

## First Supplement to Memorandum 2007-33

**Nonsubstantive Reorganization of Deadly Weapon Statutes:  
Titles 1-2 of New Part 6 of the Penal Code  
(Comments of Legal Community Against Violence)**

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Attached are comments we just received from Lindsay Nichols of Legal Community Against Violence ("LCAV"). Ms. Nichols makes three main points about the draft legislation attached to CLRC Memorandum 2007-33:

- When a term is defined for purposes of only one code section, or has different meanings in different portions of the code, the definition should be placed close to the substantive material, instead of in "Division 2. Definitions" at the beginning of new Part 6 of the Penal Code.
- Some of the material in the draft of "Division 2. Definitions" is substantive rather than definitional and thus belongs elsewhere in new Part 6.
- The draft legislation uses Comments to cross-refer to pertinent definitions. In some instances, it might not be sufficient to cross-refer to a definition in a Comment; a cross-reference in the statutory text might be necessary.

Ms. Nichols plans to attend the discussion of this study. The Commission should explore LCAV's concerns at that time.

Respectfully submitted,

Barbara Gaal  
Chief Deputy Counsel

Exhibit

**COMMENTS OF LINDSAY NICHOLS  
OF LEGAL COMMUNITY AGAINST VIOLENCE**

From: Lindsay Nichols <lindsay@lcav.org>  
Subject: Reorganization of the Deadly Weapons Statutes  
Date: August 23, 2007  
To: bgaal@clrc.ca.gov

August 22, 2007

Barbara Gaal  
California Law Revision Commission  
Email: bgaal@clrc.ca.gov

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

Dear Ms. Gaal,

Thank you so much for taking the time to speak with me on Wednesday, August 21. When we spoke you asked me to submit LCAV's comments regarding the tentative draft of Titles 1 and 2 of the new Part 6 of the Penal Code in written format. On behalf of Legal Community Against Violence (LCAV), I write this email in response to your request. We at LCAV really appreciate all the work you have been doing on the reorganization of the Deadly Weapons Statutes and are happy to have this opportunity to submit these comments. The reorganization of California's Deadly Weapons Statutes is an ambitious and worthwhile project and we are glad the Commission is paying such close attention to it.

As you know, the tentative draft includes a lengthy compilation of every definition that appears in the original Deadly Weapons Statutes. This compilation is a fantastic body of work that will be immensely useful as we continue the reorganization. However, we believe certain difficulties will arise if we adhere strictly to this approach in creating a final draft of Part 6. By bringing these issues to your attention now, we hope to avoid some of these difficulties in the future.

In general, when a term is defined for purposes of only one section or has different meanings in different portions of the Code, it is better to leave the definition as near as to the section that uses the term as defined, if not within it. This would mean that a term that is used in only in one section or has a unique definition in one section is defined within

that section. A type of weapon is defined at the beginning of the Article that governs that type of weapon. Ideally, the reader of a statutory section should not have to go up more than one level in the table of contents to find a definition of a term. Of course, terms that are used frequently and consistently throughout Part 6 can and should be defined at the outset of Part 6. However, if a definition cannot be applied through all of Part 6, the definition does not belong in the preliminary definitions Title. Instead, terms that have peculiar definitions for purposes of one section should be defined as close to the beginning of that section as possible. This approach will make the definitions easier for the reader to find, and make it more obvious which of the terms used in a particular section have definitions.

Putting all the definitions at the beginning can also result in problems when a definition becomes too divorced from the text that uses the defined term. This is problematic especially when the term has different definitions in different portions of the Code. In addition, many of the deadly weapons statutes are currently drafted as follows:

- (a) the following types of weapons fall within the definition of X...
- (b) X are prohibited.”

In the tentative draft, subsection (a) is separated from subsection (b) and placed into a separate, all-inclusive definitions portion of the Code. In this way, the substantive list of prohibited weapons has been unfortunately characterized as a “preliminary” provision, and is detached from the statute that governs them. The leading example is the term “assault weapon.” The substantive list of weapons that qualify as “assault weapons” belongs with the provisions that govern their possession in California. If the Commission feels that a definition of “assault weapon” should exist within the preliminary definitions portion of the Code, a better approach might be to follow the example of proposed section 16455, which states “Use of the term ‘licensee’ is governed by § 16265.” So the definition of assault weapon may say “Use of the term ‘assault weapon’ is governed by §§ \_\_\_\_\_.” This approach may also be used for the term “generally prohibited weapon.” The list now contained in section 16340 could go at the beginning of Title 2, Division 2 (immediately preceding the exemptions), and section 16340 could simply state, “‘Use of the term ‘generally prohibited weapon’ is governed by § \_\_\_\_\_.”

Secondly, the tentative draft includes some further substantive material within definitions that should not be relegated to the definitions portion of the Code, but instead belongs along with the substantive provisions. In general, the use of the word “shall” indicates a substantive requirement, not a definition. The perfect example of this is § 16295 “drop safety requirement for handguns.” That definition describes in detail the test that handguns are subject to. Some other examples are: §§ 16150-16152 “assault weapon,” and the last sentence of § 16315 “firearm safety device.” Also, the definitions of the terms “bona fide evidence of majority and identity” in § 16200, and “clear evidence of the person’s identity and age” in § 16250 are substantive provisions, rather than definitional ones, since they describe exactly what is necessary to fulfill the requirements of particular statutory sections. Other examples exist, and this list is by no means exhaustive.

Third, as you mentioned to me on the phone, one of the purposes of the reorganization is to eliminate unnecessary uses of cross-references, in order to minimize the work that would be necessary if the statutes need to be renumbered. However, eliminating cross-references with respect to definitions raises the possibility that the reader of a particular section that uses a defined term will not know that a definition exists for that term. As you pointed out, such cross-references will appear in the “Comment” that would accompany the section. Unfortunately, not all readers would know to look in the Comment for cross-references. Even if a reader does see the Comment, he or she may not take the time to flip to the referenced section and read the definition. As a result, we suggest including cross-references in the statutory text whenever certain critical or unusually confusing terms are used. An example of a particularly critical term is “generally prohibited weapon.” An example of an unusually confusing term is “licensed gun dealer.” However, the necessity for such cross-references may be eliminated if the definitions are moved closer to the provisions where the defined terms are used, as discussed above.

In sum, LCAV believes definitions belong as close as possible to the provisions where the defined terms are used, unless the definitions are used consistently and frequently throughout the Code. Although substantive requirements may exist within definitions, wherever possible such requirements should not be relegated to a preliminary portion of the Code, but should be located where they are most relevant. Although LCAV agrees that the Commission should avoid unnecessary use of cross-references, some cross-references are necessary to avoid confusion and for clarity.

Thank you for providing LCAV the opportunity to comment on the tentative draft.

Sincerely,

Lindsay Nichols  
Staff Attorney  
Legal Community Against Violence  
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