

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

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

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 § 16665. "Tear gas"
Penal Code § 16670. "Tear gas weapon"
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.
- (6) The second sentence of Penal Code Section 12028.5(g) refers to a “family violence incident,” not a “domestic violence incident.” Consider whether to replace “family violence incident” with “domestic violence incident.” See CLRC Memorandum 2007-21, Attachment p. 17.

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PROPOSED LEGISLATION

1 **☞ Staff Note.** This is a work in progress. The material shown below may be changed. For an
2 outline of new Part 6 of the Penal Code, see CLRC Memorandum 2007-32. Additional material
3 will be added as the Law Revision Commission proceeds with its study.

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

7 Blanks are used to indicate references to sections that have not yet been drafted (e.g., “Section
8 _____”).

9 Ellipses (...) are used to indicate places where statutory material has been omitted because it
10 has not yet been drafted.

11 All of the proposed provisions would be located in the Penal Code. All references are to the
12 Penal Code unless otherwise noted.

13 **§ 830.95 (added). Picketing in uniform of peace officer**

14 830.95. (a) Any person who wears the uniform of a peace officer while engaged
15 in picketing, or other informational activities in a public place relating to a
16 concerted refusal to work, is guilty of a misdemeanor, whether or not the person is
17 a peace officer.

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

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

22 With respect to picketing in the uniform of a peace officer, subdivision (b) continues former
23 Section 12590(b) without substantive change. See also Section 16810(b), which continues former
24 Section 12590(b) with respect to certain other acts.

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

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

28 PART 6. CONTROL OF DEADLY WEAPONS

29 TITLE 1. PRELIMINARY PROVISIONS

30 DIVISION 1. GENERAL PROVISIONS [RESERVED]

31 DIVISION 2. DEFINITIONS

32 **§ 16100. “.50 BMG cartridge”**

33 16100. As used in this part, “.50 BMG cartridge” means a cartridge that is
34 designed and intended to be fired from a center fire rifle and that meets all of the
35 following criteria:

- 1 (a) It has an overall length of 5.54 inches from the base to the tip of the bullet.
2 (b) The bullet diameter for the cartridge is from .510 to, and including, .511
3 inch.
4 (c) The case base diameter for the cartridge is from .800 inch to, and including,
5 .804 inch.
6 (d) The cartridge case length is 3.91 inches.

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

8 **Staff Note.** Existing Section 12278(b) defines “.50 BMG cartridge” as used “in this chapter”
9 (i.e., Sections 12275-12290). Section 12278 is the only provision in Title 2 of Part 4 that uses the
10 term “.50 BMG cartridge.”

11 Consequently, the definition in Section 12278(b) can be applied to the entirety of new Part 6 of
12 the Penal Code without effecting a substantive change. Proposed Section 16100 would therefore
13 define “.50 BMG cartridge” as used “in this part.”

14 **§ 16105. “.50 BMG rifle”**

15 16105. (a) As used in this part, “.50 BMG rifle” means a center fire rifle that can
16 fire a .50 BMG cartridge and is not already an assault weapon or a machinegun.

17 (b) A “.50 BMG rifle” does not include any antique firearm, nor any curio or
18 relic as defined in Section 178.11 of Title 27 of the Code of Federal Regulations.

19 **Comment.** Subdivision (a) of Section 16105 continues former Section 12278(a) without
20 substantive change. See Sections 16150 (“assault weapon”), 16151 (further clarification of
21 “assault weapon”), 16152 (exemptions from definition of “assault weapon”), 16485
22 (“machinegun”).

23 Subdivision (b) continues former Section 12278(c) without substantive change. See Section
24 16135 (“antique firearm”).

25 **Staff Notes.**

26 We encourage comment on the following points:

27 (1) Existing Section 12278(a) defines “.50 BMG rifle” as used “in this chapter” — i.e., the
28 Roberti-Roos Assault Weapons Control Act of 1989 (Sections 12275-12290). Aside from that
29 chapter, the only provisions in Title 2 of Part 4 that use the term “.50 BMG rifle” are:

- 30 • Section 12011, which refers repeatedly to a “.50 BMG rifle registration.” Because a “.50 BMG
31 rifle registration” would have to be obtained pursuant to the Roberti-Roos Assault Weapons
32 Control Act of 1989, the definition of “.50 BMG rifle” in that act necessarily applies in this
33 context.
34 • Section 12022, a sentencing enhancement provision that expressly incorporates the definition
35 in Section 12278(a).

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

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

42 Similarly, existing Section 12278(a) refers to “an assault weapon *pursuant to Section 12276,*
43 *12276.1, or 12276.5.*” (Emphasis added.) Unlike existing Section 12278(a), proposed Section
44 16105 would not cross-refer to the provisions defining an assault weapon.

45 Instead, the Comment would cross-refer to the provision defining a machinegun and the
46 provisions defining an assault weapon. The Comment would also state that “[s]ubdivision (a) of
47 Section 16105 continues former Section 12278(a) without substantive change.” The provision

1 defining a machinegun (proposed Section 16485) is drafted to encompass Section 16105, as are
2 the provisions defining an assault weapon (Sections 16150, 16151, and 16152).

3 We chose this approach because it would further the Legislature’s directive to “[a]void
4 unnecessary use of cross-references” while “[n]either expand[ing] nor contract[ing] the scope of
5 criminal liability under current provisions.” 2006 Cal. Stat. res. ch. 128. Because courts give great
6 weight to the Commission’s comments, we think this would be sufficient to preserve the
7 substance of Section 12278(a). See *2006-2007 Annual Report*, 36 Cal. L. Revision Comm’n
8 Reports 1, 18-24 (2006).

9 **§ 16110. “Abuse”**

10 16110. As used in this part, “abuse” means any of the following:

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

12 (b) Sexual assault.

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

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

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

19 **§ 16115. “Agent”**

20 16115. As used in [Section 12071], “agent” means an employee of the licensee.

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

23 **Staff Note.** Existing Section 12071(b)(2)(G)(i) defines “agent” as used in that section. The
24 term “agent” is also used elsewhere in Title 2 of Part 4, without definition. See, e.g., Sections
25 12001(r), 12026.2, 12031. From the context of some of those provisions, it is clear that the term
26 is being used with a different meaning than in Section 12071 (e.g., Section 12031 refers to “the
27 retired federal officer or agent”). Consequently, proposed Section 16115 would only define
28 “agent” for purposes of the provisions that continue the substance of Section 12071.

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

36 **§ 16120. “Air gauge knife”**

37 16120. As used in this part, “air gauge knife” means a device that appears to be
38 an air gauge but has concealed within it a pointed, metallic shaft that is designed to
39 be a stabbing instrument which is exposed by mechanical action or gravity which
40 locks into place when extended.

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

42 **Staff Note.** Existing Section 12020(c)(18) defines “air gauge knife” as used “in this section.”
43 The term is not used in any other section in Title 2 of Part 4.

1 Consequently, the definition in Section 12020(c)(18) can be applied to the entirety of new Part
2 6 without effecting a substantive change. Proposed Section 16120 would therefore define “air
3 gauge knife” as used “in this part.”

4 **§ 16125. “Ammunition”**

5 16125. (a) As used in [Section 12316(a)(1)(b)], “ammunition” means handgun
6 ammunition as defined in Section 16370.

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

10 **Comment.** Subdivision (a) of Section 16125 continues the second sentence of former Section
11 12316(a)(1)(b) without substantive change.

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

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

17 Consequently, it would not be possible to apply a single definition of “ammunition” to the
18 entirety of new Part 6 without effecting a substantive change. Proposed Section 16125(a) would
19 therefore define “ammunition” only as used in the provision that would continue Section
20 12316(a)(1)(b). Similarly, proposed Section 16125(b) would define “ammunition” only as used in
21 the provision that would continue Section 12316(b)(2).

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

29 **§ 16130. “Antique cannon”**

30 16130. As used in this part, “antique cannon” means any cannon manufactured
31 before January 1, 1899, which has been rendered incapable of firing or for which
32 ammunition is no longer manufactured in the United States and is not readily
33 available in the ordinary channels of commercial trade.

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

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

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

41 **§ 16135. “Antique firearm”**

42 16135. (a) As used in [Sections 12276.1] and 16105, “antique firearm” means
43 any firearm manufactured before January 1, 1899.

1 (b) As used in [Sections 12001(e), 12078(p)(6)(B), 12085(d)(3), 12088.8(a), and
2 12801(b)], “antique firearm” has the same meaning as in Section 921(a)(16) of
3 Title 18 of the United States Code.

4 (c) As used in Section 17000, “antique firearm” means either of the following:

5 (1) Any firearm not designed or redesigned for using rimfire or conventional
6 center fire ignition with fixed ammunition and manufactured in or before 1898.
7 This includes any matchlock, flintlock, percussion cap, or similar type of ignition
8 system or replica thereof, whether actually manufactured before or after the year
9 1898.

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

13 **Comment.** Subdivision (a) of Section 16135 continues former Section 12276.1(d)(3) and
14 former Section 12278(d) without substantive change.

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

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

19 See Section 16305 (“firearm”).

20 **Staff Note.** As proposed Section 16135 reflects, the term “antique firearm” is defined in
21 several different ways in Title 2 of Part 4. In addition, the term is used but not defined in Section
22 12071.1. See also Section 301 (“antique rifle” means a firearm conforming to the definition of an
23 “antique firearm” in 27 C.F.R. § 479.11).

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

29 § 16140. “Antique rifle”

30 16140. As used in this part, “antique rifle” means a firearm conforming to the
31 definition of an “antique firearm” in Section 479.11 of Title 27 of the Code of
32 Federal Regulations.

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

35 See Section 16305 (“firearm”).

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

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

41 § 16145. “Application to purchase”

42 16145. As used in [Section 12071 or 12072], “application to purchase” means
43 either of the following:

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

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

7 **Comment.** Section 16145 continues former Section 12001(i) without substantive change.
8 See Section 16305 (“firearm”).

9 **§ 16150. “Assault weapon”**

10 16150. As used in [Sections 12011(a), 12072, 12601], 16105, and 16545 and in
11 [Chapter 2.3 (commencing with Section 12275) of Title 2 of Part 4], “assault
12 weapon” means the following designated semiautomatic firearms:

13 (a) All of the following specified rifles:

14 (1) All AK series including, but not limited to, the models
15 identified as follows:

16 (A) Made in China AK, AKM, AKS, AK47, AK47S, 56, 56S, 84S, and 86S.

17 (B) Norinco 56, 56S, 84S, and 86S.

18 (C) Poly Technologies AKS and AK47.

19 (D) MAADI AK47 and ARM.

20 (2) UZI and Galil.

21 (3) Beretta AR-70.

22 (4) CETME Sporter.

23 (5) Colt AR-15 series.

24 (6) Daewoo K-1, K-2, Max 1, Max 2, AR 100, and AR 110C.

25 (7) Fabrique Nationale FAL, LAR, FNC, 308 Match, and Sporter.

26 (8) MAS 223.

27 (9) HK-91, HK-93, HK-94, and HK-PSG-1.

28 (10) The following MAC types:

29 (A) RPB Industries Inc. sM10 and sM11.

30 (B) SWD Incorporated M11.

31 (11) SKS with detachable magazine.

32 (12) SIG AMT, PE-57, SG 550, and SG 551.

33 (13) Springfield Armory BM59 and SAR-48.

34 (14) Sterling MK-6.

35 (15) Steyer AUG.

36 (16) Valmet M62S, M71S, and M78S.

37 (17) Armalite AR-180.

38 (18) Bushmaster Assault Rifle.

39 (19) Calico M-900.

40 (20) J&R ENG M-68.

41 (21) Weaver Arms Nighthawk.

42 (b) All of the following specified pistols:

- 1 (1) UZI.
- 2 (2) Encom MP-9 and MP-45.
- 3 (3) The following MAC types:
- 4 (A) RPB Industries Inc. sM10 and sM11.
- 5 (B) SWD Incorporated M-11.
- 6 (C) Advance Armament Inc. M-11.
- 7 (D) Military Armament Corp. Ingram M-11.
- 8 (4) Intratec TEC-9.
- 9 (5) Sites Spectre.
- 10 (6) Sterling MK-7.
- 11 (7) Calico M-950.
- 12 (8) Bushmaster Pistol.
- 13 (c) All of the following specified shotguns:
- 14 (1) Franchi SPAS 12 and LAW 12.
- 15 (2) Striker 12.
- 16 (3) The Streetsweeper type S/S Inc. SS/12.
- 17 (d) Any firearm declared by the court pursuant to [Section 12276.5] to be an
- 18 assault weapon that is specified as an assault weapon in a list promulgated
- 19 pursuant to [Section 12276.5].
- 20 (e) This section is declaratory of existing law and a clarification of the law and
- 21 the Legislature’s intent which bans the weapons enumerated in this section, the
- 22 weapons included in the list promulgated by the Attorney General pursuant to
- 23 [Section 12276.5], and any other models which are only variations of those
- 24 weapons with minor differences, regardless of the manufacturer. The Legislature
- 25 has defined assault weapons as the types, series, and models listed in this section
- 26 because it was the most effective way to identify and restrict a specific class of
- 27 semiautomatic weapons.
- 28 **Comment.** Subdivisions (a)-(d) and the introductory clause of Section 16150 continue former
- 29 Section 12276(a)-(d) and its introductory clause without substantive change.
- 30 Subdivision (e) continues former Section 12276(f) without substantive change.
- 31 See Sections 16151 (further clarification of “assault weapon”), 16152 (exemptions from
- 32 definition of “assault weapon”), 16620 (“series”).

33 **☞ Staff Notes.**

34 We encourage comment on the following points:

- 35 (1) Existing Sections 12276 and 12276.1 define “assault weapon” as used “in this chapter” —
- 36 i.e., the Roberti-Roos Assault Weapons Control Act of 1989 (Sections 12275-12290). Aside from
- 37 that chapter, the only provisions in Title 2 of Part 4 that use the term “assault weapon” are:
- 38 • Sections 12001(n)(11) and 12601, which expressly incorporate the definition in Sections
 - 39 12276 and 12276.1.
 - 40 • Section 12011(a), which refers repeatedly to an “assault weapon registration.” Because an
 - 41 “assault weapon registration” would have to be obtained pursuant to the Roberti-Roos Assault
 - 42 Weapons Control Act of 1989, the definition of “assault weapon” in that act necessarily applies
 - 43 in this context.
 - 44 • Sections 12022 and 12022.5, which are sentencing enhancement provisions that expressly
 - 45 incorporate the definition in Sections 12276 and 12276.1.

- 1 • Section 12072, which expressly incorporates the definitions in Sections 12276, 12276.1, and
2 12276.5. The reference to Section 12276.5 is immaterial because the list of weapons compiled
3 pursuant to Section 12276.5 is incorporated by reference in Section 12276(d). The definition
4 used in Section 12072 is thus the same as in the preceding sections.
- 5 • Section 12039, which directs the Attorney General to annually report on usage of “assault
6 weapons” and other firearms, but does not define the term “assault weapon.”

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

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

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

21 (3) Section 12276(f) says that “this section is declaratory of existing law, *as amended*, and a
22 clarification of the law ...” (Emphasis added.) Proposed Section 16150(e) does not include the
23 phrase “as amended.” That phrase is now surplusage, although it might have been necessary in
24 1991, when Section 12276 was amended to add subdivisions (e) and (f) and make other changes.

25 § 16151. Further clarification of “assault weapon”

26 16151. (a) Notwithstanding Section 16150, “assault weapon” also means any of
27 the following:

28 (1) A semiautomatic, centerfire rifle that has the capacity to accept a detachable
29 magazine and any one of the following:

- 30 (A) A pistol grip that protrudes conspicuously beneath the action of the weapon.
- 31 (B) A thumbhole stock.
- 32 (C) A folding or telescoping stock.
- 33 (D) A grenade launcher or flare launcher.
- 34 (E) A flash suppressor.
- 35 (F) A forward pistol grip.

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

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

40 (4) A semiautomatic pistol that has the capacity to accept a detachable magazine
41 and any one of the following:

- 42 (A) A threaded barrel, capable of accepting a flash suppressor, forward
43 handgrip, or silencer.
- 44 (B) A second handgrip.

1 (C) A shroud that is attached to, or partially or completely encircles, the barrel
2 that allows the bearer to fire the weapon without burning his or her hand, except a
3 slide that encloses the barrel.

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

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

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

9 (A) A folding or telescoping stock.

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

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

14 (8) Any shotgun with a revolving cylinder.

15 **Comment.** Section 16151 continues former Section 12276.1(a) without substantive change.

16 See Sections 16150 (“assault weapon”), 16152 (exemptions from definition of “assault
17 weapon”).

18 **§ 16152. Exemptions from definition of “assault weapon”**

19 16152. (a) The Legislature finds a significant public purpose in exempting from
20 the definition of “assault weapon” pistols that are designed expressly for use in
21 Olympic target shooting events. Therefore, those pistols that are sanctioned by the
22 International Olympic Committee and by USA Shooting, the national governing
23 body for international shooting competition in the United States, and that were
24 used for Olympic target shooting purposes as of January 1, 2001, and that would
25 otherwise fall within the definition of “assault weapon” pursuant to Sections
26 16150 and 16151 are exempt, as provided in subdivision (b).

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

28 (1) Any antique firearm.

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

31	MANUFACTURER	MODEL	CALIBER
32	BENELLI	MP90	.22LR
33	BENELLI	MP90	.32 S&W LONG
34	BENELLI	MP95	.22LR
35	BENELLI	MP95	.32 S&W LONG
36	HAMMERLI	280	.22LR
37	HAMMERLI	280	.32 S&W LONG

1	HAMMERLI	SP20	.22LR
2	HAMMERLI	SP20	.32 S&W LONG
3	PARDINI	GPO	.22 SHORT
4	PARDINI	GP-SCHUMANN	.22 SHORT
5	PARDINI	HP	.32 S&W LONG
6	PARDINI	MP	.32 S&W LONG
7	PARDINI	SP	.22LR
8	PARDINI	SPE	.22LR
9	WALTHER	GSP	.22LR
10	WALTHER	GSP	.32 S&W LONG
11	WALTHER	OSP	.22 SHORT
12	WALTHER	OSP-2000	.22 SHORT

13 (3) The Department of Justice shall create a program that is consistent with the
14 purposes stated in subdivision (a) to exempt new models of competitive pistols
15 that would otherwise fall within the definition of “assault weapon” pursuant to
16 Sections 16150 and 16151 from being classified as an assault weapon. The exempt
17 competitive pistols may be based on recommendations by USA Shooting
18 consistent with the regulations contained in the USA Shooting Official Rules or
19 may be based on the recommendation or rules of any other organization that the
20 department deems relevant.

21 **Comment.** Subdivision (a) of Section 16152 continues former Section 12276.1(b) without
22 substantive change.

23 Subdivision (b) continues former Section 12276.1(c) without substantive change.

24 See Sections 16150 (“assault weapon”), 16151 (further clarification of “assault weapon”).

25 **Staff Notes.**

26 We encourage comment on the following points:

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

32 (2) Section 12276.1(c)(3) is not a definition. It is a substantive provision that relates to the list
33 of exemptions from the definition of “assault weapon.” Proposed Section 16152(b)(3) would
34 continue Section 12276(f) without substantive change. We considered placing the material with

1 the substantive provisions on assault weapons, but decided that it would be better to keep it with
2 the list of exemptions from the definition of “assault weapon.”

3 **§ 16160. “Ballistic knife”**

4 16160. As used in this part, “ballistic knife” means a device that propels a
5 knifelike blade as a projectile by means of a coil spring, elastic material, or
6 compressed gas. Ballistic knife does not include any device which propels an
7 arrow or a bolt by means of any common bow, compound bow, crossbow, or
8 underwater speargun.

9 **Comment.** Section 16160 continues former Section 12020(c)(8) without substantive change.

10 **Staff Note.** Existing Section 12020(c)(8) defines “ballistic knife” for purposes of that section.
11 The term is not used in any other section in Title 2 of Part 4.

12 Consequently, the definition in Section 12020(c)(8) can be applied to the entirety of new Part 6
13 without effecting a substantive change. Proposed Section 16160 would therefore define “ballistic
14 knife” as used “in this part.”

15 **§ 16165. “Ballistics identification system”**

16 16165. As used in this part, “ballistics identification system” includes, but is not
17 limited to, any automated image analysis system that is capable of storing firearm
18 ballistic markings and tracing those markings to the firearm that produced them.

19 **Comment.** Section 16165 continues former Section 12072.5(a) without substantive change.

20 **Staff Note.** Existing Section 12072.5(a) defines “ballistics identification systems” for
21 purposes of that section. The term is not used in any other section in Title 2 of Part 4.

22 Consequently, the definition in Section 12072.5 can be applied to the entirety of new Part 6
23 without effecting a substantive change. Proposed Section 16165 would therefore define “ballistics
24 identification system” as used “in this part.”

25 **§ 16170. “Basic firearms safety certificate”**

26 16170. As used in this part, “basic firearms safety certificate” means a certificate
27 issued by the Department of Justice pursuant to [Article 8 (commencing with
28 Section 12800) of Chapter 6 of Title 2 of Part 4], before January 1, 2003.

29 **Comment.** Section 16170 continues former Section 12001(p) without substantive change.

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

37 The staff found that the term “basic firearms safety certificate” is only used in Title 2 of Part 4,
38 not elsewhere in the Penal Code. The substance of that title would be continued in new Part 6
39 (except for the sentencing enhancement provisions, which do not use the term “basic firearms
40 safety certificate”). Consequently, the definition could be limited to new Part 6 without effecting
41 a substantive change. Proposed Section 16170 would therefore define “basic firearms safety
42 certificate” as used “in this part.”

43 We encourage comment on this approach.

1 **§ 16175. “BB device”**

2 16175. As used in this part, “BB device” means any instrument that expels a
3 projectile, such as a BB or a pellet, not exceeding 6mm caliber, through the force
4 of air pressure, gas pressure, or spring action, or any spot marker gun.

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

7 **§ 16180. “Belt buckle knife”**

8 16180. As used in this part, “belt buckle knife” is a knife which is made an
9 integral part of a belt buckle and consists of a blade with a length of at least 2-1/2
10 inches.

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

12 ☞ **Staff Note.** Existing Section 12020(c)(13) defines “belt buckle knife” for purposes of that
13 section. The term is not used in any other section in Title 2 of Part 4.

14 Consequently, the definition in Section 12020(c)(13) can be applied to the entirety of new Part
15 6 without effecting a substantive change. Proposed Section 16180 would therefore define “belt
16 buckle knife” as used “in this part.”

17 **§ 16185. “Blowgun”**

18 16185. As used in this part, “blowgun” means a hollow tube designed and
19 intended to be used as a tube through which a dart is propelled by the force of the
20 breath of the user.

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

22 ☞ **Staff Note.** Existing Section 12580 defines “blowgun” for purposes of Article 4 of Chapter 6
23 of Title 2 of Part 4 (i.e., Sections 12580-12583). Aside from that article, the term is not used in
24 Title 2 of Part 4.

25 Consequently, the definition in Section 12580 can be applied to the entirety of new Part 6
26 without effecting a substantive change. Proposed Section 16185 would therefore define
27 “blowgun” as used “in this part.”

28 **§ 16190. “Blowgun ammunition”**

29 16190. As used in this part, “blowgun ammunition” means a dart designed and
30 intended for use in a blowgun.

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

32 See Section 16185 (“blowgun”).

33 ☞ **Staff Note.** Existing Section 12581 defines “blowgun ammunition” for purposes of Article 4
34 of Chapter 6 of Title 2 of Part 4 (i.e., Sections 12580-12583). Aside from that article, the term is
35 not used in Title 2 of Part 4.

36 Consequently, the definition in Section 12581 can be applied to the entirety of new Part 6
37 without effecting a substantive change. Proposed Section 16190 would therefore define “blowgun
38 ammunition” as used “in this part.”

1 § 16195. “Body vest” or “body shield”

2 16195. As used in this part, “body vest” or “body shield” means any bullet-
3 resistant material intended to provide ballistic and trauma protection for the wearer
4 or holder.

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

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

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

13 § 16200. “Bona fide evidence of majority and identity”

14 16200. As used in this part, “bona fide evidence of majority and identity” means
15 a document issued by a federal, state, county, or municipal government, or
16 subdivision or agency thereof, including, but not limited to, a motor vehicle
17 operator’s license, California state identification card, identification card issued to
18 a member of the armed forces, or other form of identification that bears the name,
19 date of birth, description, and picture of the person.

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

22 **Staff Notes.**

23 We encourage comment on the following points:

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

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

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

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

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

39 § 16205. “Boobytrap”

40 16205. As used in this part, “boobytrap” means any concealed or camouflaged
41 device designed to cause great bodily injury when triggered by an action of any
42 unsuspecting person coming across the device. Boobytraps may include, but are
43 not limited to, guns, ammunition, or explosive devices attached to trip wires or

1 other triggering mechanisms, sharpened stakes, and lines or wire with hooks
2 attached.

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

4 **☞ Staff Notes.**

5 We encourage comment on the following points:

6 (1) Existing Section 12355(c) defines “boobytrap” for purposes of that section. The term is not
7 used in any other section in Title 2 of Part 4.

8 Consequently, the definition in Section 12355 can be applied to the entirety of new Part 6
9 without effecting a substantive change. Proposed Section 16205 would therefore define
10 “boobytrap” as used “in this part.”

11 (2) The second sentence of existing Section 12355(c) says: “Boobytraps may include, but are
12 not limited to, guns, ammunition, or explosive devices attached to trip wires or other triggering
13 mechanisms, sharpened stakes, and lines or wire with hooks attached.” (Emphasis added.) The
14 Commission’s general practice is to draft statutes using the singular form rather than the plural.
15 We considered revising the language in the second sentence of Section 12355(c) to use the
16 singular form. But that proved difficult to do in a manner we were confident would create no risk
17 of a substantive change. Proposed Section 16205 therefore tracks the existing language in Section
18 12355(c).

19 **§ 16210. “Camouflaging firearm container”**

20 16210. (a) As used in this part, “camouflaging firearm container” means a
21 container that meets all of the following criteria:

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

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

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

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

29 **Comment.** Section 16210 continues former Section 12020(c)(9) without substantive change.

30 See Section 16305 (“firearm”).

31 **☞ Staff Note.** Existing Section 12020(c)(9) defines “camouflaging firearm container” for
32 purposes of that section. The term is not used in any other section in Title 2 of Part 4.

33 Consequently, the definition in Section 12020(c)(9) can be applied to the entirety of new Part 6
34 without effecting a substantive change. Proposed Section 16210 would therefore define
35 “camouflaging firearm container” as used “in this part.”

36 **§ 16215. “Cane gun”**

37 16215. As used in this part, “cane gun” means any firearm mounted or enclosed
38 in a stick, staff, rod, crutch, or similar device, designed to be, or capable of being
39 used as, an aid in walking, if the firearm may be fired while mounted or enclosed
40 therein.

41 **Comment.** Section 16215 continues former Section 12020(c)(5) without substantive change.

42 See Section 16305 (“firearm”).

1 **☞ Staff Note.** Existing Section 12020(c)(5) defines “cane gun” for purposes of that section. The
2 term is not used in any other section in Title 2 of Part 4.

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

6 **§ 16220. “Cane sword”**

7 16220. As used in this part, “cane sword” means a cane, swagger stick, stick,
8 staff, rod, pole, umbrella, or similar device, having concealed within it a blade that
9 may be used as a sword or stiletto.

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

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

13 Consequently, the definition in Section 12020(c)(15) can be applied to the entirety of new Part
14 6 without effecting a substantive change. Proposed Section 16220 would therefore define “cane
15 sword” as used “in this part.”

16 **§ 16225. “Capacity to accept more than 10 rounds”**

17 16225. As used in Section 16151, “capacity to accept more than 10 rounds”
18 means capable of accommodating more than 10 rounds. The term does not apply
19 to a feeding device that has been permanently altered so that it cannot
20 accommodate more than 10 rounds.

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

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

25 Because Section 12020(c)(25) uses the phrase without defining it, the definition in Section
26 12276.1(d)(2) could not be applied to the entirety of new Part 6 without creating a risk of a
27 substantive change. Accordingly, the definition in proposed Section 16225 would only apply to
28 proposed Section 16151, which would continue the portion of Section 12276.1 that uses the
29 phrase “capacity to accept more than 10 rounds.”

30 The staff suspects, however, that the phrase “capacity to accept more than 10 rounds” is
31 intended to have the same meaning in Section 12020 as in Section 12276.1. At some point in the
32 future, the Legislature might want to consider extending the definition to the entirety of new Part
33 6. Unless the Commission otherwise directs, we will add this issue to the list of minor clean-up
34 issues that the Commission plans to include in its report to the Governor and the Legislature.

35 **§ 16230. “CCW”**

36 16230. As used in this part, “CCW” means “carry concealed weapons.”

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

39 **☞ Staff Note.** Existing Section 12027(a)(1)(E) defines “CCW” for purposes of that section and
40 Section 12031. The only other section in Title 2 of Part 4 that uses the term is Section 12027.1.
41 That provision uses the term without defining it, but it is clear from the content of the provision
42 that “CCW” has the same meaning there (i.e., “carry concealed weapons”) as in Sections 12027
43 and 12031.

1 Consequently, the definition in Section 12027(a)(1)(E) can be applied to the entirety of new
2 Part 6 of the Penal Code without effecting a substantive change. Proposed Section 16230 would
3 therefore define “CCW” as used “in this part.”

4 **§ 16235. “Certified instructor” or “DOJ Certified Instructor”**

5 16235. As used in [Sections 12800-12809], “certified instructor” or “DOJ
6 Certified Instructor” means a person designated as a handgun safety instructor by
7 the Department of Justice pursuant to [subdivision (d) of Section 12804].

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

9 **☞ Staff Notes.**

10 We encourage comment on the following points:

11 (1) Existing Section 12801(a)(2) defines the terms “certified instructor” and “DOJ Certified
12 Instructor” synonymously for purposes of Article 8 of Chapter 6 of Title 2 of Part 4 (i.e., Sections
13 12800-12809). That definition is problematic, however, because Article 8 is sloppy in referring to
14 instructors.

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

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

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

31 (2) Because the terms “certified instructor” and “DOJ Certified Instructor” are defined
32 synonymously, we have kept them together in proposed Section 16235. To help persons find the
33 definition of “DOJ Certified Instructor,” we have included a provision entitled “DOJ Certified
34 Instructor” (proposed Section 16285), which would simply cross-refer to proposed Section
35 16235.

36 **§ 16240. “Chamber load indicator”**

37 16240. As used in this part, “chamber load indicator” means a device that
38 plainly indicates that a cartridge is in the firing chamber. A device satisfies this
39 definition if it is readily visible, has incorporated or adjacent explanatory text or
40 graphics, or both, and is designed and intended to indicate to a reasonably
41 foreseeable adult user of the pistol, without requiring the user to refer to a user’s
42 manual or any other resource other than the pistol itself, whether a cartridge is in
43 the firing chamber.

44 **Comment.** Section 16240 continues former Section 12126(c) without substantive change.

1 **☞ Staff Note.** Existing Section 12126(c) defines “chamber load indicator” for purposes of that
2 section. The only other section in Title 2 of Part 4 that uses the term is Section 12130, which
3 cross-refers to the definition in Section 12126(c).

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

7 **§ 16245. “Child”**

8 16245. As used in [Sections 12035 and 12036], “child” means a person under 18
9 years of age.

10 **Comment.** Section 16245 continues former Section 12035(a)(3) and former Section
11 12036(a)(2) without substantive change.

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

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

32 From these usages, it is clear that it would not be possible to adopt a definition of “child” or
33 “children” that would apply to the entirety of new Part 6. Consequently, proposed Section 16245
34 would only define “child” for purposes of the provisions that continue the substance of Sections
35 12035 and 12036.

36 **§ 16250. “Clear evidence of the person’s identity and age”**

37 16250. As used in this part, “clear evidence of the person’s identity and age”
38 means either of the following:

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

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

43 **☞ Staff Notes.**

44 We encourage comment on the following points:

45 (1) Existing Section 12071(c)(1) defines “clear evidence of his or her identity and age” for
46 purposes of the article that contains that provision. Aside from that article, the term is not used in
47 Title 2 of Part 4.

1 Consequently, the definition in Section 12071(c)(1) can be applied to the entirety of new Part 6
2 without effecting a substantive change. Proposed Section 16250 would therefore define the term
3 as used “in this part.”

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

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

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

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

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

20 **§ 16255. “Dagger” or “dirk”**

21 16255. As used in this part, “dagger” or “dirk” means a knife or other instrument
22 with or without a handguard that is capable of ready use as a stabbing weapon that
23 may inflict great bodily injury or death. A nonlocking folding knife, a folding
24 knife that is not prohibited by [Section 653k], or a pocketknife is capable of ready
25 use as a stabbing weapon that may inflict great bodily injury or death only if the
26 blade of the knife is exposed and locked into position.

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

28 **🔍 Staff Notes.**

29 We encourage comment on the following points:

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

35 Consequently, the definition in Section 12020(c)(24) can be applied to the entirety of new Part
36 6 of the Penal Code without effecting a substantive change. Proposed Section 16255 would
37 therefore define “dagger” or “dirk” as used “in this part.”

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

42 **§ 16260. “Deadly weapon”**

43 16260. As used in Division 4 (commencing with Section 17300) of Title 2,
44 “deadly weapon” means any weapon, the possession or concealed carrying of
45 which is prohibited by any provision listed in Section 16340.

1 **Comment.** Section 16260 continues former Section 12028.5(a)(3) without substantive change.

2 **§ 16265. “Dealer,” “licensee,” or “person licensed pursuant to [Section 12071]”**

3 16265. (a) As used in [Sections 12000-12101, 12804, and 12809], “licensee,”
4 “person licensed pursuant to [Section 12071],” or “dealer” means a person who
5 has all of the following:

6 (1) A valid federal firearms license.

7 (2) Any regulatory or business license, or licenses, required by local
8 government.

9 (3) A valid seller’s permit issued by the State Board of Equalization.

10 (4) A certificate of eligibility issued by the Department of Justice pursuant to
11 [Section 12071(a)(4)].

12 (5) A license issued in the format prescribed by [Section 12071(a)(6)].

13 (6) Is among those recorded in the centralized list specified in [Section
14 12071(e)].

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

17 (1) Has a license issued pursuant to [Section 12086(b)(2)].

18 (2) Is among those recorded in the centralized list specified in [Section
19 12086(f)].

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

22 Subdivision (b) continues former Section 12086(a)(1) without substantive change.

23 See also Section 16440 (“licensed gun dealer”).

24 **☞ Staff Notes.**

25 We encourage comment on the following points:

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

32 (2) Existing Section 12071(a)(1) defines “licensee,” “person licensed pursuant to Section
33 12071,” and “dealer” synonymously for purposes of “this chapter” (i.e., Sections 12000-12101).
34 Proposed Section 16265(a) would continue that definition without substantive change for
35 purposes of the provisions in new Part 6 that would continue the substance of Sections 12000-
36 12101. Proposed Section 16265(a) would also continue that definition without substantive change
37 for purposes of the provisions in new Part 6 that would continue the substance of Sections 12804
38 and 12807, which incorporate the definition by reference. Because the terms “licensee,” “person
39 licensed pursuant to Section 12071,” and “dealer” are not used in any of the sentencing
40 enhancement provisions (Sections 12021.5-12022.95), it will not be necessary to define those
41 terms in Title 2 of Part 4 once that title consists solely of the sentencing enhancement provisions.

42 (3) Existing Section 12086(a)(1) defines “licensee” for purposes of that section, which relates
43 to firearm manufacturing. Proposed Section 16265(b) would continue that definition without
44 substantive change for purposes of the provision in new Part 6 that would continue the substance
45 of Section 12086. We placed that definition in the same section as the provision defining

1 “licensee” as a synonym of “dealer,” so that the two definitions of “licensee” would be
2 juxtaposed. We hope that this placement might help to prevent confusion about which definition
3 applies when the term “licensee” is used in new Part 6.

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

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

- 17 • Section 12001(h) and (r) refer to “any person who is licensed as a dealer pursuant to Chapter
18 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations
19 issued pursuant thereto, who” Section 12001 is in the same chapter as Section 12071(a)(1),
20 which defines “dealer,” “licensee,” or “person licensed pursuant to Section 12071” for
21 purposes of that chapter. From the language of Section 12001(h) and (r), it appears that the
22 chapter-wide definition of “dealer” is not meant to apply to those provisions.
- 23 • Section 12021(g)(3) refers to a “licensed gun dealer” but does not define the term. This
24 provision is in the same chapter as Section 12071(a)(1), which defines “dealer,” “licensee,” or
25 “person licensed pursuant to Section 12071” for purposes of that chapter.
- 26 • Section 12021.3(j)(1) refers to a “licensed firearms dealer” but does not define the term. This
27 provision is in the same chapter as Section 12071(a)(1), which defines “dealer,” “licensee,” or
28 “person licensed pursuant to Section 12071” for purposes of that chapter.
- 29 • Section 12095(b)(2) refers to “persons who are licensed as dealers ... under the provisions of
30 Chapter 53 (commencing with Section 5801) of Title 26 of the United States Code, as
31 amended, and the regulations issued pursuant thereto.” Section 12095 is in the same chapter as
32 Section 12071(a)(1), which defines “dealer,” “licensee,” or “person licensed pursuant to
33 Section 12071” for purposes of that chapter. From the language of Section 12095(b)(2), it
34 appears that the chapter-wide definition of “dealer” is not meant to apply to that provision.
- 35 • Section 12289 refers to “dealers of .50 BMG rifles” but neither “dealer” nor “dealer of .50
36 BMG rifles” is defined for purposes of that section.
- 37 • Sections 12305 and 12316 refer to a “dealer,” but “dealer” is not defined for purposes of those
38 sections.
- 39 • Section 12501 refers to “dealers ... registered under Chapter 53 (commencing with Section
40 5801) of Title 26 of the United States Code, and the regulations issued pursuant thereto.”

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

46 § 16270. “Department”

47 16270. As used in [Sections 12086 and 12800-12809], “department” means the
48 Department of Justice.

49 **Comment.** Section 16270 continues former Sections 12086(a)(2) and 12801(a)(1) without
50 substantive change.

1 **☞ Staff Note.** Existing Section 12086(a)(2) defines “department” to mean the Department of
2 Justice for purposes of that section. Similarly, existing Section 12801(a)(1) defines “department”
3 to mean the Department of Justice for purposes of the article containing that section (i.e., Sections
4 12800-12809).

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

9 But that is not always the case. Title 2 of Part 4 also includes references to other departments,
10 such as police departments, fire departments, sheriff’s departments, the Department of Consumer
11 Affairs, the State Department of Mental Health, the Department of Fish and Game, the
12 Department of Motor Vehicles, and so forth. Consequently, proposed Section 16270 would only
13 define “department” for purposes of the provisions that would continue the substance of Sections
14 12086 and 12800-12809.

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

20 **§ 16275. “Destructive device”**

21 16275. (a) As used in [Sections 12020(a)(4), 12030, 12302-12312, 12601], and
22 16300, “destructive device” includes any of the following weapons:

23 (1) Any projectile containing any explosive or incendiary material or any other
24 chemical substance, including, but not limited to, that which is commonly known
25 as tracer or incendiary ammunition, except tracer ammunition manufactured for
26 use in shotguns.

27 (2) Any bomb, grenade, explosive missile, or similar device or any launching
28 device therefor.

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

34 (4) Any rocket, rocket-propelled projectile, or similar device of a diameter
35 greater than 0.60 inch, or any launching device therefor, and any rocket, rocket-
36 propelled projectile, or similar device containing any explosive or incendiary
37 material or any other chemical substance, other than the propellant for that device,
38 except those devices as are designed primarily for emergency or distress signaling
39 purposes.

40 (5) Any breakable container which contains a flammable liquid with a flashpoint
41 of 150 degrees Fahrenheit or less and has a wick or similar device capable of
42 being ignited, other than a device which is commercially manufactured primarily
43 for the purpose of illumination.

44 (6) Any sealed device containing dry ice (CO₂) or other chemically reactive
45 substances assembled for the purpose of causing an explosion by a chemical
46 reaction.

1 (b) A bullet containing or carrying an explosive agent is not a destructive device
2 as that term is used in subdivision (a).

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

5 Subdivision (b) continues the second sentence of the second paragraph of former Section
6 12020(a)(4) without substantive change.

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

8 **☞ Staff Notes.**

9 We encourage comment on the following points:

10 (1) Existing Section 12301(a) defines “destructive device” as used “in this chapter” — i.e., for
11 purposes of Sections 12301-12312. Aside from that chapter, only a few other provisions in Title 2
12 of Part 4 of the Penal Code use the term “destructive device.” See Sections 12020(a)(4),
13 12021.1(b)(15)-(17), 12030, 12601. All of those sections incorporate Section 12301’s definition
14 by reference, except Section 12021.1(b)(15)-(17), which refer to a “destructive device” without
15 defining the term.

16 To avoid any risk of a substantive change, the definition of “destructive device” in proposed
17 Section 16275 would only apply to the provisions that would continue the substance of Sections
18 12301-12312 and the provisions that would continue the substance of the sections that
19 incorporate Section 12301’s definition by reference (Sections 12020(a)(4), 12030, and 12601).

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

24 (2) Existing Section 12301(a)(3) refers to “the definition of ‘destructive device’ found in
25 subsection (b) of Section 479.11 of Title 27 of the Code of Federal Regulations.” That reference
26 is potentially confusing, because Section 479.11 of Title 27 of the Code of Federal Regulations is
27 not divided into subsections. Rather, Section 479.11 consists of a list of definitions in alphabetical
28 order, including a definition of “destructive device.” That definition includes three components,
29 which are labeled as “(a),” “(b),” and “(c).” The text of Section 479.11 refers to “paragraphs (a)
30 and (b) of this definition.” Thus, Section 12301(a)(3)’s reference to “subsection (b) of Section
31 479.11 of Title 27 of the Code of Federal Regulations” should perhaps be replaced with a
32 reference to “paragraph (b) of the definition of ‘destructive device’ in Section 479.11 of Title 27
33 of the Code of Federal Regulations.”

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

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

39 12301. (a) The term “destructive device,” as used in this chapter, shall include any of the
40 following weapons:

41

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

47 (Emphasis added.) The way the provision is currently worded, taken literally, seems to imply that
48 a shotgun “conforming to the definition of a ‘destructive device’ found in subsection (b) of

1 Section 479.11 of Title 27 of the Code of Federal Regulations” is not a “destructive device” as
2 defined in Section 12301.

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

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

14 Alternatively, the intent might be to encompass within the California definition of “destructive
15 device” any weapon that is greater than .60 caliber, fires fixed ammunition, and constitutes a
16 “destructive device” under paragraph (b) of the federal definition of “destructive device” found in
17 Section 479.11, but to exclude “a shotgun (smooth or rifled bore) ..., shotgun ammunition (single
18 projectile or shot), antique rifle, or an antique cannon.” In other words, it is possible that the
19 phrase “other than a shotgun (smooth or rifled bore)” was incorrectly positioned when Section
20 12301(a)(3) was drafted, and the provision was actually meant to read as follows:

21 12301. (a) The term “destructive device,” as used in this chapter, shall include any of the
22 following weapons:

23

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

29 (Emphasis added.)

30 We are curious to know what other people think about the proper interpretation of Section
31 12301(a)(3). Regardless of the proper interpretation, however, we recommend that the
32 Commission leave the existing language intact for purposes of this nonsubstantive reorganization
33 of the deadly weapons statutes.

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

38 § 16280. “Dirk”

39 16280. Use of the term “dirk” is governed by Section 16255.

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

42 § 16285. “DOJ Certified Instructor”

43 16285. Use of the term “DOJ Certified Instructor” is governed by Section
44 16235.

45 **Comment.** Section 16285 is new. It is intended to help persons locate the definition of “DOJ
46 Certified Instructor,” which is the same as the definition of “certified instructor.”

1 **§ 16290. “Domestic violence”**

2 16290. As used in this part, “domestic violence” means abuse perpetrated
3 against any of the following persons:

4 (a) A spouse or former spouse.

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

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

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

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

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

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

19 **§ 16295. “Drop safety requirement for handguns”**

20 16295. As used in this part, the “drop safety requirement for handguns” means
21 that at the conclusion of the firing requirements for handguns described in [Section
22 12127], the same certified independent testing laboratory shall subject the same
23 three handguns of the make and model for which certification is sought, to the
24 following test:

25 (a) A primed case (no powder or projectile) shall be inserted into the chamber.
26 For a pistol, the slide shall be released, allowing it to move forward under the
27 impetus of the recoil spring, and an empty magazine shall be inserted. For both a
28 pistol and a revolver, the weapon shall be placed in a drop fixture capable of
29 dropping the pistol from a drop height of 1m + 1cm (39.4 + 0.4 in.) onto the
30 largest side of a slab of solid concrete having minimum dimensions of 7.5 x 15 x
31 15 cm (3 x 6 x 6 in.). The drop distance shall be measured from the lowermost
32 portion of the weapon to the top surface of the slab. The weapon shall be dropped
33 from a fixture and not from the hand. The weapon shall be dropped in the
34 condition that it would be in if it were dropped from a hand (cocked with no
35 manual safety applied). If the design of a pistol is such that upon leaving the hand
36 a “safety” is automatically applied by the pistol, this feature shall not be defeated.
37 An approved drop fixture is a short piece of string with the weapon attached at one
38 end and the other end held in an air vise until the drop is initiated.

39 (b) The following six drops shall be performed:

40 (1) Normal firing position with barrel horizontal.

41 (2) Upside down with barrel horizontal.

42 (3) On grip with barrel vertical.

1 (4) On muzzle with barrel vertical.

2 (5) On either side with barrel horizontal.

3 (6) If there is an exposed hammer or striker, on the rearmost point of that device,
4 otherwise on the rearmost point of the weapon.

5 (c) The primer shall be examined for indentations after each drop. If
6 indentations are present, a fresh primed case shall be used for the next drop.

7 (d) The handgun shall pass this test if each of the three test guns does not fire the
8 primer.

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

10 **Staff Note.** Existing Section 12128 defines “drop safety requirement for handguns” for
11 purposes of “this chapter” (i.e., Sections 12125-12133). Aside from that chapter, the term is not
12 used in any other section in Title 2 of Part 4.

13 Consequently, the definition in Section 12128 can be applied to the entirety of new Part 6
14 without effecting a substantive change. Proposed Section 16295 would therefore define “drop
15 safety requirement for handguns” as used “in this part.”

16 **§ 16300. “Explosive”**

17 16300. As used in [Sections 12302-12312] and 16275, “explosive” means any
18 substance, or combination of substances, the primary or common purpose of
19 which is detonation or rapid combustion, and which is capable of a relatively
20 instantaneous or rapid release of gas and heat, or any substance, the primary
21 purpose of which, when combined with others, is to form a substance capable of a
22 relatively instantaneous or rapid release of gas and heat. “Explosive” includes, but
23 is not limited to, any explosive as defined in Section 841 of Title 18 of the United
24 States Code and published pursuant to Section 555.23 of Title 27 of the Code of
25 Federal Regulations, and any of the following:

26 (a) Dynamite, nitroglycerine, picric acid, lead azide, fulminate of mercury, black
27 powder, smokeless powder, propellant explosives, detonating primers, blasting
28 caps, or commercial boosters.

29 (b) Substances determined to be division 1.1, 1.2, 1.3, or 1.6 explosives as
30 classified by the United States Department of Transportation.

31 (c) Nitro carbo nitrate substances (blasting agent) classified as division 1.5
32 explosives by the United States Department of Transportation.

33 (d) Any material designated as an explosive by the State Fire Marshal. The
34 designation shall be made pursuant to the classification standards established by
35 the United States Department of Transportation. The State Fire Marshal shall
36 adopt regulations in accordance with the Government Code to establish procedures
37 for the classification and designation of explosive materials or explosive devices
38 that are not under the jurisdiction of the United States Department of
39 Transportation pursuant to provisions of Section 841 of Title 18 of the United
40 States Code and published pursuant to Section 555.23 of Title 27 of the Code of
41 Federal Regulations that define explosives.

1 (e) Certain division 1.4 explosives as designated by the United States
2 Department of Transportation when listed in regulations adopted by the State Fire
3 Marshal.

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

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

12 See Section 16275 (“destructive device”).

13 **☞ Staff Notes.**

14 We encourage comment on the following points:

15 (1) Existing Section 12301(b) defines “explosive” to mean “any explosive defined in Section
16 12000 of the Health and Safety Code.” The current definition thus requires a person to refer to the
17 Health and Safety Code to determine what is meant.

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

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

24 (2) Existing Section 12301(b) defines “explosive” as used “in this chapter” (i.e., Sections
25 12301-12312). Aside from that chapter, a number of other provisions in Title 2 of Part 4 use the
26 term “explosive.” See Sections 12001(d), 12020(a)(1), (a)(3), (a)(4), (c)(20) & (c)(21), 12021.1,
27 12028, 12126. The term “explosive” is not defined for purposes of those provisions.

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

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

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

42 Instead, the Comment would include such a cross-reference and would also state that “Section
43 16300 continues former Section 12301(b) without substantive change.” The provision defining
44 “destructive device” (proposed Section 16275) is drafted to encompass proposed Section 16300.

45 We chose this approach because it would further the Legislature’s directive to “[a]void
46 unnecessary use of cross-references” while “[n]either expand[ing] nor contract[ing] the scope of
47 criminal liability under current provisions.” 2006 Cal. Stat. res. ch. 128. Because courts give great
48 weight to the Commission’s comments, we think this would be sufficient to preserve the

1 substance of Section 12301(b). See *2006-2007 Annual Report*, 36 Cal. L. Revision Comm'n
2 Reports 1, 18-24 (2006).

3 **§ 16305. “Firearm”**

4 16305. (a) As used in this part, “firearm” means any device, designed to be used
5 as a weapon, from which is expelled through a barrel, a projectile by the force of
6 any explosion or other form of combustion.

7 (b) As used in [Sections 12021, 12021.1, 12070, 12071, 12072, 12073, 12078,
8 12101, and 12801 of this code], and Sections 8100, 8101, and 8103 of the Welfare
9 and Institutions Code, “firearm” includes the frame or receiver of the weapon.

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

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

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

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

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

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

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

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

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

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

37 Subdivision (e) stems from the fourth sentence of existing Section 12030(d), which says: “As
38 used in this section, the term ‘firearms’ shall not include destructive devices, *as defined in Section*
39 *12301.*” Unlike existing Section 12030(d), proposed Section 16305(e) would not include a cross-
40 reference to the provision defining a “destructive device.”

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

45 We chose this approach because it would further the Legislature’s directive to “[a]void
46 unnecessary use of cross-references” while “[n]either expand[ing] nor contract[ing] the scope of
47 criminal liability under current provisions.” 2006 Cal. Stat. res. ch. 128. Because courts give great

1 weight to the Commission’s comments, we think this would be sufficient to preserve the
2 substance of the fourth sentence of Section 12030(d). See *2006-2007 Annual Report*, 36 Cal. L.
3 Revision Comm’n Reports 1, 18-24 (2006).

4 **§ 16310. “Firearm capable of being concealed upon the person,” “pistol,” and “revolver”**

5 16310. (a) As used in this part, the terms “firearm capable of being concealed
6 upon the person,” “pistol,” and “revolver” apply to and include any device
7 designed to be used as a weapon, from which is expelled a projectile by the force
8 of any explosion, or other form of combustion, and that has a barrel less than 16
9 inches in length. These terms also include any device that has a barrel 16 inches or
10 more in length which is designed to be interchanged with a barrel less than 16
11 inches in length.

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

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

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

20 See Sections 16305 (“firearm”), 16630 (“short-barreled shotgun”), 16635 (“short-barreled
21 rifle”).

22 **§ 16315. “Firearm safety device”**

23 16315. As used in [Sections 12087-12088.9], “firearm safety device” means a
24 device other than a gun safe that locks and is designed to prevent children and
25 unauthorized users from firing a firearm. The device may be installed on a firearm,
26 be incorporated into the design of the firearm, or prevent access to the firearm.

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

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

29 **☞ Staff Notes.**

30 We encourage comment on the following points:

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

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

39 The staff suspects, however, that the term “firearms safety device” is intended to have the same
40 meaning in Section 12071 as in the other sections. At some point in the future, the Legislature
41 might want to consider extending the definition to the entirety of new Part 6. Unless the
42 Commission otherwise directs, we will add this issue to the list of minor clean-up issues that the
43 Commission plans to include in its report to the Governor and the Legislature.

1 (2) The term “firearm safety device,” rather than “firearms safety device,” is used in numerous
2 places in Section 12071, once in Section 12088.15, and once in Section 12088.4. For the sake of
3 consistency, we recommend using just one of these terms in new Part 6.

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

7 **§ 16320. “Firearm transaction record”**

8 16320. As used in this part, “firearm transaction record” is a record containing
9 the same information referred to in subdivision (a) of Section 478.124, Section
10 478.124a, and subdivision (e) of Section 478.125 of Title 27 of the Code of
11 Federal Regulations.

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

14 **☞ Staff Notes.**

15 We encourage comment on the following points:

16 (1) Existing Section 12071(c)(4)(A) defines “firearms transaction record” for purposes of
17 Section 12071(b)(17). Those two provisions are the only ones in Title 2 of Part 4 that use the term
18 “firearms transaction record.”

19 Consequently, the definition in Section 12071(c)(4)(A) can be applied to the entirety of new
20 Part 6 of the Penal Code without effecting a substantive change. Proposed Section 16320 would
21 therefore define the term as used “in this part.”

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

27 **§ 16325. “Firing requirement for handguns”**

28 16325. (a) As used in this part, “firing requirement for handguns” means a test
29 in which the manufacturer provides three handguns of the make and model for
30 which certification is sought to an independent testing laboratory certified by the
31 Attorney General pursuant to [Section 12130]. These handguns may not be refined
32 or modified in any way from those that would be made available for retail sale if
33 certification is granted. The magazines of a tested pistol shall be identical to those
34 that would be provided with the pistol to a retail customer.

35 (b) The test shall be conducted as follows:

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

41 (2) The ammunition used shall be of the type recommended by the handgun
42 manufacturer in the user manual, or if none is recommended, any standard
43 ammunition of the correct caliber in new condition that is commercially available.

1 (c) A handgun shall pass this test if each of the three test guns meets both of the
2 following:

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

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

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

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

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

19 Consequently, the definition in Section 12127(a)-(b) can be applied to the entirety of new Part
20 6 of the Penal Code without effecting a substantive change. Proposed Section 16325 would
21 therefore define the term as used “in this part.”

22 § 16330. “Flechette dart”

23 16330. As used in this part, “flechette dart” means a dart, capable of being fired
24 from a firearm, that measures approximately one inch in length, with tail fins that
25 take up approximately five-sixteenths of an inch of the body.

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

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

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

33 § 16335. “Furnishes”

34 16335. As used in [Section 12552], “furnishes” means either of the following:

- 35 (a) A loan.
36 (b) A transfer that does not involve a sale.

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

38 **Staff Notes.**

39 We encourage comment on the following points:

40 (1) Existing Section 12252(b) defines “furnishes” for purposes of that section, which relates to
41 furnishing a BB device to a minor. The terms “furnish,” “furnishes,” and “furnishing” are also
42 used elsewhere in Title 2 of Part 4, without definition. See, e.g., Sections 12052 (department shall
43 “furnish” a report of all data and information pertaining to an applicant), 12054 (application fee

1 shall not exceed costs of “furnishing” report), 12076 (“knowingly furnishing any incorrect
2 information”). In some of these provisions, it seems unlikely that “furnish,” “furnishes,” or
3 “furnishing” is intended to have the meaning given in Section 12252(b). Consequently, proposed
4 Section 16335 would only define “furnishes” for purposes of the provision that continues the
5 substance of Section 12252.

6 (2) Among the provisions that use the terms “furnish,” “furnishes,” or “furnishing” are Section
7 12403.7(c), which relates to selling or furnishing tear gas or a tear gas weapon to a minor, and
8 Section 12651(c), which relates to selling or furnishing a stun gun to a minor. At some point in
9 the future, the Legislature might want to consider whether the same definition of “furnishes”
10 should be used in these contexts as in the provision that relates to furnishing a BB device to a
11 minor. Unless the Commission otherwise directs, we will add this issue to the list of minor clean-
12 up issues that the Commission plans to include in its report to the Governor and the Legislature.

13 **§ 16340. “Generally prohibited weapon”**

14 16340. As used in this part, “generally prohibited weapon” means any of the
15 following:

- 16 (a) An air gauge knife, as prohibited by Section _____.
- 17 (b) Ammunition that contains or consists of a flechette dart, as prohibited by
18 Section _____.
- 19 (c) A ballistic knife, as prohibited by Section _____.
- 20 (d) A belt buckle knife, as prohibited by Section _____.
- 21 (e) A bullet containing or carrying an explosive agent, as prohibited by Section
22 _____.
- 23 (f) A camouflaging firearm container, as prohibited by Section _____.
- 24 (g) A cane gun, as prohibited by Section _____.
- 25 (h) A cane sword, as prohibited by Section _____.
- 26 (i) A concealed dirk or dagger, as prohibited by Section _____.
- 27 (j) A concealed explosive substance, other than fixed ammunition, as prohibited
28 by Section _____.
- 29 (k) A firearm that is not immediately recognizable as a firearm, as prohibited by
30 Section _____.
- 31 (l) A large-capacity magazine, as prohibited by Section _____.
- 32 (m) A leaded cane, as prohibited by Section _____.
- 33 (n) A lipstick case knife, as prohibited by Section _____.
- 34 (o) Metal knuckles, as prohibited by Section _____.
- 35 (p) A metal military practice handgrenade or a metal replica handgrenade, as
36 prohibited by Section _____.
- 37 (q) A multiburst trigger activator, as prohibited by Section _____.
- 38 (r) A nunchaku, as prohibited by Section _____.
- 39 (s) A shobi-zue, as prohibited by Section _____.
- 40 (t) A short-barreled rifle, as prohibited by Section _____.
- 41 (u) A short-barreled shotgun, as prohibited by Section _____.
- 42 (v) A shuriken, as prohibited by Section _____.
- 43 (w) An unconventional pistol, as prohibited by Section _____.
- 44 (x) An undetectable firearm, as prohibited by Section _____.

- 1 (y) A wallet gun, as prohibited by Section _____.
- 2 (z) A writing pen knife, as prohibited by Section _____.
- 3 (aa) A zip gun, as prohibited by Section _____.
- 4 (bb) An instrument or weapon of the kind commonly known as a billy,
- 5 blackjack, sandbag, sandclub, sap, or slungshot, as prohibited by Section _____.

6 **Comment.** Section 16340 is new. It defines the term “generally prohibited weapon” for
7 drafting convenience. Each of the items listed in this section was formerly listed in subdivision
8 (a) of former Section 12020.

9 **§ 16345. “Great bodily injury”**

10 16345. As used in [Section 12035], “great bodily injury” means a significant or
11 substantial physical injury.

12 **Comment.** Section 16345 continues former Section 12035(a)(4) without substantive change.
13 To make the provision more easily understandable, the definition of “great bodily injury” in
14 Section 12022.7 is repeated in Section 16345, rather than incorporated by reference as it was in
15 the past. Case law construing the definition in Section 12022.7 is relevant in construing Section
16 16345.

17 **☞ Staff Notes.**

18 We encourage comment on the following points:

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

22 The term “great bodily injury” is also used elsewhere in Title 2 of Part 4, without definition.
23 See, e.g., Sections 12001.1, 12020(c)(24), 12021.1, 12036, 12310, 12355(c). In addition, several
24 sentencing enhancement provisions incorporate the definition in Section 12022.7. Like Section
25 12022.7, these sentencing enhancement provisions would not be moved to new Part 6.

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

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

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

41 Section 12022.7 is a sentencing enhancement provision that would not be moved to new Part 6.
42 Consequently, it would be more user-friendly to state the definition directly in proposed Section
43 16345, rather than incorporating it by reference. Proposed Section 16345 follows that approach.
44 The Comment to proposed Section 16345 would make clear that “[c]ase law construing the
45 definition in Section 12022.7 is relevant in construing Section 16345.”

1 § 16350. “Gun safe”

2 16350. As used in this part, “gun safe” means a locking container that fully
3 contains and secures one or more firearms, and that meets the standards for gun
4 safes adopted pursuant to [Section 12088.2].

5 **Comment.** Section 16350 continues former Section 12087.6(b) without substantive change.
6 See Section 16305 (“firearm”).

7 **Staff Note.** Existing Section 12087.6(b) defines “gun safe” for purposes of the article that
8 contains that section (i.e., Sections 12087-12088.9). Aside from that article, Section
9 12071(b)(20)(G)(ii)(II) is the only other provision in Title 2 of Part 4 that uses the term “gun
10 safe.” Like Section 12087.6(b), that provision refers to the standards in Section 12088.2.

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

14 § 16355. “Gun Show Trader”

15 16355. As used in this part, “Gun Show Trader” means a person described in
16 [Section 12070(b)(5)].

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

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

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

24 § 16360. “Gunsmith”

25 16360. As used in this part, “gunsmith” means any person who is licensed as a
26 dealer pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the
27 United States Code and the regulations issued pursuant thereto, who is engaged
28 primarily in the business of repairing firearms, or making or fitting special barrels,
29 stocks, or trigger mechanisms to firearms, or the agent or employee of that person.

30 **Comment.** Section 16360 continues former Section 12001(r) without substantive change.
31 See Section 16305 (“firearm”).

32 § 16365. “Handgun”

33 16365. (a) As used in this part, “handgun” means any pistol, revolver, or firearm
34 capable of being concealed upon the person.

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

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

40 With respect to a “handgun,” subdivision (b) continues former Section 12001(f) without
41 substantive change. See also Section 16310(b), which continues former Section 12001(f) with
42 respect to a “firearm capable of being concealed upon the person,” “pistol,” and “revolver.”

1 See Sections 16305 (“firearm”), 16310 (“firearm capable of being concealed upon the person,”
2 “pistol,” and “revolver”), 16630 (“short-barreled shotgun”), 16635 (“short-barreled rifle”).

3 **§ 16370. “Handgun ammunition”**

4 16370. As used in this part, “handgun ammunition” means ammunition
5 principally for use in pistols, revolvers, and other firearms capable of being
6 concealed upon the person, notwithstanding that the ammunition may also be used
7 in some rifles.

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

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

11 **☞ Staff Notes.**

12 We encourage comment on the following points:

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

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

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

23 Instead, the Comment would include such a cross-reference and would also state that “Section
24 16370 continues former Section 12323(a) without substantive change.” The provision defining
25 the characteristics of a pistol, revolver, or other firearm capable of being concealed upon the
26 person (proposed Section 16310) is drafted to encompass Section 16370.

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

33 **§ 16375. “Handgun ammunition designed primarily to penetrate metal or armor”**

34 16375. As used in this part, “handgun ammunition designed primarily to
35 penetrate metal or armor” means any ammunition, except a shotgun shell or
36 ammunition primarily designed for use in a rifle, that is designed primarily to
37 penetrate a body vest or body shield, and has either of the following
38 characteristics:

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

43 (2) Is primarily manufactured or designed, by virtue of its shape, cross-sectional
44 density, or any coating applied thereto, including, but not limited to, ammunition

1 commonly known as “KTW ammunition,” to breach or penetrate a body vest or
2 body shield when fired from a pistol, revolver, or other firearm capable of being
3 concealed upon the person.

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

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

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

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

15 § 16380. “Handgun safety certificate”

16 16380. As used in this part, “handgun safety certificate” means a certificate
17 issued by the Department of Justice pursuant to [Article 8 (commencing with
18 Section 12800) of Chapter 6 of Title 2 of Part 4, as that article is operative on or
19 after January 1, 2003].

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

21 See Section 16365 (“handgun”).

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

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

35 We encourage comment on this approach.

36 § 16385. “Hard plastic knuckles”

37 16385. As used in this part, “hard plastic knuckles” means any device or
38 instrument made wholly or partially of plastic that is not metal knuckles, that is
39 worn for purposes of offense or defense in or on the hand, and that either protects
40 the wearer’s hand while striking a blow or increases the force of impact from the
41 blow or injury to the individual receiving the blow. The plastic contained in the
42 device may help support the hand or fist, provide a shield to protect it, or consist
43 of projections or studs that would contact the individual receiving a blow.

44 **Comment.** Section 16385 continues the second and third sentences of former Section 12020.1
45 without substantive change.

1 See Section 16505 (“metal knuckles”).

2 **☞ Staff Notes.**

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

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

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

11 Instead, the Comment would include such a cross-reference and would also state that “Section
12 16385 continues the second and third sentences of former Section 12020.1 without substantive
13 change.” The provision defining metal knuckles (proposed Section 16505) is drafted to
14 encompass Section 16385.

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

21 **§ 16390. “Honorably retired”**

22 16390. As used in [Sections 12027 and 12031], “honorably retired” includes any
23 peace officer who has qualified for, and has accepted, a service or disability
24 retirement. As used in [Sections 12027 and 12031], “honorably retired” does not
25 include an officer who has agreed to a service retirement in lieu of termination.

26 **Comment.** Section 16390 continues the fourth and fifth sentences of former Section
27 12027(a)(1)(A) without substantive change.

28 **☞ Staff Note.** Existing Section 12027(a)(1)(A) defines “honorably retired” for purposes of that
29 section and Section 12031. The only other section in Title 2 of Part 4 that uses the term is Section
30 12807.

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

37 Consequently, the definition in Section 12027(a)(1)(A) could not be applied to the entirety of
38 new Part 6 of the Penal Code without creating a risk of a substantive change. Proposed Section
39 16390 would therefore define “honorably retired” only for purposes of the provisions that would
40 continue the substance of Sections 12027 and 12031.

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

45 **§ 16395. “Imitation firearm”**

46 16395. (a) As used in this part, “imitation firearm” means any BB device, toy
47 gun, replica of a firearm, or other device that is so substantially similar in

1 coloration and overall appearance to an existing firearm as to lead a reasonable
2 person to perceive that the device is a firearm.

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

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

7 (2) A BB device.

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

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

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

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

19 **Staff Notes.**

20 We encourage comment on the following points:

21 (1) Existing Section 12550(c) defines “imitation firearm” as used “in this article” (i.e., Sections
22 12550-12556). Aside from that article, the term is not used in Title 2 of Part 4.

23 Consequently, the definition in Section 12550(c) can be applied to the entirety of new Part 6 of
24 the Penal Code without effecting a substantive change. Subdivision (a) of proposed Section
25 16395 would therefore define “imitation firearm” as used “in this part.”

26 However, one of the provisions in the article containing Section 12550(c) includes special rules
27 regarding what constitutes an “imitation firearm.” Section 12555(c) states:

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

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

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

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

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

40 (2) Existing Section 12550(c) refers to “[a] BB device, *as defined in subdivision (b) of Section*
41 *12001.*” (Emphasis added.) Unlike existing Section 12550(c), proposed Section 16395(b) would
42 not cross-refer to the provision defining a BB device.

43 Instead, the Comment would include such a cross-reference and would also state that Section
44 16395(b) “continues former Section 12555(c) without substantive change.” The definition of “BB
45 device” (proposed Section 16175) is drafted to encompass Section 16395.

1 We chose this approach because it would further the Legislature’s directive to “[a]void
2 unnecessary use of cross-references” while “[n]either expand[ing] nor contract[ing] the scope of
3 criminal liability under current provisions.” 2006 Cal. Stat. res. ch. 128. Because courts give great
4 weight to the Commission’s comments, we think this would be sufficient to preserve the
5 substance of Section 12550(c). See *2006-2007 Annual Report*, 36 Cal. L. Revision Comm’n
6 Reports 1, 18-24 (2006).

....

7 **§ 16440. “Licensed gun dealer”**

8 16440. As used in [Sections 12275-12290], “licensed gun dealer” means a
9 person who is licensed pursuant to [Section 12071] and who has a permit to sell
10 assault weapons or .50 BMG rifles pursuant to [Section 12287].

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

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

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

15 **☞ Staff Notes.**

16 We encourage comment on the following points:

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

21 That definition of “licensed gun dealer” differs from the definition of “dealer,” “licensee,” and
22 “person licensed pursuant to [Section 12071]” that would be continued in proposed Section
23 16265(a). Specifically, a “licensed gun dealer” not only has to satisfy the requirements listed in
24 the provision defining “dealer,” “licensee,” and “person licensed pursuant to [Section 12071],”
25 but also needs “a permit to sell assault weapons or .50 BMG rifles pursuant to Section 12287.” To
26 help prevent confusion, the Comment to proposed Section 16440 would cross-refer to proposed
27 Section 16265.

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

....

30 **§ 16455. “Licensee”**

31 16455. Use of the term “licensee” is governed by Section 16265.

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

....

1 **§ 16485. “Machinegun”**

2 16485. As used in this part, “machinegun” means any weapon that shoots, is
3 designed to shoot, or can readily be restored to shoot, automatically more than one
4 shot, without manual reloading, by a single function of the trigger. The term also
5 includes the frame or receiver of any such weapon, any part designed and intended
6 solely and exclusively, or combination of parts designed and intended, for use in
7 converting a weapon into a machinegun, and any combination of parts from which
8 a machinegun can be assembled if those parts are in the possession or under the
9 control of a person. The term also includes any weapon deemed by the federal
10 Bureau of Alcohol, Tobacco, and Firearms as readily convertible to a machinegun
11 under Chapter 53 (commencing with Section 5801) of Title 26 of the United States
12 Code.

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

14 **Staff Note.** Existing Section 12200 defines “machinegun” for purposes of the chapter that
15 contains that section (i.e., Sections 12200-12551). Aside from that chapter, the only other sections
16 in Title 2 of Part 4 that use the term are (1) sentencing enhancement provisions, which would not
17 be moved to new Part 6, and (2) Sections 12001(n)(12), 12072(f)(1)(A), 12278(a), and
18 12601(b)(2), all of which expressly incorporate the definition in Section 12200.

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

....

22 **§ 16495. “Magazine disconnect mechanism”**

23 16495. As used in this part, “magazine disconnect mechanism” means a
24 mechanism that prevents a semiautomatic pistol that has a detachable magazine
25 from operating to strike the primer of ammunition in the firing chamber when a
26 detachable magazine is not inserted in the semiautomatic pistol.

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

28 See Sections 16310 (“firearm capable of being concealed upon the person,” “pistol,” and
29 “revolver”), 16615 (“semiautomatic pistol”).

30 **Staff Note.** Existing Section 12126(d) defines “magazine disconnect mechanism” for
31 purposes of that section. The only other section in Title 2 of Part 4 that uses the term is Section
32 12130, which expressly incorporates the definition in Section 12126(d).

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

36 **§ 16500. “Malfunction”**

37 16500. As used in Section 16325, “malfunction” means a failure to properly
38 feed, fire, or eject a round, or failure of a pistol to accept or eject the magazine, or
39 failure of a pistol’s slide to remain open after the magazine has been expended.

40 **Comment.** Section 16500 continues former Section 12127(c) without substantive change.

1 See Section 16310 (“firearm capable of being concealed upon the person,” “pistol,” and
2 “revolver”).

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

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

13 **§ 16505. “Metal knuckles”**

14 16505. As used in this part, “metal knuckles” means any device or instrument
15 made wholly or partially of metal that is worn for purposes of offense or defense
16 in or on the hand and that either protects the wearer’s hand while striking a blow
17 or increases the force of impact from the blow or injury to the individual receiving
18 the blow. The metal contained in the device may help support the hand or fist,
19 provide a shield to protect it, or consist of projections or studs which would
20 contact the individual receiving a blow.

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

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

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

....

29 **§ 16535. “Person licensed pursuant to [Section 12071]”**

30 16535. Use of the term “person licensed pursuant to [Section 12071]” is
31 governed by Section 16265.

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

34 **§ 16540. “Person taking title or possession of a firearm by operation of law”**

35 16540. As used in [Section 12078], the phrase “a person taking title or
36 possession of a firearm by operation of law” includes, but is not limited to, any of
37 the following instances in which an individual receives title to, or possession of, a
38 firearm:

- 39 (a) The executor or administrator of an estate if the estate includes a firearm.

1 (b) A secured creditor or an agent or employee of a secured creditor when the
2 firearm is possessed as collateral for, or as a result of, a default under a security
3 agreement under the Commercial Code.

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

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

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

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

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

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

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

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

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

23 **Staff Notes.**

24 We encourage comment on the following points:

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

26 (u) As used in this section:

27

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

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

32

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

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

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

1 in [Section 12078] to a person taking title or possession of a firearm by operation of law includes,
2 but is not limited to, any of the following instances”

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

5 At some point in the future, the Legislature might want to consider revising proposed Section
6 16540 to deal with this point. Unless the Commission otherwise directs, we will add this issue to
7 the list of minor clean-up issues that the Commission plans to include in its report to the
8 Governor and the Legislature.

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

16 **§ 16545. “Personal handgun importer”**

17 16545. (a) As used in this part, “personal handgun importer” means an
18 individual who meets all of the following criteria:

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

20 (2) The individual is not a licensed manufacturer of firearms pursuant to Chapter
21 44 (commencing with Section 921) of Title 18 of the United States Code.

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

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

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

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

31 (7) The individual intends to possess that pistol, revolver, or other firearm
32 capable of being concealed upon the person within this state on or after January 1,
33 1998.

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

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

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

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

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

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

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

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

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

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

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

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

21 **§ 16550. “Pistol”**

22 16550. Use of the term “pistol” is governed by Section 16310.

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

....

25 **§ 16585. “Revolver”**

26 16585. Use of the term “revolver” is governed by Section 16310.

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

....

29 **§ 16630. “Short-barreled shotgun”**

30 16630. As used in [Sections 12001.5, 12020, 12029, 12072], 16310, and 16365,
31 “short-barreled shotgun” means any of the following:

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

34 (b) A firearm that has an overall length of less than 26 inches and that is
35 designed or redesigned to fire a fixed shotgun shell.

1 (c) Any weapon made from a shotgun (whether by alteration, modification, or
2 otherwise) if that weapon, as modified, has an overall length of less than 26 inches
3 or a barrel or barrels of less than 18 inches in length.

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

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

11 **Comment.** Section 16630 continues former Section 12020(c)(1) without substantive change.
12 See Section 16305 (“firearm”).

13 **Staff Note.** Existing Section 12020(c)(1) defines “short-barreled shotgun” for purposes of
14 that section. Several other provisions in Title 2 of Part 4 use the term “short-barreled shotgun”
15 and expressly incorporate the definition given in Section 12020. See Sections 12001(f), 12001.5,
16 12029, 12072(f)(1)(A). Still other provisions use the term “short-barreled shotgun” without
17 defining it. See Sections 12095, 12096, 12097, 12098, 12099.

18 Because Title 2 of Part 4 includes provisions that use the phrase without defining it, the
19 definition in Section 12020(c)(1) could not be applied to the entirety of new Part 6 without
20 creating a risk of a substantive change. Accordingly, the definition in proposed Section 16630
21 would only apply to specified provisions.

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

28 **§ 16635. “Short-barreled rifle”**

29 16635. As used in [Sections 12001.5, 12020, 12029, 12072], 16310, and 16365,
30 “short-barreled rifle” means any of the following:

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

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

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

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

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

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

44 **Staff Note.** Existing Section 12020(c)(2) defines “short-barreled rifle” for purposes of that
45 section. Several other provisions in Title 2 of Part 4 use the term “short-barreled rifle” and

1 expressly incorporate the definition given in Section 12020. See Sections 12001(f), 12001.5,
2 12029, 12072(f)(1)(A). Still other provisions use the term “short-barreled rifle” without defining
3 it. See Sections 12095, 12096, 12097, 12098, 12099.

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

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

....

14 **§ 16710. “Wallet gun”**

15 16710. As used in this part, “wallet gun” means any firearm mounted or
16 enclosed in a case, resembling a wallet, designed to be or capable of being carried
17 in a pocket or purse, if the firearm may be fired while mounted or enclosed in the
18 case.

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

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

23 Consequently, the definition in Section 12020(c)(4) can be applied to the entirety of new Part 6
24 without effecting a substantive change. Proposed Section 16710 would therefore define “wallet
25 gun” as used “in this part.”

26 **§ 16715. “Wholesaler”**

27 16715. (a) As used in this part, “wholesaler” means any person who is licensed
28 as a dealer pursuant to Chapter 44 (commencing with Section 921) of Title 18 of
29 the United States Code and the regulations issued pursuant thereto, who sells,
30 transfers, or assigns firearms, or parts of firearms, to persons who are licensed as
31 manufacturers, importers, or gunsmiths pursuant to Chapter 44 (commencing with
32 Section 921) of Title 18 of the United States Code, or persons licensed pursuant to
33 [Section 12071], and includes persons who receive finished parts of firearms and
34 assemble them into completed or partially completed firearms in furtherance of
35 that purpose.

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

42 **Comment.** Section 16715 continues former Section 12001(h) without substantive change.

1 See Sections 16305 (“firearm”), 16360 (“gunsmith”).

2 **§ 16720. “Writing pen knife”**

3 16720. As used in this part, “writing pen knife” means a device that appears to
4 be a writing pen but has concealed within it a pointed, metallic shaft that is
5 designed to be a stabbing instrument which is exposed by mechanical action or
6 gravity which locks into place when extended or the pointed, metallic shaft is
7 exposed by the removal of the cap or cover on the device.

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

9 **☞ Staff Notes.**

10 We encourage comment on the following points:

11 (1) Existing Section 12020(c)(19) defines “writing pen knife” for purposes of that section. The
12 term is not used in any other section in Title 2 of Part 4.

13 Consequently, the definition in Section 12020(c)(19) can be applied to the entirety of new Part
14 6 without effecting a substantive change. Proposed Section 16720 would therefore define
15 “writing pen knife” as used “in this part.”

16 (2) The wording of existing Section 12020(c)(19) is somewhat awkward. The provision also
17 appears to violate Legislative Counsel’s stylistic rule regarding use of “which” and “that.”

18 We considered trying to improve the wording of the provision. To avoid any risk of a
19 substantive change, however, we ultimately decided to use the current wording.

20 **§ 16725. “Zip gun”**

21 16725. As used in this part, “zip gun” means any weapon or device that meets
22 all of the following criteria:

23 (a) It was not imported as a firearm by an importer licensed pursuant to Chapter
24 44 (commencing with Section 921) of Title 18 of the United States Code and the
25 regulations issued pursuant thereto.

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

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

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

36 **Comment.** Section 16725 continues former Section 12020(c)(10) without substantive change.
37 See Section 16305 (“firearm”).

38 **☞ Staff Notes.**

39 We encourage comment on the following points:

40 (1) Existing Section 12020(c)(10) defines “zip gun” for purposes of that section. The term is
41 not used in any other section in Title 2 of Part 4.

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

4 **Comment.** Subdivision (a) of Section 16810 continues former Section 12590(a)(1)-(3) without
5 substantive change.

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

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

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

12 DIVISION 2. GENERALLY PROHIBITED WEAPONS

13 CHAPTER 1. EXEMPTIONS

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

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

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

32 § 17000. Exemption for antique firearm

33 17000. The provisions listed in Section 16340 do not apply to an antique
34 firearm.

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

37 See Section 16135 (“antique firearm”).

38 § 17005. Exemption for firearm or ammunition constituting curio or relic

39 17005. (a) The provisions listed in Section 16340 do not apply to any firearm or
40 ammunition that is a curio or relic as defined in Section 478.11 of Title 27 of the
41 Code of Federal Regulations and that is in the possession of a person permitted to
42 possess the items under Chapter 44 (commencing with Section 921) of Title 18 of
43 the United States Code and the regulations issued pursuant thereto.

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

10 **Comment.** Section 17005 continues former Section 12020(b)(7) without substantive change.
11 See Section 16305 (“firearm”).

12 **§ 17010. Exemption for “any other weapon” in possession of person permitted to possess it**
13 **under federal Gun Control Act of 1968**

14 17010. (a) The provisions listed in Section 16340 do not apply to “any other
15 weapon” as defined in subsection (e) of Section 5845 of Title 26 of the United
16 States Code, which is in the possession of a person permitted to possess the
17 weapons under the federal Gun Control Act of 1968 (Public Law 90-618), as
18 amended, and the regulations issued pursuant thereto.

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

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

29 **Comment.** Section 17010 continues former Section 12020(b)(8) without substantive change.

30 **§ 17015. Exemption for historical society, museum, or institutional collection**

31 17015. The provisions listed in Section 16340 do not apply to an instrument or
32 device that is possessed by a federal, state, or local historical society, museum, or
33 institutional collection that is open to the public if all of the following conditions
34 are satisfied:

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

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

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

38 **Comment.** Section 17015 continues former Section 12020(b)(9) without substantive change.
39 See Section 16305 (“firearm”).

1 **§ 17020. Exemption for motion picture, television, video production, or entertainment event**

2 17020. The provisions listed in Section 16340 do not apply to an instrument or
3 device, other than a short-barreled shotgun or a short-barreled rifle, which is
4 possessed or used during the course of a motion picture, television, or video
5 production or entertainment event by an authorized participant therein in the
6 course of making that production or event or by an authorized employee or agent
7 of the entity producing that production or event.

8 **Comment.** Section 17020 continues former Section 12020(b)(10) without substantive change.

9 **§ 17025. Exemption for person who sells to historical society, museum, or institutional**
10 **collection, or for purposes of entertainment event**

11 17025. The provisions listed in Section 16340 do not apply to an instrument or
12 device, other than a short-barreled shotgun or a short-barreled rifle, which is sold
13 by, manufactured by, exposed or kept for sale by, possessed by, imported by, or
14 lent by a person who is in the business of selling instruments or devices listed in
15 Section 16340 solely to the entities referred to in Sections 17015 and 17020 when
16 engaging in transactions with those entities.

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

19 **§ 17030. Exemption for law enforcement or person who sells to law enforcement**

20 17030. The provisions listed in Section 16340 do not apply to any of the
21 following:

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

26 (b) The possession of any weapon, device, or ammunition, other than a short-
27 barreled rifle or short-barreled shotgun, by a peace officer of any federal, state,
28 county, city and county, or city agency that is charged with the enforcement of any
29 law, when the officer is on duty and the use is authorized by the agency and is
30 within the course and scope of the officer’s duties.

31 (c) A weapon, device, or ammunition, other than a short-barreled rifle or a short-
32 barreled shotgun, which is sold by, manufactured by, exposed or kept for sale by,
33 possessed by, imported by, or lent by, a person who is in the business of selling
34 weapons, devices, and ammunition listed in Section 16340 solely to the entities
35 referred to in subdivision (a) when engaging in transactions with those entities.

36 **Comment.** Subdivisions (a) and (b) of Section 17030 continue former Section 12020(b)(12)
37 without substantive change.

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

39 See Sections 16630 (“short-barreled shotgun”), 16635 (“short-barreled rifle”).

1 **§ 17035. Exemption for transportation of non-firearm to law enforcement for disposition**
2 **according to law**

3 17035. The provisions listed in Section 16340 do not apply to an instrument,
4 ammunition, weapon, or device that is not a firearm and is found and possessed by
5 a person who meets all of the following:

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

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

12 (c) If the person is transporting the item, the person is transporting it to a law
13 enforcement agency for disposition according to law.

14 **Comment.** Section 17035 continues former Section 12020(b)(16) without substantive change.
15 See Section 16305 ("firearm").

16 **§ 17040. Exemption for transportation of firearm to law enforcement for disposition**
17 **according to law**

18 17040. The provisions listed in Section 16340 do not apply to a firearm, other
19 than a short-barreled rifle or short-barreled shotgun, which is found and possessed
20 by a person who meets all of the following:

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

24 (b) The person possessed the firearm no longer than was necessary to deliver or
25 transport it to a law enforcement agency for that agency's disposition according to
26 law.

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

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

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

34 **Comment.** Section 17040 continues former Section 12020(b)(17) without substantive change.
35 See Sections 16305 ("firearm"), 16470 ("locked container"), 16630 ("short-barreled shotgun"),
36 16635 ("short-barreled rifle").

37 **Staff Note.** Existing Section 12020(b)(17)(E) refers to "a locked container *as defined in*
38 *subdivision (d) of Section 12026.2.*" (Emphasis added.) Unlike existing Section 12020(b)(17)(E),
39 proposed Section 17040(e) would not contain a cross-reference to the provision defining a locked
40 container.

41 Instead, the Comment would include such a cross-reference and would also state that "Section
42 17040 continues former Section 12020(b)(17) without substantive change." When we redraft the
43 provision defining a locked container (Section 12026.2(d)), we will make sure that the definition
44 encompasses proposed Section 17040.

1 We chose this approach because it would further the Legislature’s directive to “[a]void
2 unnecessary use of cross-references” while “[n]either expand[ing] nor contract[ing] the scope of
3 criminal liability under current provisions.” 2006 Cal. Stat. res. ch. 128. Because courts give great
4 weight to the Commission’s comments, we think this would be sufficient to preserve the
5 substance of Section 12020(b)(17)(E). See *2006-2007 Annual Report*, 36 Cal. L. Revision
6 Comm’n Reports 1, 18-24 (2006).

7 **§ 17045. Exemption for possession by forensic laboratory**

8 17045. The provisions listed in Section 16340 do not apply to the possession of
9 any weapon, device, or ammunition by a forensic laboratory or by any authorized
10 agent or employee thereof in the course and scope of the person’s authorized
11 activities.

12 **Comment.** Section 17045 continues former Section 12020(b)(18) without substantive change.

13 CHAPTER 2. MISCELLANEOUS PROVISIONS

14 **§ 17100. Distinct and separate offense**

15 17100. For purposes of the provisions listed in Section 16340, a violation as to
16 each firearm, weapon, or device enumerated in any of those provisions shall
17 constitute a distinct and separate offense.

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

19 DIVISION 3. SURRENDER AND DISPOSAL OF WEAPONS
20 CONSTITUTING A NUISANCE

21 **§ 17200. Surrender of specified weapons constituting nuisance**

22 17200. (a) Any weapon described in [Section 12028(a)], or, upon conviction of
23 the defendant or upon a juvenile court finding that an offense that would be a
24 misdemeanor or felony if committed by an adult was committed or attempted by
25 the juvenile with the use of a firearm, any weapon described in [Section
26 12028(b)], shall be surrendered to one of the following:

27 (1) The sheriff of a county.

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

30 (3) The chief of police of any campus of the University of California or the
31 California State University.

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

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

36 **Comment.** Subdivision (a) of Section 17200 continues the first sentence of former Section
37 12028(c) without substantive change.

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

3 See Section 16305 (“firearm”).

4 **§ 17205. Disposal of weapons constituting nuisance**

5 17205. (a) An officer to whom weapons are surrendered under Section 17200,
6 except upon the certificate of a judge of a court of record, or of the district
7 attorney of the county, that the retention thereof is necessary or proper to the ends
8 of justice, may annually, between the 1st and 10th days of July, in each year, offer
9 the weapons, which the officer in charge of them considers to have value with
10 respect to sporting, recreational, or collection purposes, for sale at public auction
11 to persons licensed pursuant to [Section 12071] to engage in businesses involving
12 any weapon purchased.

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

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

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

31 **Comment.** Subdivision (a) of Section 17205 continues the third sentence of former Section
32 12028(c) without substantive change.

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

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

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

37 **§ 17210. Treatment of other weapons constituting nuisance**

38 17210. (a) The Attorney General, district attorney, or city attorney may bring an
39 action to enjoin the manufacture of, importation of, keeping for sale of, offering or
40 exposing for sale, giving, lending, or possession of, any item that constitutes a
41 nuisance under [Section 12029].

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

3 (c) These weapons shall be destroyed in the same manner described in Section
4 17205, except that upon the certification of a judge or of the district attorney that
5 the ends of justice will be served thereby, the weapon shall be preserved until the
6 necessity for its use ceases.

7 **Comment.** Subdivision (a) of Section 17210 continues the end of the first sentence of former
8 Section 12029 without substantive change.

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

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

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

15 CHAPTER 1. SEIZURE AND SUBSEQUENT PROCEDURES

16 **§ 17300. Seizure of firearm or other deadly weapon at scene of domestic violence**

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

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

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

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

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

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

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

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

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

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

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

1 For what constitutes a domestic violence incident, see Sections 16110 (“abuse”), 16290
2 (“domestic violence”). For what constitutes a deadly weapon, see Section 16260 (“deadly
3 weapon”); see also Section 16305 (“firearm”).

4 See Sections 17305 (receipt for weapon), 17310 (delivery of deadly weapon seized by peace
5 officer for community college or school district), 17315 (holding period), 17320 (return of stolen
6 weapon), 17325 (sale or destruction of deadly weapon held longer than one year), 17500 (no
7 liability for act in good faith under this division). For procedures applicable when a law
8 enforcement agency has reasonable cause to believe that return of a weapon would endanger the
9 victim of a domestic violence incident or a person who reported the incident, see Sections 17400-
10 17420.

11 **§ 17305. Receipt for weapon**

12 17305. (a) Upon taking custody of a firearm or other deadly weapon pursuant to
13 this division, the officer shall give the owner or person who possessed the firearm
14 a receipt.

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

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

21 **Comment.** Subdivision (a) of Section 17305 continues the second sentence of former Section
22 12028.5(b) without substantive change.

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

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

27 For what constitutes a deadly weapon, see Section 16260 (“deadly weapon”). See also Section
28 16305 (“firearm”).

29 See Sections 17300 (seizure of firearm or other deadly weapon at scene of domestic violence),
30 17310 (delivery of deadly weapon seized by peace officer for community college or school
31 district), 17315 (holding period), 17320 (return of stolen weapon), 17325 (sale or destruction of
32 deadly weapon held longer than one year), 17500 (no liability for act in good faith under this
33 division). For procedures applicable when a law enforcement agency has reasonable cause to
34 believe that return of a weapon would endanger the victim of a domestic violence incident or a
35 person who reported the incident, see Sections 17400-17420.

36 **§ 17310. Delivery of deadly weapon seized by peace officer for community college or school**
37 **district**

38 17310. Any peace officer, as defined in subdivisions (a) and (b) of Section
39 830.32, who takes custody of a firearm or deadly weapon pursuant to this division,
40 shall deliver the firearm within 24 hours to the city police department or county
41 sheriff’s office in the jurisdiction where the college or school is located.

42 **Comment.** Section 17310 continues former Section 12028.5(c) without substantive change.

43 For what constitutes a deadly weapon, see Section 16260 (“deadly weapon”). See also Section
44 16305 (“firearm”).

45 See Sections 17300 (seizure of firearm or other deadly weapon at scene of domestic violence),
46 17305 (receipt for weapon), 17315 (holding period), 17320 (return of stolen weapon), 17325 (sale
47 or destruction of deadly weapon held longer than one year), 17500 (no liability for act in good

1 faith under this division). For procedures applicable when a law enforcement agency has
2 reasonable cause to believe that return of a weapon would endanger the victim of a domestic
3 violence incident or a person who reported the incident, see Sections 17400-17420.

4 **§ 17315. Holding period**

5 17315. (a) No firearm or other deadly weapon taken into custody pursuant to
6 this division shall be held less than 48 hours.

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

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

19 **Comment.** Subdivision (a) of Section 17315 continues the fifth sentence of former Section
20 12028.5(b) without substantive change.

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

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

25 For what constitutes a domestic violence incident, see Sections 16110 ("abuse"), 16290
26 ("domestic violence"). For what constitutes a deadly weapon, see Section 16260 ("deadly
27 weapon"); see also Section 16305 ("firearm").

28 See Sections 17300 (seizure of firearm or other deadly weapon at scene of domestic violence),
29 17305 (receipt for weapon), 17310 (delivery of deadly weapon seized by peace officer for
30 community college or school district), 17320 (return of stolen weapon), 17325 (sale or
31 destruction of deadly weapon held longer than one year), 17500 (no liability for act in good faith
32 under this division). For procedures applicable when a law enforcement agency has reasonable
33 cause to believe that return of a weapon would endanger the victim of a domestic violence
34 incident or a person who reported the incident, see Sections 17400-17420.

35 **§ 17320. Return of stolen weapon**

36 17320. If a firearm or other deadly weapon has been stolen and has been seized
37 pursuant to this division, it shall be restored to the lawful owner upon satisfaction
38 of all of the following conditions:

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

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

42 (c) The law enforcement agency has complied with [Section 12021.3].

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

44 For what constitutes a deadly weapon, see Section 16260 ("deadly weapon"); see also Section
45 16305 ("firearm").

1 See Sections 17300 (seizure of firearm or other deadly weapon at scene of domestic violence),
2 17305 (receipt for weapon), 17310 (delivery of deadly weapon seized by peace officer for
3 community college or school district), 17315 (holding period), 17325 (sale or destruction of
4 deadly weapon held longer than one year), 17500 (no liability for act in good faith under this
5 division). For procedures applicable when a law enforcement agency has reasonable cause to
6 believe that return of a weapon would endanger the victim of a domestic violence incident or a
7 person who reported the incident, see Sections 17400-17420.

8 **§ 17325. Sale or destruction of deadly weapon held longer than one year**

9 17325. (a) Any firearm or other deadly weapon that has been taken into custody
10 and held by any of the following law enforcement authorities for longer than 12
11 months, and has not been recovered by the owner or person who had lawful
12 possession at the time it was taken into custody, shall be considered a nuisance
13 and sold or destroyed as provided in Section 17205:

14 (1) A police, university police, or sheriff's department.

15 (2) A marshal's office.

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

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

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

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

22 (b) If a firearm or other deadly weapon is not recovered within 12 months due to
23 an extended hearing process as provided in Section 17420, it is not subject to
24 destruction until the court issues a decision, and then only if the court does not
25 order the return of the firearm or other deadly weapon to the owner.

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

27 For what constitutes a deadly weapon, see Section 16260 ("deadly weapon"); see also Section
28 16305 ("firearm").

29 See Sections 17300 (seizure of firearm or other deadly weapon at scene of domestic violence),
30 17305 (receipt for weapon), 17310 (delivery of deadly weapon seized by peace officer for
31 community college or school district), 17315 (holding period), 17320 (return of stolen weapon),
32 17500 (no liability for act in good faith under this division). For procedures applicable when a
33 law enforcement agency has reasonable cause to believe that return of a weapon would endanger
34 the victim of a domestic violence incident or a person who reported the incident, see Sections
35 17400-17420.

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

38 **§ 17400. Petition to determine whether weapon should be returned**

39 17400. (a) When a law enforcement agency has reasonable cause to believe that
40 the return of a firearm or other deadly weapon seized under this division would be
41 likely to result in endangering the victim or the person who reported the assault or
42 threat, the agency shall so advise the owner of the firearm or other deadly weapon,

1 and within 60 days of the date of seizure, initiate a petition in superior court to
2 determine if the firearm or other deadly weapon should be returned.

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

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

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

9 For what constitutes a deadly weapon, see Section 16260 (“deadly weapon”); see also Section
10 16305 (“firearm”).

11 See Sections 17405 (notice of petition), 17410 (hearing on petition), 17415 (order of default),
12 17420 (petition for second hearing).

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

18 § 17405. Notice of petition

19 17405. If a petition is filed under Section 17400, the law enforcement agency
20 shall inform the owner or person who had lawful possession of the firearm or other
21 deadly weapon, at that person’s last known address, by registered mail, return
22 receipt requested, that the person has 30 days from the date of receipt of the notice
23 to respond to the court clerk to confirm the person’s desire for a hearing, and that
24 the failure to respond shall result in a default order forfeiting the confiscated
25 firearm or other deadly weapon.

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

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

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

34 For what constitutes a deadly weapon, see Section 16260 (“deadly weapon”); see also Section
35 16305 (“firearm”).

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

38 See also Sections 16110 (“abuse”), 16290 (“domestic violence”), 17300 (seizure of firearm or
39 other deadly weapon at scene of domestic violence), 17305 (receipt for weapon), 17310 (delivery
40 of deadly weapon seized by peace officer for community college or school district), 17315
41 (holding period), 17320 (return of stolen weapon), 17325 (sale or destruction of deadly weapon
42 held longer than one year), 17500 (no liability for act in good faith under this division).

1 **§ 17410. Hearing on petition**

2 17410. (a) If the person who receives a petition under Section 17405 requests a
3 hearing, the court clerk shall set a hearing no later than 30 days from receipt of
4 that request.

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

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

12 **Comment.** Section 17410 continues former Section 12028.5(h) without substantive change.

13 For what constitutes a deadly weapon, see Section 16260 (“deadly weapon”); see also Section
14 16305 (“firearm”).

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

17 See also Sections 16110 (“abuse”), 16290 (“domestic violence”), 17300 (seizure of firearm or
18 other deadly weapon at scene of domestic violence), 17305 (receipt for weapon), 17310 (delivery
19 of deadly weapon seized by peace officer for community college or school district), 17315
20 (holding period), 17320 (return of stolen weapon), 17325 (sale or destruction of deadly weapon
21 held longer than one year), 17500 (no liability for act in good faith under this division).

22 **§ 17415. Order of default**

23 17415. If the person who receives a petition under Section 17405 does not
24 request a hearing or does not otherwise respond within 30 days of the receipt of
25 the notice, the law enforcement agency may file a petition for an order of default
26 and may dispose of the firearm or other deadly weapon as provided in Section
27 17205.

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

29 For what constitutes a deadly weapon, see Section 16260 (“deadly weapon”); see also Section
30 16305 (“firearm”).

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

33 See also Sections 16110 (“abuse”), 16290 (“domestic violence”), 17300 (seizure of firearm or
34 other deadly weapon at scene of domestic violence), 17305 (receipt for weapon), 17310 (delivery
35 of deadly weapon seized by peace officer for community college or school district), 17315
36 (holding period), 17320 (return of stolen weapon), 17325 (sale or destruction of deadly weapon
37 held longer than one year), 17500 (no liability for act in good faith under this division).

38 **§ 17420. Petition for second hearing**

39 17420. (a) If, at a hearing under Section 17410, the court does not order the
40 return of the firearm or other deadly weapon to the owner or person who had
41 lawful possession, that person may petition the court for a second hearing within
42 12 months from the date of the initial hearing.

43 (b) If there is a petition for a second hearing, unless it is shown by clear and
44 convincing evidence that the return of the firearm or other deadly weapon would

1 result in endangering the victim or the person reporting the assault or threat, the
2 court shall order the return of the firearm or other deadly weapon and shall award
3 reasonable attorney's fees to the prevailing party.

4 (c) If the owner or person who had lawful possession does not petition the court
5 within this 12-month period for a second hearing or is unsuccessful at the second
6 hearing in gaining return of the firearm or other deadly weapon, the firearm or
7 other deadly weapon may be disposed of as provided in Section 17205.

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

9 For what constitutes a deadly weapon, see Section 16260 ("deadly weapon"); see also Section
10 16305 ("firearm").

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

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

18 CHAPTER 3. LIABILITY

19 **§ 17500. No liability for act in good faith under this division**

20 17500. The law enforcement agency, or the individual law enforcement officer,
21 shall not be liable for any act in the good faith exercise of this division.

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