50081 of the Government Code.

(j) The transfer of a firearm by a law enforcement agency to the person who found the firearm where the delivery is to the person as the finder of the firearm pursuant to Article 1 (commencing with Section 2080) of Chapter 4 of Division 3 of the Civil Code.

Comment. Section 16540 continues former Section 12078(u)(2) without substantive change.

☞ Staff Notes.

We encourage comment on the following points:

(1) Existing Section 12078(u)(2) states:

(u) As used in this section:

(2) “A person taking title or possession of firearms by operation of law” includes, but is not limited to, any of the following instances wherein an individual receives title to, or possession of, firearms:

(A) The executor or administrator of an estate if the estate includes firearms.

Surprisingly, the phrase “[a] person taking title or possession of firearms by operation of law” appears nowhere else in Title 2 of Part 4.

However, similar phrases are used repeatedly within Section 12078. For example, subdivision (i)(1) says “[s]ubdivision (d) of Section 12072 shall not apply to a person who takes title or possession of a firearm that is not a handgun by operation of law if ....” (Emphasis added.) Likewise, subdivision (i)(3) says “[s]ubdivision (d) of Section 12072 shall not apply to a person who takes possession of a firearm by operation of law in a representative capacity who subsequently ....” (Emphasis added.)

The intent of Section 12078(u)(2) must be to define the meaning of these similar phrases in Section 12078. Instead of using the current language, that objective could perhaps be better achieved by other means. For example, one could say: “As used in [Section 12078], ‘a person taking title or possession of firearms by operation of law’ or a variant of that phrase includes, but is not limited to, any of the following instances ....” Alternatively, one could say: “Any reference
in [Section 12078] to a person taking title or possession of a firearm by operation of law includes, but is not limited to, any of the following instances ....”

We considered taking such an approach in proposed Section 16540. To avoid any risk of a substantive change, however, we did not do so.

At some point in the future, the Legislature might want to consider revising proposed Section 16540 to deal with this point. Unless the Commission otherwise directs, we will add this issue to the list of minor clean-up issues that the Commission plans to include in its report to the Governor and the Legislature.

(2) Existing Section 12078(u)(2) defines “[a] person taking title or possession of firearms by operation of law.” (Emphasis added.) Because the Commission’s general practice is to draft statutes using the singular form rather than the plural, proposed Section 16540 would define “[a] person taking title or possession of a firearm by operation of law.” (Emphasis added.) This phrase does not appear anywhere in Title 2 of Part 4, and we do not plan to use it in new Part 6. Thus, the switch from plural to singular would not change the status quo with regard to use of the defined term in material other than the definition itself.

§ 16545. “Personal handgun importer”

16545. (a) As used in this part, “personal handgun importer” means an individual who meets all of the following criteria:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Comment. Subdivision (a) of Section 16545 continues former Section 12001(n) without substantive change. For guidance on what constitutes an assault weapon, see Sections 16150 (“assault weapon”), 16151 (further clarification of “assault weapon”), and 16152 (exemptions from definition of “assault weapon”). For guidance on what constitutes a machinegun, see Section 16485 (“machinegun”).

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

See Sections 16305 (“firearm”), 16310 (“firearm capable of being concealed upon the person,” “pistol,” and “revolver”), 16365 (“handgun”).

§ 16550. “Pistol”

16550. Use of the term “pistol” is governed by Section 16310.

Comment. Section 16550 is new. It is intended to help persons locate key rules relating to use of the term “pistol.”

....

§ 16585. “Revolver”

16585. Use of the term “revolver” is governed by Section 16310.

Comment. Section 16585 is new. It is intended to help persons locate key rules relating to use of the term “revolver.”

....

§ 16630. “Short-barreled shotgun”

16630. As used in [Sections 12001.5, 12020, 12029, 12072], 16310, and 16365, “short-barreled shotgun” means any of the following:

(a) A firearm that is designed or redesigned to fire a fixed shotgun shell and has a barrel or barrels of less than 18 inches in length.

(b) A firearm that has an overall length of less than 26 inches and that is designed or redesigned to fire a fixed shotgun shell.
(c) Any weapon made from a shotgun (whether by alteration, modification, or otherwise) if that weapon, as modified, has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length.

(d) Any device that may be readily restored to fire a fixed shotgun shell which, when so restored, is a device defined in subdivisions (a) to (c), inclusive.

(e) Any part, or combination of parts, designed and intended to convert a device into a device defined in subdivisions (a) to (c), inclusive, or any combination of parts from which a device defined in subdivisions (a) to (c), inclusive, can be readily assembled if those parts are in the possession or under the control of the same person.

Comment. Section 16630 continues former Section 12020(c)(1) without substantive change.

☞ Staff Note. Existing Section 12020(c)(1) defines “short-barreled shotgun” for purposes of that section. Several other provisions in Title 2 of Part 4 use the term “short-barreled shotgun” and expressly incorporate the definition given in Section 12020. See Sections 12001(f), 12001.5, 12029, 12072(f)(1)(A). Still other provisions use the term “short-barreled shotgun” without defining it. See Sections 12095, 12096, 12097, 12098, 12099. Because Title 2 of Part 4 includes provisions that use the phrase without defining it, the definition in Section 12020(c)(1) could not be applied to the entirety of new Part 6 without creating a risk of a substantive change. Accordingly, the definition in proposed Section 16630 would only apply to specified provisions.

The staff suspects, however, that the term “short-barreled shotgun” is intended to have the same meaning in the sections where it is used without definition as in the sections where it is defined. At some point in the future, the Legislature might want to consider extending the definition to the entirety of new Part 6. Unless the Commission otherwise directs, we will add this issue to the list of minor clean-up issues that the Commission plans to include in its report to the Governor and the Legislature.

§ 16635. “Short-barreled rifle”

16635. As used in [Sections 12001.5, 12020, 12029, 12072], 16310, and 16365, “short-barreled rifle” means any of the following:

(a) A rifle having a barrel or barrels of less than 16 inches in length.

(b) A rifle with an overall length of less than 26 inches.

(c) Any weapon made from a rifle (whether by alteration, modification, or otherwise) if that weapon, as modified, has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length.

(d) Any device which may be readily restored to fire a fixed cartridge which, when so restored, is a device defined in subdivisions (a) to (c), inclusive.

(e) Any part, or combination of parts, designed and intended to convert a device into a device defined in subdivisions (a) to (c), inclusive, or any combination of parts from which a device defined in subdivisions (a) to (c), inclusive, may be readily assembled if those parts are in the possession or under the control of the same person.

Comment. Section 16635 continues former Section 12020(c)(2) without substantive change.

☞ Staff Note. Existing Section 12020(c)(2) defines “short-barreled rifle” for purposes of that section. Several other provisions in Title 2 of Part 4 use the term “short-barreled rifle” and
expressly incorporate the definition given in Section 12020. See Sections 12001(f), 12001.5, 12029, 12072(f)(1)(A). Still other provisions use the term “short-barreled rifle” without defining it. See Sections 12095, 12096, 12097, 12098, 12099.

Because Title 2 of Part 4 includes provisions that use the phrase without defining it, the definition in Section 12020(c)(2) could not be applied to the entirety of new Part 6 without creating a risk of a substantive change. Accordingly, the definition in proposed Section 16635 would only apply to specified provisions.

The staff suspects, however, that the term “short-barreled rifle” is intended to have the same meaning in the sections where it is used without definition as in the sections where it is defined. At some point in the future, the Legislature might want to consider extending the definition to the entirety of new Part 6. Unless the Commission otherwise directs, we will add this issue to the list of minor clean-up issues that the Commission plans to include in its report to the Governor and the Legislature.

§ 16710. “Wallet gun”
16710. As used in this part, “wallet gun” means any firearm mounted or enclosed in a case, resembling a wallet, designed to be or capable of being carried in a pocket or purse, if the firearm may be fired while mounted or enclosed in the case.

Comment. Section 16710 continues former Section 12020(c)(4) without substantive change. See Section 16305 (“firearm”).

☞ Staff Note. Existing Section 12020(c)(4) defines “wallet gun” for purposes of that section. The term is not used in any other section in Title 2 of Part 4. Consequently, the definition in Section 12020(c)(4) can be applied to the entirety of new Part 6 without effecting a substantive change. Proposed Section 16710 would therefore define “wallet gun” as used “in this part.”

§ 16715. “Wholesaler”
16715. (a) As used in this part, “wholesaler” means any person who is licensed as a dealer pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, who sells, transfers, or assigns firearms, or parts of firearms, to persons who are licensed as manufacturers, importers, or gunsmiths pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code, or persons licensed pursuant to [Section 12071], and includes persons who receive finished parts of firearms and assemble them into completed or partially completed firearms in furtherance of that purpose.

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

Comment. Section 16715 continues former Section 12001(h) without substantive change.
See Sections 16305 ("firearm"), 16360 ("gunsmith").

§ 16720. “Writing pen knife”

16720. As used in this part, “writing pen knife” means a device that appears to be a writing pen but has concealed within it a pointed, metallic shaft that is designed to be a stabbing instrument which is exposed by mechanical action or gravity which locks into place when extended or the pointed, metallic shaft is exposed by the removal of the cap or cover on the device.

Comment. Section 16720 continues former Section 12020(c)(19) without substantive change.

☞ Staff Notes.

We encourage comment on the following points:

(1) Existing Section 12020(c)(19) defines “writing pen knife” for purposes of that section. The term is not used in any other section in Title 2 of Part 4. Consequently, the definition in Section 12020(c)(19) can be applied to the entirety of new Part 6 without effecting a substantive change. Proposed Section 16720 would therefore define “writing pen knife” as used “in this part.”

(2) The wording of existing Section 12020(c)(19) is somewhat awkward. The provision also appears to violate Legislative Counsel’s stylistic rule regarding use of “which” and “that.” We considered trying to improve the wording of the provision. To avoid any risk of a substantive change, however, we ultimately decided to use the current wording.

§ 16725. “Zip gun”

16725. As used in this part, “zip gun” means any weapon or device that meets all of the following criteria:

(a) It was not imported as a firearm by an importer licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(b) It was not originally designed to be a firearm by a manufacturer licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(c) No tax was paid on the weapon or device nor was an exemption from paying tax on that weapon or device granted under Section 4181 and Subchapters F (commencing with Section 4216) and G (commencing with Section 4221) of Chapter 32 of Title 26 of the United States Code, as amended, and the regulations issued pursuant thereto.

(d) It is made or altered to expel a projectile by the force of an explosion or other form of combustion.

Comment. Section 16725 continues former Section 12020(c)(10) without substantive change.

☞ Staff Notes.

We encourage comment on the following points:

(1) Existing Section 12020(c)(10) defines “zip gun” for purposes of that section. The term is not used in any other section in Title 2 of Part 4.
Consequently, the definition in Section 12020(c)(10) can be applied to the entirety of new Part 6 without effecting a substantive change. Proposed Section 16725 would therefore define “zip gun” as used “in this part.”

(2) Existing Section 12020(c)(10)(C) refers to “Section 4181 and Subchapters F (commencing with Section 4216) and G (commencing with Section 4221) of Chapter 32 of Title 26 of the United States Code, as amended ....” The phrase “as amended” might have been needed in the past but might not be necessary at this point. We could look into this further if the Commission thinks such research is warranted. For now, we have simply retained the phrase in proposed Section 16725.

TITIE 2. WEAPONS GENERALLY

DIVISION 1. MISCELLANEOUS RULES RELATING TO WEAPONS GENERALLY

§ 16800. Bearing deadly weapon with intent to assault

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

Comment. Section 16800 continues former Section 12024 without substantive change.

§ 16805. Advertising sale of prohibited weapon or device

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 16805 continues former Section 12020.5 without substantive change.

§ 16810. Picketing with deadly weapon

(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 16810 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 16305 (“firearm”), 16310 (“firearm capable of being concealed upon the person,” “pistol,” and “revolver”).

DIVISION 2. GENERALLY PROHIBITED WEAPONS

CHAPTER 1. EXEMPTIONS

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.

For the most part, dividing up the substance of Section 12020 according to the type of weapon or equipment covered is relatively straightforward. But the statute includes a number of exemptions that do not specify the types of weapons or equipment to which they potentially apply. To avoid any risk of a substantive change, the Commission decided to place those exemptions in “Division 2. Generally Prohibited Weapons,” instead of trying to divide them up according to the types of weapons and equipment to which they potentially apply.

That approach is not as user-friendly as may be ideal, but it is the safest means of ensuring there is no inadvertent substantive change. At some point in the future, the Legislature might want to consider dividing up the exemptions in this chapter according to the types of weapons and equipment to which they potentially apply (i.e., placing each exemption in proximity to the substantive rules it modifies). Unless the Commission otherwise directs, we will add this issue to the list of minor clean-up issues that the Commission plans to include in its report to the Governor and the Legislature.

§ 17000. Exemption for antique firearm

17000. The provisions listed in Section 16340 do not apply to an antique firearm.

Comment. Section 17000 continues the first sentence of former Section 12020(b)(5) without substantive change.

See Section 16135 (“antique firearm”).

§ 17005. Exemption for firearm or ammunition constituting curio or relic

17005. (a) The provisions listed in Section 16340 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 17005 continues former Section 12020(b)(7) without substantive change.

§ 17010. Exemption for “any other weapon” in possession of person permitted to possess it under federal Gun Control Act of 1968

17010. (a) The provisions listed in Section 16340 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 17010 continues former Section 12020(b)(8) without substantive change.

§ 17015. Exemption for historical society, museum, or institutional collection

17015. The provisions listed in Section 16340 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 17015 continues former Section 12020(b)(9) without substantive change. See Section 16305 (“firearm”).
§ 17020. Exemption for motion picture, television, video production, or entertainment event

17020. The provisions listed in Section 16340 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 17020 continues former Section 12020(b)(10) without substantive change.

§ 17025. Exemption for person who sells to historical society, museum, or institutional collection, or for purposes of entertainment event

17025. The provisions listed in Section 16340 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 16340 solely to the entities referred to in Sections 17015 and 17020 when engaging in transactions with those entities.

Comment. Section 17025 continues former Section 12020(b)(11) without substantive change. See Sections 16630 (“short-barreled shotgun”), 16635 (“short-barreled rifle”).

§ 17030. Exemption for law enforcement or person who sells to law enforcement

17030. The provisions listed in Section 16340 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 16340 solely to the entities referred to in subdivision (a) when engaging in transactions with those entities.

Comment. Subdivisions (a) and (b) of Section 17030 continue former Section 12020(b)(12) without substantive change. Subdivision (c) continues former Section 12020(b)(13) without substantive change. See Sections 16630 (“short-barreled shotgun”), 16635 (“short-barreled rifle”).
§ 17035. Exemption for transportation of non-firearm to law enforcement for disposition according to law

17035. The provisions listed in Section 16340 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 17035 continues former Section 12020(b)(16) without substantive change.
See Section 16305 (“firearm”).

§ 17040. Exemption for transportation of firearm to law enforcement for disposition according to law

17040. The provisions listed in Section 16340 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 17040 continues former Section 12020(b)(17) without substantive change.

Staff Note. Existing Section 12020(b)(17)(E) refers to “a locked container as defined in subdivision (d) of Section 12026.2.” (Emphasis added.) Unlike existing Section 12020(b)(17)(E), proposed Section 17040(e) would not contain a cross-reference to the provision defining a locked container.
Instead, the Comment would include such a cross-reference and would also state that “Section 17040 continues former Section 12020(b)(17) without substantive change.” When we redraft the provision defining a locked container (Section 12026.2(d)), we will make sure that the definition encompasses proposed Section 17040.
We chose this approach because it would further the Legislature’s directive to “[a]void unnecessary use of cross-references” while “[n]either expand[ing] nor contract[ing] the scope of criminal liability under current provisions.” 2006 Cal. Stat. res. ch. 128. Because courts give great weight to the Commission’s comments, we think this would be sufficient to preserve the substance of Section 12020(b)(17)(E). See 2006-2007 Annual Report, 36 Cal. L. Revision Comm’n Reports 1, 18-24 (2006).

§ 17045. Exemption for possession by forensic laboratory

17045. The provisions listed in Section 16340 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 17045 continues former Section 12020(b)(18) without substantive change.

CHAPTER 2. MISCELLANEOUS PROVISIONS

§ 17100. Distinct and separate offense

17100. For purposes of the provisions listed in Section 16340, a violation as to each firearm, weapon, or device enumerated in any of those provisions shall constitute a distinct and separate offense.

Comment. Section 17100 continues former Section 12001(l) without substantive change.

DIVISION 3. SURRENDER AND DISPOSAL OF WEAPONS

CONSTITUTING A NUISANCE

§ 17200. Surrender of specified weapons constituting nuisance

17200. (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 12028(b)], 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 17200 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 16305 (“firearm”).

§ 17205. Disposal of weapons constituting nuisance

17205. (a) An officer to whom weapons are surrendered under Section 17200, 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 (b)] 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 17205 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.

§ 17210. Treatment of other weapons constituting nuisance

17210. (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 17205, 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 17210 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 16110 ("abuse"), 16290 ("domestic violence"). For what constitutes a deadly weapon, see Section 16260 ("deadly weapon"); see also Section 16305 ("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 16260 ("deadly weapon"). See also Section 16305 ("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.

§ 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 16260 ("deadly weapon"). See also Section 16305 ("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.

§ 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 16110 (“abuse”), 16290
(“domestic violence”). For what constitutes a deadly weapon, see Section 16260 (“deadly
weapon”); see also Section 16305 (“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 16260 (“deadly weapon”); see also Section
16305 (“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 17205:
   (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(e) without substantive change.

CHAPGTER 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 16260 (“deadly weapon”); see also Section
16305 (“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 16260 (“deadly weapon”); see also Section
16305 (“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 16110 (“abuse”), 16290 (“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).
§ 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 16260 (“deadly weapon”); see also Section
16305 (“firearm”).
See Sections 17400 (petition to determine whether weapon should be returned), 17405 (notice
of petition), 17415 (order of default), 17420 (petition for second hearing).
See also Sections 16110 (“abuse”), 16290 (“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
17205.

Comment. Section 17415 continues former Section 12028.5(i) without substantive change.
For what constitutes a deadly weapon, see Section 16260 (“deadly weapon”); see also Section
16305 (“firearm”).
See Sections 17400 (petition to determine whether weapon should be returned), 17405 (notice
of petition), 17410 (hearing on petition), 17420 (petition for second hearing).
See also Sections 16110 (“abuse”), 16290 (“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 17205.

Comment. Section 17420 continues former Section 12028.5(j) without substantive change.
For what constitutes a deadly weapon, see Section 16260 (“deadly weapon”); see also Section
16305 (“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.