

Memorandum 2008-17

**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. The Commission's report is due by July 1, 2009.

The Commission is in the process of preparing a tentative recommendation, which will be broadly circulated for comment. The Commission's current plan is to create a new Part 6 of the Penal Code, which would contain most of the material on deadly weapons currently located in Title 2 of Part 4 of the Penal Code (Penal Code §§ 12000-12809). The sentencing enhancement provisions in Title 2 of Part 4 (Penal Code §§ 12021.5-12022.95) would be left in place, and Title 2 of Part 4 would be relabeled "Sentence Enhancements." For detail on the structure of new Part 6, see Memorandum 2008-16.

Attached for Commissioners and interested persons to review are the following:

- A new version of the list of "Minor Clean-up Issues for Possible Future Legislative Attention." In June 2007, the Commission decided to maintain such a list in conducting this nonsubstantive study. The list will be included in the Commission's report to the Governor and the Legislature. The attached new version (Exhibit pp. 1-2) incorporates points covered last August. See Memorandum 2007-33; Minutes (Aug. 2007), pp. 8-9.
- A complete draft of "Title 1. Preliminary Provisions" and a partial draft of "Title 2. Weapons Generally" of new Part 6. The remainder of "Title 2. Weapons Generally" will be prepared when time permits.

For reference purposes in reviewing these drafts, the current text of Title 2 of Part 4 is reproduced in Memorandum 2007-59.

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.

A few points relating to this study are discussed below.

Manner of Preparing the Attached Draft of Titles 1 and 2

Some of the material in the attached draft of Titles 1 and 2 has been previously presented. See Memorandum 2007-20; First Supplement to Memorandum 2007-20; Memorandum 2007-21; Memorandum 2007-33; First Supplement to Memorandum 2007-33; Minutes (June 2007), pp. 9-11; Minutes (Aug. 2007), pp. 8-9.

In the attached draft, we renumbered the material that was previously presented, so as to:

- Allow more room for insertion of new definitions in “Division 2. Definitions” of “Title 1. Preliminary Provisions” as the code evolves in the future.
- Leave some room in the substantive portions of the draft (Divisions 1-4 of “Title 2. Weapons Generally”) for reinsertion of definitions, in case the Commission at some point decides to reverse its decision to place all of the definitions in “Division 2. Definitions” of “Title 1. Preliminary Provisions.”

The renumbering necessitated conforming changes to cross-references in the statutory text and Comments.

In the attached draft, the material that was previously presented is shown in normal typeface. *New material is italicized.* We have also italicized a few provisions that were previously presented, either because we have made a revision or because we want to raise a new drafting issue.

Staff Notes (~~is~~ **Staff Note**) in the attached draft raise matters for Commissioners and interested persons to consider. We do not plan to discuss each of these matters at the upcoming meeting. Rather, persons should review the draft, identify any issues of concern, and then raise those issues for discussion at the meeting or express their concerns in writing before the meeting, or both.

Pending Case Before the United States Supreme Court

A major case involving the federal constitutional right to bear arms (U.S. Const. amend. II) is currently pending before the United States Supreme Court. *District of Columbia v. Heller* (No. 07-290). The case involves a challenge to the District of Columbia’s virtual ban on handguns.

A critical issue at stake is whether the federal constitutional right to bear arms is an individual right, or only protects collective gun rights related to a state militia. Unlike most lower courts that have considered the issue, the District of Columbia Circuit held in a 2-1 decision that the Second Amendment protects an individual's right to bear arms. It invalidated the District of Columbia's ban on handguns, explaining that an individual's right to bear arms is subject to "reasonable restrictions" but the city's virtually total handgun ban was not reasonable. The city appealed and the United States Supreme Court granted *certiorari*.

The United States Supreme Court has never definitively resolved whether the federal constitutional right to bear arms is an individual right. Based on the justices' comments at oral argument in the pending case, it appears likely that the Court will rule that the Second Amendment does apply to an individual, not just to collective formation of a militia.

If so, the Court will also have to determine whether the District of Columbia's handgun restrictions violate an individual's right to bear arms. What standard the Court would apply in making such a determination is hard to predict.

Assuming the Court rules that the Second Amendment applies to an individual, there likely will be a flood of follow-up cases challenging the constitutionality of various types of gun restrictions. It will take years before these are resolved and the parameters of the right to bear arms become more clear.

What are the implications of the pending *Heller* case for the Commission's study? The staff recommends that the Commission **simply proceed in the same manner as before the Court granted *certiorari* last November.**

Early in this study, the Commission considered how to handle a deadly weapons statute that might be subject to constitutional challenge, or that had been ruled unconstitutional by a court other than the court of last resort (i.e., the United States Supreme Court or, on a matter of California law, the California Supreme Court). The Commission decided:

Judicial Decisions Interpreting or Determining the Constitutionality of Provisions in Title 2

The preliminary part of the Commission's recommendation should make clear that the legislation proposed by the Commission (1) is not intended to reflect any assessment of the constitutionality of any provision, and (2) is not intended as an endorsement or a disapproval of any judicial decision relating to any of the

provisions affected by the reform. The recommendation should include an uncodified provision to the same effect. The staff should prepare a draft of such a provision and present it to the Commission for review.

The substance of Penal Code Section 12091 should be continued in new Part 6 of the Penal Code, even though the provision was held unconstitutional in *In re Christopher K.*, 91 Cal. App. 4th 853, 110 Cal. Rptr. 2d 914 (2001). The Comment to the section continuing the substance of Section 12091 should state that the recodification is not intended to reflect any assessment of the constitutionality of the provision. In general, the same approach should be followed with regard to any other provision in Title 2 that has been held unconstitutional, in whole or in part.

Minutes (April 2007), p. 11.

The staff continues to believe this is the best approach. If a provision has been invalidated by the court of last resort, then it should not be continued in the Commission's proposed nonsubstantive reorganization of the deadly weapons statutes. **Short of that, the provision should be included in the proposed legislation, but (1) the Commission's report should make clear that the Commission has not passed judgment on its constitutionality, and (2) the proposed legislation should include an uncodified provision to similar effect.**

The Commission should not attempt to guess whether the courts will uphold any particular provision of California law. The holding of the anticipated decision in *Heller* will only apply to the District of Columbia's handgun restrictions. The implications for California's gun laws will not be fully litigated until well after the Commission's report is due.

If the proposed legislation is enacted, the Commission's report will be official legislative history and will be entitled to great weight in interpreting the legislation. See *2006-2007 Annual Report*, 36 Cal. L. Revision Comm'n Reports 1, 18-24 (2006). By expressly stating in its report that the Commission has not passed judgment on the constitutionality of any provision, and including an uncodified provision to similar effect in its proposal, the Commission will foreclose arguments that continuation of a provision in new Part 6 reflects an assessment of the provision's constitutionality.

Does the Commission continue to agree with this approach?

Pending Legislation

A number of bills to revise provisions within Title 2 of Part 4 are pending before the Legislature. See, e.g., AB 334 (Levine), AB 1218 (Duvall), AB 1357

(Parra), AB 1826 (Beall), AB 2062 (DeLeon), AB 2235 (DeSaulnier), AB 2245 (Soto), AB 2417 (Runner), AB 2566 (Hancock), AB 2590 (Feuer), AB 2696 (Krekorian), AB 2706 (Feuer), AB 2883 (Runner), AB 2973 (Soto), SB 110 (Romero), SB 327 (Migden), SB 997 (Ridley-Thomas), SB 1033 (Runner), SB 1162 (Maldonado), SB 1171 (Scott), SB 1241 (Margett), SB 1302 (Cogdill), SB 1342 (Cogdill), SB 1344 (Battin).

The staff is monitoring these bills. We will not make any attempt to account for them in drafting proposed legislation, however, until after the Legislature adjourns at the end of August and the Governor acts on any relevant bills sent to him for approval.

Placement of Definitions

The Commission has previously discussed where to place the definitions that are now found throughout Title 2 of Part 4. For purposes of the tentative recommendation, the Commission decided to consolidate all definitions at the beginning of new Part 6 of the Penal Code, instead of placing some definitions in closer proximity to the pertinent substantive material. Minutes (June 2007), p. 9; Minutes (Aug. 2007), p. 8.

The attached draft of “Division 2. Definitions” of “Title 1. Preliminary Provisions” implements that approach. In general, the staff thinks the approach is effective.

A few of the defined terms, however, are a commonplace word that is specifically defined only for purposes of a particular provision. For example, existing Penal Code Section 12031(j) refers to “immediate, grave danger.” The term “immediate” is defined as “the brief interval before and after the local law enforcement agency, when reasonably possible, has been notified of the danger and before the arrival of its assistance.”

As long as that definition of “immediate” is located in close proximity to the substantive provision in which the term is used, it likely will come to a reader’s attention. If the definition were relocated to “Division 2. Definitions” of “Title 1. Preliminary Provisions” instead, we fear that it might be overlooked, because it is not obvious that “immediate” might be a defined term. Although the Commission’s Comment would refer to the definition of “immediate,” that may not be sufficient to draw attention to the definition in this situation.

Other definitions that raise similar issues include:

- “Child”

- “Furnishes”
- “Infrequent”
- “Locking device”
- “Major component”
- “Malfunction”
- “Off-premises”
- “Public place”
- “Purchase”
- “Purchaser”
- “Sale”
- “Secured”
- “Seller”
- “Series”
- “Transaction”

In at least some of these contexts, it might be preferable to place the definition in close proximity to the substantive provision in which the term is used, instead of in “Division 2. Definitions” of “Title 1. Preliminary Provisions.” In other contexts, a different solution might be appropriate, such as replacing the existing term with one sounds more like a term of art. For example, the term “transaction” is differently defined for a handgun transaction (Penal Code § 12070(c)(1)(A)) and a firearm transaction that does not involve handguns (Penal Code § 12077(d)(4)). It might be helpful to refer to the first kind of transaction as a “handgun transaction,” and the second kind as a “transaction of firearms other than handguns” or something similar.

The staff recommends that the Commission reconsider where to place and how to treat each of these definitions. If the Commission agrees, we will reexamine each definition in detail in a future memorandum.

Current Text of Title 2 of Part 4 of the Penal Code

The current text of Title 2 of Part 4 is reproduced in Memorandum 2007-59. Two points relating to that text warrant attention:

- On page 183, line 22, the headline should refer to “Penal Code § 12303.6,” not to “Penal Code § 12306.” A similar correction should be made in the corresponding entry in the table of contents.
- West’s 2008 Desktop Edition of the Penal Code includes two versions of Section 12131: (1) the text of the section before it was amended by 2002 Cal. Stat. ch. 912, § 4, and 2006 Cal. Stat. ch. 71, §

1, and (2) the text of the section as it was amended by 2002 Cal. Stat. ch. 912, § 4, and 2006 Cal. Stat. ch. 71, § 1. An editor's note says that the 2002 amendment was made contingent on an appropriation, and cites to 2002 Cal. Stat. ch. 912, § 6.

Legislative Counsel's online version of the Penal Code only includes the latter of the two versions of Section 12131. We did the same in preparing Memorandum 2007-59.

Is the approach we followed to Section 12131 in Memorandum 2007-59 correct? We encourage knowledgeable persons to shed light on this situation.

Review of the Attached Draft and Related Materials

In the staff's estimation, the attached draft of Titles 1 and 2 of new Part 6 does not raise scintillating issues for discussion. Many of the staff notes are included simply to explain and memorialize the staff's reasoning in drafting a provision a particular way. This is a study that requires a lot of staff time, but relatively little discussion at Commission meetings.

Nonetheless, it is important for Commissioners and interested persons to review the draft with care, so that any potential problems, minor errors, or other issues are spotted and dealt with appropriately. **The staff is grateful for the effort this entails.**

As always, **comments on any aspect of the Commission's study are welcome and encouraged.** Input from knowledgeable persons is crucial in developing a well-crafted Commission proposal.

Respectfully submitted,

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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 Memorandum 2007-21, Attachment p. 13.

- (6) 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 Memorandum 2007-21, Attachment p. 14.
- (7) 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 Memorandum 2007-21, Attachment p. 17.
- (8) Article 8 of Chapter 6 of Title 2 of Part 4 (i.e., Penal Code §§ 12800-12809) is sloppy in referring to instructors. See Memorandum 2007-33, Attachment p. 16. Consider whether to address this problem.
- (9) In Title 2 of Part 4 of the Penal Code, the usage of “dealer,” “licensee,” and similar terms is potentially confusing. See Memorandum 2007-33, Attachment p. 20. Consider whether to address this problem.
- (10) Consider whether to revise the definition of “department” to say: “As used in this part, unless otherwise apparent from the context, ‘department’ means the Department of Justice.” See Memorandum 2007-33, Attachment p. 21.
- (11) Consider whether to revise the language now found in Penal Code Section 12301(a)(3). See Memorandum 2007-33, Attachment pp. 22-23.
- (12) Consider whether the same definition of “furnishes” should be used in the provisions relating to (1) furnishing tear gas or a tear gas weapon to a minor, (2) furnishing a stun gun to a minor, and (3) furnishing a BB device to a minor. See Memorandum 2007-33, Attachment p. 31.
- (13) Consider whether to revise the provision defining “A person taking title or possession of firearms by operation of law.” See Memorandum 2007-33, Attachment pp. 41-42.
- (14) Consider which exemptions listed in Penal Code Section 12020 apply to which weapons and equipment, and then consider whether to place each of those exemptions in proximity to the provisions governing the weapons or equipment to which it applies. See Memorandum 2007-33, Attachment p. 48.

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PROPOSED LEGISLATION

Staff Note. This is a work in progress. The material shown below may be changed. For an outline of new Part 6 of the Penal Code, see Memorandum 2008-16. Additional material will be added as the Law Revision Commission proceeds with its study.

Some of the material in this draft of Titles 1 and 2 has been previously presented. See Memorandum 2007-20; First Supplement to Memorandum 2007-20; Memorandum 2007-21; Memorandum 2007-33; First Supplement to Memorandum 2007-33; Minutes (June 2007), pp. 9-11; Minutes (Aug. 2007), pp. 8-9. That material has been renumbered as explained in Memorandum 2008-17.

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Staff Notes (**Staff Note**) in the attached draft raise matters for Commissioners and interested persons to consider. We do not plan to discuss each of these matters at the upcoming meeting. Rather, persons should review the draft, identify any issues of concern, and then raise those issues for discussion at the meeting or express their concerns in writing before the meeting, or both.

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

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

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

1 **§ 830.95 (added). Picketing in uniform of peace officer**

2 830.95. (a) Any person who wears the uniform of a peace officer while engaged
3 in picketing, or other informational activities in a public place relating to a
4 concerted refusal to work, is guilty of a misdemeanor, whether or not the person is
5 a peace officer.

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

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

10 With respect to picketing in the uniform of a peace officer, subdivision (b) continues former
11 Section 12590(b) without substantive change. See also Section 17510(b), which continues former
12 Section 12590(b) with respect to certain other acts.

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

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

1 PART 6. CONTROL OF DEADLY WEAPONS

2 TITLE 1. PRELIMINARY PROVISIONS

3 DIVISION 1. GENERAL PROVISIONS [RESERVED]

4 DIVISION 2. DEFINITIONS

5 **§ 16100. “.50 BMG cartridge”**

6 16100. As used in this part, “.50 BMG cartridge” means a cartridge that is
7 designed and intended to be fired from a center fire rifle and that meets all of the
8 following criteria:

9 (a) It has an overall length of 5.54 inches from the base to the tip of the bullet.

10 (b) The bullet diameter for the cartridge is from .510 to, and including, .511
11 inch.

12 (c) The case base diameter for the cartridge is from .800 inch to, and including,
13 .804 inch.

14 (d) The cartridge case length is 3.91 inches.

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

16 **§ 16110. “.50 BMG rifle”**

17 16110. (a) As used in this part, “.50 BMG rifle” means a center fire rifle that can
18 fire a .50 BMG cartridge and is not already an assault weapon or a machinegun.

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

21 **Comment.** Subdivision (a) of Section 16110 continues former Section 12278(a) without
22 substantive change. See Sections 16200 (“assault weapon”), 16201 (further clarification of
23 “assault weapon”), 16202 (exemptions from definition of “assault weapon”), 16880
24 (“machinegun”).

25 Subdivision (b) continues former Section 12278(c) without substantive change. See Section
26 16170 (“antique firearm”).

27 **§ 16120. “Abuse”**

28 16120. As used in this part, “abuse” means any of the following:

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

30 (b) Sexual assault.

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

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

36 **Comment.** Section 16120 continues former Section 12028.5(a)(1) without substantive change.

1 **§ 16130. “Agent”**

2 16130. As used in [Section 12071], “agent” means an employee of the licensee.

3 **Comment.** Section 16130 continues former Section 12071(b)(20)(G)(i) without substantive
4 change.

5 **§ 16140. “Air gauge knife”**

6 16140. As used in this part, “air gauge knife” means a device that appears to be
7 an air gauge but has concealed within it a pointed, metallic shaft that is designed to
8 be a stabbing instrument which is exposed by mechanical action or gravity which
9 locks into place when extended.

10 **Comment.** Section 16140 continues former Section 12020(c)(18) without substantive change.

11 **§ 16150. “Ammunition”**

12 16150. (a) As used in [Section 12316(a)(1)(b)], “ammunition” means handgun
13 ammunition as defined in Section 16650.

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

17 **Comment.** Subdivision (a) of Section 16150 continues the second sentence of former Section
18 12316(a)(1)(b) without substantive change.

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

20 **§ 16160. “Antique cannon”**

21 16160. As used in this part, “antique cannon” means any cannon manufactured
22 before January 1, 1899, which has been rendered incapable of firing or for which
23 ammunition is no longer manufactured in the United States and is not readily
24 available in the ordinary channels of commercial trade.

25 **Comment.** Section 16160 continues the second sentence of former Section 12301(a)(3)
26 without substantive change.

27 **§ 16170. “Antique firearm”**

28 16170. (a) As used in Sections 16202 and 16110, “antique firearm” means any
29 firearm manufactured before January 1, 1899.

30 (b) As used in [Sections 12001(e), 12078(p)(6)(B), 12085(d)(3), 12088.8(a), and
31 12801(b)], “antique firearm” has the same meaning as in Section 921(a)(16) of
32 Title 18 of the United States Code.

33 (c) As used in Section 17700, “antique firearm” means either of the following:

34 (1) Any firearm not designed or redesigned for using rimfire or conventional
35 center fire ignition with fixed ammunition and manufactured in or before 1898.
36 This includes any matchlock, flintlock, percussion cap, or similar type of ignition
37 system or replica thereof, whether actually manufactured before or after the year
38 1898.

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

4 **Comment.** Subdivision (a) of Section 16170 continues former Section 12276.1(d)(3) and
5 former Section 12278(d) without substantive change.

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

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

10 See Section 16520 (“firearm”).

11 **§ 16180. “Antique rifle”**

12 16180. As used in this part, “antique rifle” means a firearm conforming to the
13 definition of an “antique firearm” in Section 479.11 of Title 27 of the Code of
14 Federal Regulations.

15 **Comment.** Section 16180 continues the third sentence of former Section 12301(a)(3) without
16 substantive change.

17 See Section 16520 (“firearm”).

18 **§ 16190. “Application to purchase”**

19 16190. As used in [Section 12071 or 12072], “application to purchase” means
20 either of the following:

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

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

27 **Comment.** Section 16190 continues former Section 12001(i) without substantive change.

28 See Section 16520 (“firearm”).

29 **§ 16200. “Assault weapon”**

30 16200. As used in [Sections 12011(a), 12072, 12601], 16110, and 17000 and in
31 [Chapter 2.3 (commencing with Section 12275) of Title 2 of Part 4], “assault
32 weapon” means the following designated semiautomatic firearms:

33 (a) All of the following specified rifles:

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

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

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

38 (C) Poly Technologies AKS and AK47.

39 (D) MAADI AK47 and ARM.

40 (2) UZI and Galil.

41 (3) Beretta AR-70.

42 (4) CETME Sporter.

- 1 (5) Colt AR-15 series.
- 2 (6) Daewoo K-1, K-2, Max 1, Max 2, AR 100, and AR 110C.
- 3 (7) Fabrique Nationale FAL, LAR, FNC, 308 Match, and Sporter.
- 4 (8) MAS 223.
- 5 (9) HK-91, HK-93, HK-94, and HK-PSG-1.
- 6 (10) The following MAC types:
 - 7 (A) RPB Industries Inc. sM10 and sM11.
 - 8 (B) SWD Incorporated M11.
- 9 (11) SKS with detachable magazine.
- 10 (12) SIG AMT, PE-57, SG 550, and SG 551.
- 11 (13) Springfield Armory BM59 and SAR-48.
- 12 (14) Sterling MK-6.
- 13 (15) Steyer AUG.
- 14 (16) Valmet M62S, M71S, and M78S.
- 15 (17) Armalite AR-180.
- 16 (18) Bushmaster Assault Rifle.
- 17 (19) Calico M-900.
- 18 (20) J&R ENG M-68.
- 19 (21) Weaver Arms Nighthawk.
- 20 (b) All of the following specified pistols:
 - 21 (1) UZI.
 - 22 (2) Encom MP-9 and MP-45.
 - 23 (3) The following MAC types:
 - 24 (A) RPB Industries Inc. sM10 and sM11.
 - 25 (B) SWD Incorporated M-11.
 - 26 (C) Advance Armament Inc. M-11.
 - 27 (D) Military Armament Corp. Ingram M-11.
 - 28 (4) Intratec TEC-9.
 - 29 (5) Sites Spectre.
 - 30 (6) Sterling MK-7.
 - 31 (7) Calico M-950.
 - 32 (8) Bushmaster Pistol.
- 33 (c) All of the following specified shotguns:
 - 34 (1) Franchi SPAS 12 and LAW 12.
 - 35 (2) Striker 12.
 - 36 (3) The Streetsweeper type S/S Inc. SS/12.
- 37 (d) Any firearm declared by the court pursuant to [Section 12276.5] to be an
38 assault weapon that is specified as an assault weapon in a list promulgated
39 pursuant to [Section 12276.5].
- 40 (e) This section is declaratory of existing law and a clarification of the law and
41 the Legislature's intent which bans the weapons enumerated in this section, the
42 weapons included in the list promulgated by the Attorney General pursuant to
43 [Section 12276.5], and any other models that are only variations of those weapons

1 with minor differences, regardless of the manufacturer. The Legislature has
2 defined assault weapons as the types, series, and models listed in this section
3 because it was the most effective way to identify and restrict a specific class of
4 semiautomatic weapons.

5 **Comment.** Subdivisions (a)-(d) and the introductory clause of Section 16200 continue former
6 Section 12276(a)-(d) and its introductory clause without substantive change.

7 Subdivision (e) continues former Section 12276(f) without substantive change.

8 See Sections 16201 (further clarification of “assault weapon”), 16202 (exemptions from
9 definition of “assault weapon”), 17150 (“series”).

10 **§ 16201. Further clarification of “assault weapon”**

11 16201. (a) Notwithstanding Section 16200, “assault weapon” also means any of
12 the following:

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

15 (A) A pistol grip that protrudes conspicuously beneath the action of the weapon.

16 (B) A thumbhole stock.

17 (C) A folding or telescoping stock.

18 (D) A grenade launcher or flare launcher.

19 (E) A flash suppressor.

20 (F) A forward pistol grip.

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

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

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

27 (A) A threaded barrel, capable of accepting a flash suppressor, forward
28 handgrip, or silencer.

29 (B) A second handgrip.

30 (C) A shroud that is attached to, or partially or completely encircles, the barrel
31 that allows the bearer to fire the weapon without burning the bearer’s hand, except
32 a slide that encloses the barrel.

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

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

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

38 (A) A folding or telescoping stock.

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

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

43 (8) Any shotgun with a revolving cylinder.

1 **Comment.** Section 16201 continues former Section 12276.1(a) without substantive change.
2 See Sections 16200 (“assault weapon”), 16202 (exemptions from definition of “assault
3 weapon”), 16890 (“magazine”).

4 **§ 16202. Exemptions from definition of “assault weapon”**

5 16202. (a) The Legislature finds a significant public purpose in exempting from
6 the definition of “assault weapon” pistols that are designed expressly for use in
7 Olympic target shooting events. Therefore, those pistols that are sanctioned by the
8 International Olympic Committee and by USA Shooting, the national governing
9 body for international shooting competition in the United States, and that were
10 used for Olympic target shooting purposes as of January 1, 2001, and that would
11 otherwise fall within the definition of “assault weapon” pursuant to Sections
12 16200 and 16201 are exempt, as provided in subdivision (b).

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

14 (1) Any antique firearm.

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

17	MANUFACTURER	MODEL	CALIBER
18	BENELLI	MP90	.22LR
19	BENELLI	MP90	.32 S&W LONG
20	BENELLI	MP95	.22LR
21	BENELLI	MP95	.32 S&W LONG
22	HAMMERLI	280	.22LR
23	HAMMERLI	280	.32 S&W LONG
24	HAMMERLI	SP20	.22LR
25	HAMMERLI	SP20	.32 S&W LONG
26	PARDINI	GPO	.22 SHORT
27	PARDINI	GP-SCHUMANN	.22 SHORT
28	PARDINI	HP	.32 S&W LONG
29	PARDINI	MP	.32 S&W LONG
30	PARDINI	SP	.22LR

1	PARDINI	SPE	.22LR
2	WALTHER	GSP	.22LR
3	WALTHER	GSP	.32 S&W LONG
4	WALTHER	OSP	.22 SHORT
5	WALTHER	OSP-2000	.22 SHORT

6 (3) The Department of Justice shall create a program that is consistent with the
7 purposes stated in subdivision (a) to exempt new models of competitive pistols
8 that would otherwise fall within the definition of “assault weapon” pursuant to
9 Sections 16200 and 16201 from being classified as an assault weapon. The exempt
10 competitive pistols may be based on recommendations by USA Shooting
11 consistent with the regulations contained in the USA Shooting Official Rules or
12 may be based on the recommendation or rules of any other organization that the
13 department deems relevant.

14 **Comment.** Subdivision (a) of Section 16202 continues former Section 12276.1(b) without
15 substantive change.

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

17 See Sections 16200 (“assault weapon”), 16201 (further clarification of “assault weapon”).

18 **§ 16220. “Ballistic knife”**

19 16220. As used in this part, “ballistic knife” means a device that propels a
20 knifelike blade as a projectile by means of a coil spring, elastic material, or
21 compressed gas. Ballistic knife does not include any device which propels an
22 arrow or a bolt by means of any common bow, compound bow, crossbow, or
23 underwater speargun.

24 **Comment.** Section 16220 continues former Section 12020(c)(8) without substantive change.

25 **§ 16230. “Ballistics identification system”**

26 16230. As used in this part, “ballistics identification system” includes, but is not
27 limited to, any automated image analysis system that is capable of storing firearm
28 ballistic markings and tracing those markings to the firearm that produced them.

29 **Comment.** Section 16230 continues former Section 12072.5(a) without substantive change.

30 **§ 16240. “Basic firearms safety certificate”**

31 16240. As used in this part, “basic firearms safety certificate” means a certificate
32 issued by the Department of Justice pursuant to [Article 8 (commencing with
33 Section 12800) of Chapter 6 of Title 2 of Part 4], before January 1, 2003.

34 **Comment.** Section 16240 continues former Section 12001(p) without substantive change.

1 **§ 16250. “BB device”**

2 16250. 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 16250 continues former Sections 12001(g) and 12550(a) without
6 substantive change.

7 **§ 16260. “Belt buckle knife”**

8 16260. 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 16260 continues former Section 12020(c)(13) without substantive change.

12 **§ 16270. “Blowgun”**

13 16270. As used in this part, “blowgun” means a hollow tube designed and
14 intended to be used as a tube through which a dart is propelled by the force of the
15 breath of the user.

16 **Comment.** Section 16270 continues former Section 12580 without substantive change.

17 **§ 16280. “Blowgun ammunition”**

18 16280. As used in this part, “blowgun ammunition” means a dart designed and
19 intended for use in a blowgun.

20 **Comment.** Section 16280 continues former Section 12581 without substantive change.
21 See Section 16270 (“blowgun”).

22 **§ 16290. “Body vest” or “body shield”**

23 16290. As used in this part, “body vest” or “body shield” means any bullet-
24 resistant material intended to provide ballistic and trauma protection for the wearer
25 or holder.

26 **Comment.** Section 16290 continues former Section 12323(c) without substantive change.

27 **§ 16300. “Bona fide evidence of majority and identity”**

28 16300. As used in this part, “bona fide evidence of majority and identity” means
29 a document issued by a federal, state, county, or municipal government, or
30 subdivision or agency thereof, including, but not limited to, a motor vehicle
31 operator’s license, California state identification card, identification card issued to
32 a member of the armed forces, or other form of identification that bears the name,
33 date of birth, description, and picture of the person.

34 **Comment.** Section 16300 continues the second sentence of former Section 12316(a)(2)
35 without substantive change.

1 **§ 16310. “Boobytrap”**

2 16310. As used in this part, “boobytrap” means any concealed or camouflaged
3 device designed to cause great bodily injury when triggered by an action of any
4 unsuspecting person coming across the device. Boobytraps may include, but are
5 not limited to, guns, ammunition, or explosive devices attached to trip wires or
6 other triggering mechanisms, sharpened stakes, and lines or wire with hooks
7 attached.

8 **Comment.** Section 16310 continues former Section 12355(c) without substantive change.

9 **§ 16320. “Camouflaging firearm container”**

10 16320. (a) As used in this part, “camouflaging firearm container” means a
11 container that meets all of the following criteria:

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

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

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

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

19 **Comment.** Section 16320 continues former Section 12020(c)(9) without substantive change.
20 See Section 16520 (“firearm”).

21 **§ 16330. “Cane gun”**

22 16330. As used in this part, “cane gun” means any firearm mounted or enclosed
23 in a stick, staff, rod, crutch, or similar device, designed to be, or capable of being
24 used as, an aid in walking, if the firearm may be fired while mounted or enclosed
25 therein.

26 **Comment.** Section 16330 continues former Section 12020(c)(5) without substantive change.
27 See Section 16520 (“firearm”).

28 **§ 16340. “Cane sword”**

29 16340. As used in this part, “cane sword” means a cane, swagger stick, stick,
30 staff, rod, pole, umbrella, or similar device, having concealed within it a blade that
31 may be used as a sword or stiletto.

32 **Comment.** Section 16340 continues former Section 12020(c)(15) without substantive change.

33 **§ 16350. “Capacity to accept more than 10 rounds”**

34 16350. As used in Section 16201, “capacity to accept more than 10 rounds”
35 means capable of accommodating more than 10 rounds. The term does not apply
36 to a feeding device that has been permanently altered so that it cannot
37 accommodate more than 10 rounds.

38 **Comment.** Section 16350 continues former Section 12276.1(d)(2) without substantive change.

1 **§ 16360. “CCW”**

2 16360. As used in this part, “CCW” means “carry concealed weapons.”

3 **Comment.** Section 16360 continues former Section 12027(a)(1)(E) without substantive
4 change.

5 **§ 16370. “Certified instructor” or “DOJ Certified Instructor”**

6 16370. As used in [Sections 12800-12809], “certified instructor” or “DOJ
7 Certified Instructor” means a person designated as a handgun safety instructor by
8 the Department of Justice pursuant to [subdivision (d) of Section 12804].

9 **Comment.** Section 16370 continues former Section 12801(a)(2) without substantive change.

10 **§ 16380. “Chamber load indicator”**

11 16380. As used in this part, “chamber load indicator” means a device that
12 plainly indicates that a cartridge is in the firing chamber. A device satisfies this
13 definition if it is readily visible, has incorporated or adjacent explanatory text or
14 graphics, or both, and is designed and intended to indicate to a reasonably
15 foreseeable adult user of the pistol, without requiring the user to refer to a user’s
16 manual or any other resource other than the pistol itself, whether a cartridge is in
17 the firing chamber.

18 **Comment.** Section 16380 continues former Section 12126(c) without substantive change.

19 **§ 16390. “Child”**

20 16390. As used in [Sections 12035 and 12036], “child” means a person under 18
21 years of age.

22 **Comment.** Section 16390 continues former Section 12035(a)(3) and former Section
23 12036(a)(2) without substantive change.

24 **§ 16400. “Clear evidence of the person’s identity and age”**

25 16400. As used in this part, “clear evidence of the person’s identity and age”
26 means either of the following:

27 (a) A valid California driver’s license.

28 (b) A valid California identification card issued by the Department of Motor
29 Vehicles.

30 **Comment.** Section 16400 continues former Section 12071(c)(1) without substantive change.

31 **§ 16410. “Consultant-evaluator”**

32 16410. As used in this part, “consultant-evaluator” means a consultant or
33 evaluator who, in the course of that person’s profession is loaned firearms from a
34 person licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18
35 of the United States Code and the regulations issued pursuant thereto, for
36 research or evaluation, and has a current certificate of eligibility issued pursuant
37 to [Section 12071].

38 **Comment.** Section 16410 continues former Section 12001(s) without substantive change.

1 **☞ Staff Notes.**

2 (1) Section 12001(s) was added to the codes in 2007. See 2007 Cal. Stat. ch. 163, §1. It defines
3 “consultant-evaluator” as used “in this title” — i.e., Title 2 of Part 4 (Sections 12000-12809). In
4 the nonsubstantive reorganization being developed by the Commission, most of the provisions in
5 Title 2 of Part 4 would be moved to new Part 6. The sentencing enhancement provisions (Sections
6 12021.5-12022.95) would not be moved, but the term “consultant-evaluator” is not used in any of
7 those provisions.

8 Consequently, the definition in Section 12001(s) can be applied to the entirety of new Part 6
9 without effecting a substantive change. Proposed Section 16410 would therefore define
10 “consultant-evaluator” as used “in this part.”

11 (2) Existing Section 12001(s) defines “consultant-evaluator” as follows:

12 (s) As used in this title, “consultant-evaluator” means a consultant or evaluator
13 who, in the course of **his or her** profession is loaned firearms from a person licensed
14 pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United
15 States Code and the regulations issued pursuant thereto, for **his or her** research or
16 evaluation, and has a current certificate of eligibility issued to **him or her** pursuant
17 to [Section 12071].

18 (Emphasis added.) In drafting statutes, the Law Revision Commission generally tries to avoid
19 using awkward phrases like “his or her,” “he or she,” and “himself or herself.” We have
20 followed that practice in drafting proposed Section 16410.

21 **§ 16420. “Dagger” or “dirk”**

22 16420. As used in this part, “dagger” or “dirk” means a knife or other instrument
23 with or without a handguard that is capable of ready use as a stabbing weapon that
24 may inflict great bodily injury or death. A nonlocking folding knife, a folding
25 knife that is not prohibited by [Section 653k], or a pocketknife is capable of ready
26 use as a stabbing weapon that may inflict great bodily injury or death only if the
27 blade of the knife is exposed and locked into position.

28 **Comment.** Section 16420 continues former Section 12020(c)(24) without substantive change.

29 **§ 16430. “Deadly weapon”**

30 16430. As used in Division 4 (commencing with Section 18250) of Title 2,
31 “deadly weapon” means any weapon, the possession or concealed carrying of
32 which is prohibited by any provision listed in Section 16590.

33 **Comment.** Section 16430 continues former Section 12028.5(a)(3) without substantive change.

34 **§ 16440. “Dealer,” “licensee,” or “person licensed pursuant to [Section 12071]”**

35 16440. (a) As used in [Sections 12000-12101, 12804, and 12809], “dealer,”
36 “licensee,” or “person licensed pursuant to [Section 12071]” means a person who
37 has all of the following:

38 (1) A valid federal firearms license.

39 (2) Any regulatory or business license, or licenses, required by local
40 government.

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

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

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

4 (6) Is among those recorded in the centralized list specified in [Section
5 12071(e)].

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

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

9 (2) Is among those recorded in the centralized list specified in [Section
10 12086(f)].

11 **Comment.** Subdivision (a) of Section 16440 continues former Section 12071(a)(1) without
12 substantive change.

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

14 See also Section 16790 (“licensed gun dealer”).

15 **§ 16450. “Department”**

16 16450. As used in [Sections 12086 and 12800-12809], “department” means the
17 Department of Justice.

18 **Comment.** Section 16450 continues former Sections 12086(a)(2) and 12801(a)(1) without
19 substantive change.

20 **§ 16460. “Destructive device”**

21 16460. (a) As used in [Sections 12020(a)(4), 12030, 12302-12312, 12601], and
22 16510, “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 that contains a flammable liquid with a flashpoint
41 of 150 degrees Fahrenheit or less and has a wick or similar device capable of

1 being ignited, other than a device which is commercially manufactured primarily
2 for the purpose of illumination.

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

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

8 **Comment.** Subdivision (a) of Section 16460 continues former Section 12301(a) without
9 substantive change.

10 Subdivision (b) continues the second sentence of the second paragraph of former Section
11 12020(a)(4) without substantive change.

12 See Sections 16160 (“antique cannon”), 16180 (“antique rifle”).

13 **§ 16470. “Dirk”**

14 16470. Use of the term “dirk” is governed by Section 16420.

15 **Comment.** Section 16470 is new. It is intended to help persons locate the definition of “dirk,”
16 which is the same as the definition of “dagger.”

17 **§ 16480. “DOJ Certified Instructor”**

18 16480. Use of the term “DOJ Certified Instructor” is governed by Section
19 16370.

20 **Comment.** Section 16480 is new. It is intended to help persons locate the definition of “DOJ
21 Certified Instructor,” which is the same as the definition of “certified instructor.”

22 **§ 16490. “Domestic violence”**

23 16490. As used in this part, “domestic violence” means abuse perpetrated
24 against any of the following persons:

25 (a) A spouse or former spouse.

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

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

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

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

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

39 **Comment.** Section 16490 continues former Section 12028.5(a)(2) without substantive change.

1 **§ 16500. “Drop safety requirement for handguns”**

2 16500. As used in this part, the “drop safety requirement for handguns” means
3 that at the conclusion of the firing requirements for handguns described in [Section
4 12127], the same certified independent testing laboratory shall subject the same
5 three handguns of the make and model for which certification is sought, to the
6 following test:

7 (a) A primed case (no powder or projectile) shall be inserted into the chamber.
8 For a pistol, the slide shall be released, allowing it to move forward under the
9 impetus of the recoil spring, and an empty magazine shall be inserted. For both a
10 pistol and a revolver, the weapon shall be placed in a drop fixture capable of
11 dropping the pistol from a drop height of 1m + 1cm (39.4 + 0.4 in.) onto the
12 largest side of a slab of solid concrete having minimum dimensions of 7.5 x 15 x
13 15 cm (3 x 6 x 6 in.). The drop distance shall be measured from the lowermost
14 portion of the weapon to the top surface of the slab. The weapon shall be dropped
15 from a fixture and not from the hand. The weapon shall be dropped in the
16 condition that it would be in if it were dropped from a hand (cocked with no
17 manual safety applied). If the design of a pistol is such that upon leaving the hand
18 a “safety” is automatically applied by the pistol, this feature shall not be defeated.
19 An approved drop fixture is a short piece of string with the weapon attached at one
20 end and the other end held in an air vise until the drop is initiated.

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

22 (1) Normal firing position with barrel horizontal.

23 (2) Upside down with barrel horizontal.

24 (3) On grip with barrel vertical.

25 (4) On muzzle with barrel vertical.

26 (5) On either side with barrel horizontal.

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

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

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

33 **Comment.** Section 16500 continues former Section 12128 without substantive change.

34 **§ 16510. “Explosive”**

35 16510. As used in [Sections 12302-12312] and 16460, “explosive” means any
36 substance, or combination of substances, the primary or common purpose of
37 which is detonation or rapid combustion, and which is capable of a relatively
38 instantaneous or rapid release of gas and heat, or any substance, the primary
39 purpose of which, when combined with others, is to form a substance capable of a
40 relatively instantaneous or rapid release of gas and heat. “Explosive” includes, but
41 is not limited to, any explosive as defined in Section 841 of Title 18 of the United

1 States Code and published pursuant to Section 555.23 of Title 27 of the Code of
2 Federal Regulations, and any of the following:

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

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

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

10 (d) Any material designated as an explosive by the State Fire Marshal. The
11 designation shall be made pursuant to the classification standards established by
12 the United States Department of Transportation. The State Fire Marshal shall
13 adopt regulations in accordance with the Government Code to establish procedures
14 for the classification and designation of explosive materials or explosive devices
15 that are not under the jurisdiction of the United States Department of
16 Transportation pursuant to provisions of Section 841 of Title 18 of the United
17 States Code and published pursuant to Section 555.23 of Title 27 of the Code of
18 Federal Regulations that define explosives.

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

22 (f) As used in [Sections 12302-12312] and 16460, “explosive” does not include
23 any destructive device, nor does it include ammunition or small arms primers
24 manufactured for use in shotguns, rifles, and pistols.

25 **Comment.** Section 16510 continues former Section 12301(b) without substantive change. To
26 make the provision more easily understandable, the definition of “explosive” in Health and Safety
27 Code Section 12000 is repeated in Section 16510, rather than incorporated by reference as it was
28 in the past. Case law construing the definition in Health and Safety Code Section 12000 is
29 relevant in construing Section 16510.

30 See Section 16460 (“destructive device”).

31 **§ 16520. “Firearm”**

32 *16520. (a) As used in this part, “firearm” means any device, designed to be*
33 *used as a weapon, from which is expelled through a barrel, a projectile by the*
34 *force of any explosion or other form of combustion.*

35 *(b) As used in [Sections 12021, 12021.1, 12070, 12071, 12072, 12073, 12078,*
36 *12101, and 12801 of this code], and Sections 8100, 8101, and 8103 of the Welfare*
37 *and Institutions Code, “firearm” includes the frame or receiver of the weapon.*

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

42 *(d) As used in [Sections 12070, 12071, and paragraph (8) of subdivision (a),*
43 *and subdivisions (b), (c), (d), and (f) of Section 12072], “firearm” does not*

1 include an unloaded firearm that is defined as an “antique firearm” in Section
2 921(a)(16) of Title 18 of the United States Code.

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

4 (f) As used in Sections 17280 and [12020(c)(22)(C), 2d ¶], “firearm” has the
5 same meaning as in Section 922 of Title 18 of the United States Code.

6 **Comment.** Subdivision (a) of Section 16520 continues former Section 12001(b) without
7 substantive change, for purposes of “Part 6. Control of Deadly Weapons.” See also Section
8 _____, which continues former Section 12001(b) without substantive change, for purposes of
9 “Title 2. Sentencing Enhancements” of “Part 4. Prevention of Crimes and Apprehension of
10 Criminals.”

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

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

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

14 Subdivision (e) continues the fourth sentence of former Section 12030(d) without substantive
15 change. See Section 16460 (“destructive device”).

16 With respect to the definition of “firearm,” subdivision (f) continues the first paragraph of
17 former Section 12020(c)(22)(C) without substantive change.

18 **Staff Note.** Proposed Section 16520 has been previously presented. See Memorandum 2007-
19 20, Attachment pp. 2-3; Memorandum 2007-33, Attachment pp. 27-28. In preparing the previous
20 versions, however, we overlooked that the first paragraph of existing Section 12020(c)(22)(C)
21 contains a definition of “firearm” for use in interpreting Section 12020(c)(22)(A)-(B).

22 We have therefore modified proposed Section 16520 to continue the definition given in Section
23 12020(c)(22)(C). We have also renumbered the proposed new provision. We have not made any
24 other changes in it.

25 **§ 16530. “Firearm capable of being concealed upon the person,” “pistol,” and “revolver”**

26 16530. (a) As used in this part, the terms “firearm capable of being concealed
27 upon the person,” “pistol,” and “revolver” apply to and include any device
28 designed to be used as a weapon, from which is expelled a projectile by the force
29 of any explosion, or other form of combustion, and that has a barrel less than 16
30 inches in length. These terms also include any device that has a barrel 16 inches
31 or more in length which is designed to be interchanged with a barrel less than 16
32 inches in length.

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

36 **Comment.** Subdivision (a) of Section 16530 continues former Section 12001(a)(1) without
37 substantive change.

38 With respect to a “firearm capable of being concealed upon the person,” “pistol,” and
39 “revolver,” subdivision (b) continues former Section 12001(f) without substantive change. See
40 also Section 16640(b), which continues former Section 12001(f) with respect to a “handgun.”

41 See Sections 16520 (“firearm”), 17170 (“short-barreled shotgun”), 17180 (“short-barreled
42 rifle”). See also Section 16640 (“handgun” means “any pistol, revolver, or firearm capable of
43 being concealed upon the person”).

44 **Staff Note.** The term “handgun” encompasses “any pistol, revolver, or firearm capable of
45 being concealed upon the person.” See proposed Section 16640, which would continue existing
46 Section 12001(a)(2) without substantive change. To draw attention to this definition of
47 “handgun,” we have inserted a reference to proposed Section 16640 at the end of the Comment

1 *shown above. Aside from this revision and renumbering, we have not made any changes in*
2 *proposed Section 16530 (previously presented as proposed Section 16020 in Memorandum 2007-*
3 *20, Attachment pp. 3-4, and as proposed Section 16310 in Memorandum 2007-33, Attachment pp.*
4 *28-29).*

5 **§ 16540. “Firearm safety device”**

6 16540. As used in [Sections 12087-12088.9], “firearm safety device” means a
7 device other than a gun safe that locks and is designed to prevent children and
8 unauthorized users from firing a firearm. The device may be installed on a firearm,
9 be incorporated into the design of the firearm, or prevent access to the firearm.

10 **Comment.** Section 16540 continues former Section 12087.6(a) without substantive change.
11 See Sections 16520 (“firearm”), 16610 (“gun safe”).

12 **§ 16550. “Firearm transaction record”**

13 16550. As used in this part, “firearm transaction record” is a record containing
14 the same information referred to in subdivision (a) of Section 478.124, Section
15 478.124a, and subdivision (e) of Section 478.125 of Title 27 of the Code of
16 Federal Regulations.

17 **Comment.** Section 16550 continues former Section 12071(c)(4)(A) without substantive
18 change.

19 **§ 16560. “Firing requirement for handguns”**

20 16560. (a) As used in this part, “firing requirement for handguns” means a test
21 in which the manufacturer provides three handguns of the make and model for
22 which certification is sought to an independent testing laboratory certified by the
23 Attorney General pursuant to [Section 12130]. These handguns may not be refined
24 or modified in any way from those that would be made available for retail sale if
25 certification is granted. The magazines of a tested pistol shall be identical to those
26 that would be provided with the pistol to a retail customer.

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

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

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

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

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

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

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

9 **Comment.** Section 16560 continues former Section 12127(a)-(b) without substantive change.
10 See Sections 16530 (“firearm capable of being concealed upon the person,” “pistol,” and
11 “revolver”), 16640 (“handgun”), 16910 (“malfunction”).

12 **§ 16570. “Flechette dart”**

13 16570. As used in this part, “flechette dart” means a dart, capable of being fired
14 from a firearm, that measures approximately one inch in length, with tail fins that
15 take up approximately five-sixteenths of an inch of the body.

16 **Comment.** Section 16570 continues former Section 12020(c)(6) without substantive change.
17 See Section 16520 (“firearm”).

18 **§ 16580. “Furnishes”**

19 16580. As used in [Section 12552], “furnishes” means either of the following:

- 20 (a) A loan.
21 (b) A transfer that does not involve a sale.

22 **Comment.** Section 16580 continues former Section 12252(b) without substantive change.

23 **§ 16590. “Generally prohibited weapon”**

24 16590. As used in this part, “generally prohibited weapon” means any of the
25 following:

- 26 (a) An air gauge knife, as prohibited by Section _____.
27 (b) Ammunition that contains or consists of a flechette dart, as prohibited by
28 Section _____.
29 (c) A ballistic knife, as prohibited by Section _____.
30 (d) A belt buckle knife, as prohibited by Section _____.
31 (e) A bullet containing or carrying an explosive agent, as prohibited by Section
32 _____.
33 (f) A camouflaging firearm container, as prohibited by Section _____.
34 (g) A cane gun, as prohibited by Section _____.
35 (h) A cane sword, as prohibited by Section _____.
36 (i) A concealed dirk or dagger, as prohibited by Section _____.
37 (j) A concealed explosive substance, other than fixed ammunition, as prohibited
38 by Section _____.
39 (k) A firearm that is not immediately recognizable as a firearm, as prohibited by
40 Section _____.

- 1 (l) A large-capacity magazine, as prohibited by Section _____.
2 (m) A leaded cane, as prohibited by Section _____.
3 (n) A lipstick case knife, as prohibited by Section _____.
4 (o) Metal knuckles, as prohibited by Section _____.
5 (p) A metal military practice handgrenade or a metal replica handgrenade, as
6 prohibited by Section _____.
7 (q) A multiburst trigger activator, as prohibited by Section _____.
8 (r) A nunchaku, as prohibited by Section _____.
9 (s) A shobi-zue, as prohibited by Section _____.
10 (t) A short-barreled rifle, as prohibited by Section _____.
11 (u) A short-barreled shotgun, as prohibited by Section _____.
12 (v) A shuriken, as prohibited by Section _____.
13 (w) An unconventional pistol, as prohibited by Section _____.
14 (x) An undetectable firearm, as prohibited by Section _____.
15 (y) A wallet gun, as prohibited by Section _____.
16 (z) A writing pen knife, as prohibited by Section _____.
17 (aa) A zip gun, as prohibited by Section _____.
18 (bb) An instrument or weapon of the kind commonly known as a billy,
19 blackjack, sandbag, sandclub, sap, or slungshot, as prohibited by Section _____.

20 **Comment.** Section 16590 is new. It defines the term “generally prohibited weapon” for
21 drafting convenience. Each of the items listed in this section was formerly listed in subdivision
22 (a) of former Section 12020.

23 **§ 16600. “Great bodily injury”**

24 16600. As used in [Section 12035], “great bodily injury” means a significant or
25 substantial physical injury.

26 **Comment.** Section 16600 continues the second paragraph of former Section 12035(a)(4)
27 without substantive change. To make the provision more easily understandable, the definition of
28 “great bodily injury” in Section 12022.7 is repeated in Section 16600, rather than incorporated by
29 reference as it was in the past. Case law construing the definition in Section 12022.7 is relevant in
30 construing Section 16600.

31 **§ 16610. “Gun safe”**

32 16610. *As used in this part, “gun safe” means a locking container that fully*
33 *contains and secures one or more firearms, and that meets the standards for gun*
34 *safes adopted pursuant to [Section 12088.2].*

35 **Comment.** *Section 16610 continues former Section 12087.6(b) without substantive change.*
36 *See Section 16520 (“firearm”).*

37 **Staff Note.** *Proposed Section 16610 has been previously presented. See Memorandum 2007-*
38 *33, Attachment p. 33. We have revised the Comment to reflect that the provision would only*
39 *continue the second paragraph of existing Section 12087.6(b), not the entirety of that subdivision.*
40 *Aside from this revision and renumbering, we have not made any changes.*

1 § 16620. “Gun Show Trader”

2 16620. As used in this part, “Gun Show Trader” means a person described in
3 [Section 12070(b)(5)].

4 **Comment.** Section 16620 continues former Section 12070(b)(5) without substantive change.

5 § 16630. “Gunsmith”

6 16630. As used in this part, “gunsmith” means any person who is licensed as a
7 dealer pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the
8 United States Code and the regulations issued pursuant thereto, who is engaged
9 primarily in the business of repairing firearms, or making or fitting special barrels,
10 stocks, or trigger mechanisms to firearms, or the agent or employee of that person.

11 **Comment.** Section 16630 continues former Section 12001(r) without substantive change.
12 See Section 16520 (“firearm”).

13 § 16640. “Handgun”

14 16640. (a) As used in this part, “handgun” means any pistol, revolver, or firearm
15 capable of being concealed upon the person.

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

18 **Comment.** Subdivision (a) of Section 16640 continues former Section 12001(a)(2) without
19 substantive change. See Sections 16520 (“firearm”), 16530 (“firearm capable of being concealed
20 upon the person,” “pistol,” and “revolver”).

21 With respect to a “handgun,” subdivision (b) continues former Section 12001(f) without
22 substantive change. See also Section 16530(b), which continues former Section 12001(f) with
23 respect to a “firearm capable of being concealed upon the person,” “pistol,” and “revolver.”

24 See Sections 16520 (“firearm”), 16530 (“firearm capable of being concealed upon the person,”
25 “pistol,” and “revolver”), 17170 (“short-barreled shotgun”), 17180 (“short-barreled rifle”).

26 § 16650. “Handgun ammunition”

27 *16650. As used in this part, “handgun ammunition” means ammunition*
28 *principally for use in pistols, revolvers, and other firearms capable of being*
29 *concealed upon the person, notwithstanding that the ammunition may also be used*
30 *in some rifles.*

31 **Comment.** Section 16650 continues former Section 12323(a) without substantive change.

32 See Sections 16520 (“firearm”), 16530 (“firearm capable of being concealed upon the
33 person,” “pistol,” and “revolver”).

34 **Staff Note.** Proposed Section 16650 has been previously presented. See Memorandum 2007-
35 33, Attachment p. 34. Aside from renumbering, we have not made any changes in it. We have
36 italicized it here to raise a drafting issue.

37 Specifically, the term “handgun” encompasses “any pistol, revolver, or firearm capable of
38 being concealed upon the person.” See proposed Section 16640, which would continue existing
39 Section 12001(a)(2) without substantive change.

40 Consequently, proposed Section 16650 could be shortened as follows, without changing its
41 meaning:

42 *16650. As used in this part, “handgun ammunition” means ammunition principally*
43 *for use in ~~pistols, revolvers, and other firearms capable of being concealed upon the~~*

1 ~~person a handgun~~, notwithstanding that the ammunition may also be used in some
2 rifles.

3 A revision like this was recently made in Section 12001(n).

4 Should a similar revision be made in proposed Section 16650? We invite comment on this
5 point.

6 **§ 16660. “Handgun ammunition designed primarily to penetrate metal or armor”**

7 16660. As used in this part, “handgun ammunition designed primarily to
8 penetrate metal or armor” means any ammunition, except a shotgun shell or
9 ammunition primarily designed for use in a rifle, that is designed primarily to
10 penetrate a body vest or body shield, and has either of the following
11 characteristics:

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

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

21 **Comment.** Section 16660 continues former Section 12323(b) without substantive change.

22 See Sections 16290 (“body vest” or “body shield”), 16520 (“firearm”), 16530 (“firearm
23 capable of being concealed upon the person,” “pistol,” and “revolver”), 16650 (“handgun
24 ammunition”).

25 **Staff Note.** Proposed Section 16660 has been previously presented. See Memorandum 2007-
26 33, Attachment pp. 34-35. Aside from renumbering, we have not made any changes in it. We have
27 italicized it here to raise a drafting issue.

28 Specifically, the term “handgun” encompasses “any pistol, revolver, or firearm capable of
29 being concealed upon the person.” See proposed Section 16640, which would continue existing
30 Section 12001(a)(2) without substantive change.

31 Consequently, proposed Section 16660(b) could be shortened as follows, without changing its
32 meaning:

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

38 A revision like this was recently made in Section 12001(n).

39 Should a similar revision be made in proposed Section 16660(b)? We invite comment on this
40 point.

41 **§ 16670. “Handgun safety certificate”**

42 16670. As used in this part, “handgun safety certificate” means a certificate
43 issued by the Department of Justice pursuant to [Article 8 (commencing with

1 Section 12800) of Chapter 6 of Title 2 of Part 4, as that article is operative on or
2 after January 1, 2003].

3 **Comment.** Section 16670 continues former Section 12001(q) without substantive change.
4 See Section 16640 (“handgun”).

5 **§ 16680. “Hard plastic knuckles”**

6 16680. As used in this part, “hard plastic knuckles” means any device or
7 instrument made wholly or partially of plastic that is not metal knuckles, that is
8 worn for purposes of offense or defense in or on the hand, and that either protects
9 the wearer’s hand while striking a blow or increases the force of impact from the
10 blow or injury to the individual receiving the blow. The plastic contained in the
11 device may help support the hand or fist, provide a shield to protect it, or consist
12 of projections or studs that would contact the individual receiving a blow.

13 **Comment.** Section 16680 continues the second and third sentences of former Section 12020.1
14 without substantive change.

15 See Section 16920 (“metal knuckles”).

16 **§ 16690. “Honorably retired”**

17 16690. As used in [Sections 12027 and 12031], “honorably retired” includes any
18 peace officer who has qualified for, and has accepted, a service or disability
19 retirement. As used in [Sections 12027 and 12031], “honorably retired” does not
20 include an officer who has agreed to a service retirement in lieu of termination.

21 **Comment.** Section 16690 continues the fourth and fifth sentences of former Section
22 12027(a)(1)(A) without substantive change.

23 **§ 16700. “Imitation firearm”**

24 16700. (a) As used in this part, “imitation firearm” means any BB device, toy
25 gun, replica of a firearm, or other device that is so substantially similar in
26 coloration and overall appearance to an existing firearm as to lead a reasonable
27 person to perceive that the device is a firearm.

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

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

32 (2) A BB device.

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

40 **Comment.** Subdivision (a) of Section 16700 continues former Section 12550(c) without
41 substantive change.

1 Subdivision (b) continues former Section 12555(c) without substantive change.
2 See Sections 16250 (“BB device”), 16520 (“firearm”).

3 **§ 16710. “Immediate”**

4 16710. As used in [Section 12031(j)], “immediate” means the brief interval
5 before and after the local law enforcement agency, when reasonably possible, has
6 been notified of the danger and before the arrival of its assistance.

7 **Comment.** Section 16710 continues the second sentence of former Section 12031(j)(1) without
8 substantive change.

9 **☞ Staff Note.** Existing Section 12031(j)(1) defines “immediate” as used “in this subdivision.”
10 The terms “immediate” and “immediately” are also used in other provisions within Title 2 of
11 Part 4, without definition. In addition, existing Section 12078(c)(3) defines “immediate family
12 member” as used in that subdivision. In that context, “immediate” clearly has a different
13 meaning than in Section 12031(j).

14 Consequently, the definition of “immediate” in Section 12031(j)(1) should not be applied to the
15 entirety of new Part 6. Proposed Section 16710 would therefore define “immediate” only for
16 purposes of the provision(s) that would continue existing Section 12031(j).

17 **§ 16720. “Immediate family member”**

18 16720. As used in this part, “immediate family member” means either of the
19 following relationships:

20 (a) Parent and child.

21 (b) Grandparent and grandchild.

22 **Comment.** Section 16720 continues former Section 12078(c)(3) without substantive change.

23 **☞ Staff Note.** Existing Section 12078(c)(3) defines “immediate family member” as used “in this
24 subdivision.” The term is not used in any other subdivision in Title 2 of Part 4.

25 Consequently, the definition in Section 12078(c)(3) can be applied to the entirety of new Part 6
26 without effecting a substantive change. Proposed Section 16720 would therefore define
27 “immediate family member” as used “in this part.”

28 **§ 16730. “Infrequent”**

29 16730. (a) As used in this part, “infrequent” means:

30 (1) For pistols, revolvers, and other firearms capable of being concealed upon
31 the person, less than six transactions per calendar year.

32 (2) For firearms other than pistols, revolvers, or other firearms capable of being
33 concealed upon the person, occasional and without regularity.

34 (b) As used in [Section 12078(g)(1), 1st ¶], the term “infrequent” shall not be
35 construed to prohibit different local chapters of the same nonprofit corporation
36 from conducting auctions or similar events, provided the individual local chapter
37 conducts the auctions or similar events infrequently. It is the intent of the
38 Legislature that different local chapters, representing different localities, be
39 entitled to invoke the exemption created by [Section 12078(g)(1), 1st ¶],
40 notwithstanding the frequency with which other chapters of the same nonprofit
41 corporation may conduct auctions or similar events.

1 **Comment.** Subdivision (a) of Section 16730 continues the first sentence of former Section
2 12070(c)(1)(A), former Section 12070(c)(1)(B), and former Section 12078(u)(1) without
3 substantive change. See Section 17260 (“transaction”).

4 Subdivision (b) continues the second paragraph of former Section 12078(g)(1) without
5 substantive change.

6 **☞ Staff Notes.**

7 (1) Sections 12070 and 12078 are the only sections in Title 2 of Part 4 that use the term
8 “infrequent.” Section 12070(c)(1) defines “infrequent” as used in Section 12070. Section
9 12078(u)(1) extends the same definition of “infrequent” to Section 12078. In addition, paragraph
10 (g)(1) of Section 12078 provides additional detail on how the term “infrequent” should be
11 interpreted for purposes of that paragraph.

12 Because the same definition of “infrequent” is used in both Sections 12070 and 12078, and the
13 term is not used elsewhere in Title 2 of Part 4, the definition in Sections 12070(c)(1) and
14 12078(u)(1) can be applied to the entirety of new Part 6 without effecting a substantive change.
15 Subdivision (a) of proposed Section 16730 would therefore define “infrequent” as used “in this
16 part.”

17 Subdivision (b) of proposed Section 16730 would preserve the additional detail on how the
18 term “infrequent” should be interpreted for purposes of the exemption that is now in the first
19 paragraph of Section 12078(g)(1). The scope of subdivision (b) would be limited to the
20 provision(s) that would continue that exemption.

21 (2) The term “handgun” encompasses “any pistol, revolver, or firearm capable of being
22 concealed upon the person.” See proposed Section 16640, which would continue existing Section
23 12001(a)(2) without substantive change.

24 Consequently, proposed Section 16730(a) could be shortened as follows, without changing its
25 meaning:

26 16730. (a) As used in this part, “infrequent” means:

27 (1) For ~~pistols, revolvers, and other firearms capable of being concealed upon the~~
28 ~~person~~ handguns, less than six transactions per calendar year.

29 (2) For firearms other than ~~pistols, revolvers, or other firearms capable of being~~
30 ~~concealed upon the person~~ handguns, occasional and without regularity.

31 A revision like this was recently made in Section 12001(n).

32 Should a similar revision be made in proposed Section 16730(a)? We invite comment on this
33 point.

34 **§ 16740. “Large-capacity magazine”**

35 16740. As used in this part, “large-capacity magazine” means any ammunition
36 feeding device with the capacity to accept more than 10 rounds, but shall not be
37 construed to include any of the following:

38 (a) A feeding device that has been permanently altered so that it cannot
39 accommodate more than 10 rounds.

40 (b) A .22 caliber tube ammunition feeding device.

41 (c) A tubular magazine that is contained in a lever-action firearm.

42 **Comment.** Section 16740 continues former Sections 12020(c)(25) and 12079(b) without
43 substantive change.

44 **☞ Staff Notes.**

45 (1) Sections 12020 and 12079 are the only sections in Title 2 of Part 4 that use the term “large-
46 capacity magazine” or “large capacity magazine.” Section 12020(c)(25) defines “large-capacity
47 magazine” as used in Section 12020. Section 12079 extends the same definition to Section 12079.

1 Because the same definition is used in both Sections 12020 and 12079, and the term is not used
2 elsewhere in Title 2 of Part 4, the definition in Sections 12020(c)(25) and 12079(b) can be
3 applied to the entirety of new Part 6 without effecting a substantive change. Proposed Section
4 16740 would therefore define “large-capacity magazine” as used “in this part.”

5 (2) Section 12020 hyphenates “large-capacity magazine” but Section 12079 uses the phrase
6 “large capacity magazine” without hyphenation. For the sake of consistency, we plan to use the
7 hyphenated version (“large-capacity magazine”) throughout new Part 6.

8 **§ 16750. “Lawful possession of the firearm”**

9 16750. (a) As used in [Section 12025], “lawful possession of the firearm”
10 means that the person who has possession or custody of the firearm either lawfully
11 owns the firearm or has the permission of the lawful owner or a person who
12 otherwise has apparent authority to possess or have custody of the firearm. A
13 person who takes a firearm without the permission of the lawful owner or without
14 the permission of a person who has lawful custody of the firearm does not have
15 lawful possession of the firearm.

16 (b) As used in [Section 12031], “lawful possession of the firearm” means that
17 the person who has possession or custody of the firearm either lawfully acquired
18 and lawfully owns the firearm or has the permission of the lawful owner or person
19 who otherwise has apparent authority to possess or have custody of the firearm. A
20 person who takes a firearm without the permission of the lawful owner or without
21 the permission of a person who has lawful custody of the firearm does not have
22 lawful possession of the firearm.

23 **Comment.** Subdivision (a) of Section 16750 continues former Section 12025(g) without
24 substantive change.

25 Subdivision (b) continues former Section 12031(a)(3) without substantive change.

26 See Section 16520 (“firearm”).

27 ☞ **Staff Note.** Sections 12025, 12028.5, and 12031 are the only sections in Title 2 of Part 4 that
28 use the phrase “lawful possession of the firearm.” Section 12028.5 uses the phrase without
29 defining it. Section 12025(g) defines the phrase, but only for purposes of that section. Section
30 12031(a)(3) adopts a similar, but not quite identical, definition for purposes of Section 12031
31 (under Section 12025(b), it is enough to “lawfully own the firearm;” under Section 12031(a)(3)
32 the firearm must also have been “lawfully acquired”).

33 Because the definitions in Sections 12025(g) and 12031(a)(3) differ, and because Section
34 12028.5 uses the phrase without definition, it is not possible to apply a single definition to the
35 entirety of new Part 6 without risking a substantive change. Proposed Section 16750(a) would
36 therefore define “lawful possession of the firearm” as in existing Section 12025, and would apply
37 that definition only to the provision(s) that would continue existing Section 12025. Similarly,
38 proposed Section 16750(b) would define the phrase as in existing Section 12031, and would
39 apply that definition only to the provision(s) that would continue existing Section 12031.

40 It would make more sense, however, to define “lawful possession of the firearm” consistently
41 throughout new Part 6. Unless the Commission otherwise directs, we will add this matter to the
42 list of minor clean-up issues that the Commission plans to include in its report to the Governor
43 and the Legislature.

1 § 16760. “Leaded cane”

2 16760. As used in this part, a “leaded cane” means a staff, crutch, stick, rod,
3 pole, or similar device, unnaturally weighted with lead.

4 **Comment.** Section 16760 continues former Section 12020(c)(17) without substantive change.

5 **Staff Note.** Existing Section 12020(c)(17) defines “leaded cane” as used “in this section.”
6 The term is not used in any other section in Title 2 of Part 4.

7 Consequently, the definition in Section 12020(c)(17) can be applied to the entirety of new Part
8 6 without effecting a substantive change. Proposed Section 16760 would therefore define “leaded
9 cane” as used “in this part.”

10 § 16770. “Less lethal ammunition”

11 16770. As used in this part, “less lethal ammunition” means any ammunition
12 that satisfies both of the following requirements:

13 (a) It is designed to be used in a less lethal weapon or any other kind of weapon
14 (including, but not limited to, a firearm, pistol, revolver, shotgun, rifle, or spring,
15 compressed air, or compressed gas weapon).

16 (b) When used in a less lethal weapon or other weapon, it is designed to
17 immobilize, incapacitate, or stun a human being through the infliction of any less
18 than lethal impairment of physical condition, function, or senses, including
19 physical pain or discomfort.

20 **Comment.** Section 16770 continues former Section 12601(c) without substantive change.

21 See Sections 16520 (“firearm”), 16780 (“less lethal weapon”), 17010 (“pistol”), 17080
22 (“revolver”).

23 **Staff Note.** Existing Section 12601(c) defines “less lethal ammunition.” The provision does
24 not make clear how broadly the definition applies. Fortunately, this ambiguity is inconsequential
25 because the term is not used in any other section of the Penal Code.

26 Thus, the definition in Section 12601(c) can be applied to the entirety of new Part 6 without
27 effecting a substantive change. Proposed Section 16770 would therefore define “less lethal
28 ammunition” as used “in this part.”

29 § 16780. “Less lethal weapon”

30 16780. As used in this part,

31 (a) “Less lethal weapon” means any device that is designed to or that has been
32 converted to expel or propel less lethal ammunition by any action, mechanism, or
33 process for the purpose of incapacitating, immobilizing, or stunning a human
34 being through the infliction of any less than lethal impairment of physical
35 condition, function, or senses, including physical pain or discomfort. It is not
36 necessary that a weapon leave any lasting or permanent incapacitation,
37 discomfort, pain, or other injury or disability in order to qualify as a less lethal
38 weapon.

39 (b) Less lethal weapon includes the frame or receiver of any weapon described
40 in subdivision (a), but does not include any of the following unless the part or
41 weapon has been converted as described in subdivision (a):

42 (1) Pistol, revolver, or firearm.

43 (2) Machinegun.

1 (3) Rifle or shotgun using fixed ammunition consisting of standard primer and
2 powder and not capable of being concealed upon the person.

3 (4) A pistol, rifle, or shotgun that is a firearm having a barrel less than 0.18
4 inches in diameter and that is designed to expel a projectile by any mechanical
5 means or by compressed air or gas.

6 (5) When used as designed or intended by the manufacturer, any weapon
7 commonly regarded as a toy gun, and that as such is incapable of inflicting any
8 impairment of physical condition, function, or senses.

9 (6) A destructive device.

10 (7) A tear gas weapon.

11 (8) A bow or crossbow designed to shoot arrows.

12 (9) A device commonly known as a slingshot.

13 (10) A device designed for the firing of stud cartridges, explosive rivets, or
14 similar industrial ammunition.

15 (11) A device designed for signaling, illumination, or safety.

16 (12) An assault weapon.

17 **Comment.** Section 16780 continues former Section 12601(a)-(b) without substantive change.

18 See Sections 16200 (“assault weapon”), 16201 (further clarification of “assault weapon”),
19 16202 (exemptions from definition of “assault weapon”), 16460 (“destructive device”), 16520
20 (“firearm”), 16880 (“machinegun”), 17010 (“pistol”), 17080 (“revolver”), 17250 (“tear gas
21 weapon”).

22 **Staff Notes.**

23 (1) Existing Section 12601(a)-(b) defines “less lethal weapon.” The provision does not make
24 clear how broadly the definition applies. Fortunately, this ambiguity is not of much concern,
25 because the only other Penal Code provision using the term is Section 12600. The definition in
26 Section 12601 is obviously meant to apply to Section 12600, because Section 12601 is purely
27 definitional, Section 12600 is immediately adjacent to and within the same article as Section
28 12601, and Section 12600 is the only substantive provision in the Penal Code to use the term
29 “less lethal weapon.”

30 Thus, the definition in Section 12601(a)-(b) can be applied to the entirety of new Part 6 without
31 effecting a substantive change. Proposed Section 16780 would therefore define “less lethal
32 weapon” as used “in this part.”

33 (2) Existing Section 12601(b) refers to a:

- 34 • “Pistol, revolver, or firearm as defined in Section 12001”
- 35 • “Machinegun as defined in Section 12200”
- 36 • “[D]estructive device as defined in Section 12301”
- 37 • “[T]ear gas weapon as defined in Section 12402”
- 38 • “[A]ssault weapon as defined in Section 12276 or 12276.1”

39 (Emphasis added.)

40 Unlike existing Section 12601(b), proposed Section 16780 would not cross-refer to the
41 provisions defining these terms. Instead, the Comment would contain such cross-references. The
42 Comment would also state that “Section 16780 continues former Section 12601(a)-(b) without
43 substantive change.” The provisions defining the terms are all drafted to encompass Section
44 16780.

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

1 of criminal liability under current provisions.” 2006 Cal. Stat. res. ch. 128. Because courts give
2 great weight to the Commission’s comments, we think this would be sufficient to preserve the
3 substance of Section 12278(a). See 2006-2007 Annual Report, 36 Cal. L. Revision Comm’n
4 Reports 1, 18-24 (2006).

5 **§ 16790. “Licensed gun dealer”**

6 16790. As used in [Sections 12275-12290], “licensed gun dealer” means a
7 person who is licensed pursuant to [Section 12071] and who has a permit to sell
8 assault weapons or .50 BMG rifles pursuant to [Section 12287].

9 **Comment.** Section 16790 continues former Section 12290(c) without substantive change.

10 See Sections 16110 (“.50 BMG rifle”), 16200 (“assault weapon”), 16201 (further clarification
11 of “assault weapon”), 16202 (exemptions from definition of “assault weapon”).

12 See also Section 16440 (“dealer,” “licensee,” or “person licensed pursuant to [Section 12071].”

13 **§ 16800. “Licensed gun show producer”**

14 16800. As used in this part, “licensed gun show producer” means a person who
15 has been issued a certificate of eligibility by the Department of Justice pursuant to
16 [Section 12071.1(a)]. No regulations shall be required to implement this section.

17 **Comment.** Section 16800 continues former Section 12071.1(c) without substantive change.

18 **☞ Staff Notes.**

19 (1) Existing Section 12071.1(c) defines “licensed gun show producer” as used “in this
20 section.” The term is not used in any other section in Title 2 of Part 4.

21 Consequently, the definition in Section 12071.1(c) can be applied to the entirety of new Part 6
22 without effecting a substantive change. Proposed Section 16800 would therefore define “licensed
23 gun show producer” as used “in this part.”

24 (2) The second sentence of proposed Section 16800 is substantive, rather than definitional. We
25 considered separating it from the first sentence, but decided to leave the two sentences together,
26 as in existing law. We worried that separating the sentences might create a risk of a substantive
27 change.

28 **§ 16810. “Licensed premises,” “licensee’s business premises,” and “licensee’s place of
29 business”**

30 16810. As used in [Section 12071], “licensed premises,” “licensee’s business
31 premises,” or “licensee’s place of business” means the building designated in the
32 license.

33 **Comment.** Section 16810 continues former Section 12071(c)(3) without substantive change.

34 **☞ Staff Notes.**

35 (1) Existing Section 12071(c)(3) defines four terms synonymously for purposes of that section:

- 36 • “Licensed premises”
- 37 • “Licensed place of business”
- 38 • “Licensee’s place of business”
- 39 • “Licensee’s business premises”

40 One of these terms — “licensed place of business” — is not used anywhere in Title 2 of Part 4
41 aside from the definition. Because it makes no sense to define a term that is not used, we have not
42 included it in proposed Section 16810.

1 Because the other three terms are defined synonymously in existing law, we have kept them
2 together in proposed Section 16810. To help persons find the definitions of “licensee’s business
3 premises” and “licensee’s place of business,” we have included provisions entitled “licensee’s
4 business premises” (Section 16822) and “licensee’s place of business” (Section 16824), which
5 would simply cross-refer to proposed Section 16265.

6 (2) The terms “licensee’s place of business” and “licensee’s business premises” are used only
7 in Section 12071, not elsewhere in Title 2 of Part 4. In contrast, the term “licensed premises” is
8 used both in Section 12071 and, without definition, elsewhere. See Sections 12072(f)(2)(D)(ii)(IV)
9 & (f)(3), 12083(a) & (c)(1), 12086(c)(9)(A) & (B).

10 Consequently, the definition of “licensed premises” in Section 12071(c)(3) could not be
11 applied to the entirety of new Part 6 without creating a risk of a substantive change. We have
12 therefore limited the application of proposed Section 16810 to the provision(s) that would
13 continue existing Section 12071.

14 The staff suspects, however, that the term “licensed premises” is intended to have the same
15 meaning wherever it is used in Title 2 of Part 4. At some point in the future, the Legislature might
16 want to consider extending the definitions in proposed Section 16810 to the entirety of new Part
17 6. Unless the Commission otherwise directs, we will add this issue to the list of minor clean-up
18 issues that the Commission plans to include in its report to the Governor and the Legislature.

19 **§ 16820. “Licensee”**

20 16820. Use of the term “licensee” is governed by Section 16440.

21 **Comment.** Section 16820 is new. It is intended to help persons locate the definition of
22 “licensee,” which is the same as the definition of “dealer” for certain purposes.

23 **§ 16822. “Licensee’s business premises”**

24 16822. Use of the term “licensee’s business premises” is governed by Section
25 16810.

26 **Comment.** Section 16822 is new. It is intended to help persons locate the definition of
27 “licensee’s business premises, which is the same as the definition of “licensed premises” in
28 Section 16810.

29 **§ 16824. “Licensee’s place of business”**

30 16824. Use of the term “licensee’s place of business” is governed by Section
31 16810.

32 **Comment.** Section 16824 is new. It is intended to help persons locate the definition of
33 “licensee’s place of business, which is the same as the definition of “licensed premises” in
34 Section 16810.

35 **§ 16830. “Lipstick case knife”**

36 16830. As used in this part, a “lipstick case knife” means a knife enclosed
37 within and made an integral part of a lipstick case.

38 **Comment.** Section 16830 continues former Section 12020(c)(14) without substantive change.

39 ☞ **Staff Note.** Existing Section 12020(c)(14) defines “lipstick case knife” as used “in this
40 section.” The term is not used in any other section in Title 2 of Part 4.

41 Consequently, the definition in Section 12020(c)(14) can be applied to the entirety of new Part
42 6 without effecting a substantive change. Proposed Section 16830 would therefore define
43 “lipstick case knife” as used “in this part.”

1 **§ 16840. “Loaded” and “loaded firearm”**

2 16840. (a) As used in [Section 12023], a firearm shall be deemed to be
3 “loaded” whenever both the firearm and the unexpended ammunition capable of
4 being discharged from the firearm are in the immediate possession of the same
5 person.

6 (b) As used in [Sections 12025(b)(6)(A), 12031, and 12035],

7 (1) A firearm shall be deemed to be “loaded” when there is an unexpended
8 cartridge or shell, consisting of a case that holds a charge of powder and a bullet
9 or shot, in, or attached in any manner to, the firearm, including, but not limited to,
10 in the firing chamber, magazine, or clip thereof attached to the firearm.

11 (2) Notwithstanding paragraph (1), a muzzle-loader firearm shall be deemed to
12 be loaded when it is capped or primed and has a powder charge and ball or shot
13 in the barrel or cylinder.

14 **Comment.** Subdivision (a) of Section 16840 continues former Section 12001(j) without
15 substantive change.

16 Subdivision (b) continues former Sections 12031(g) and 12035(a)(2) without substantive
17 change.

18 See Section 16520 (“firearm”).

19 **Staff Note.** Existing Section 12001(j) defines “loaded” in an unusual manner for purposes of
20 that section: “[A] firearm shall be deemed to be ‘loaded’ whenever both the firearm and the
21 unexpended ammunition capable of being discharged from the firearm are in the immediate
22 possession of the same person.” Sections 12031(g) and 12035(a)(2) adopt a more conventional
23 definition of “loaded” for purposes of those sections, which is also incorporated by reference in
24 Section 12025(b)(6)(A). In addition, numerous provisions in Title 2 of Part 4 use the terms
25 “loaded” and “unloaded” without definition. See, e.g., Sections 12031.1, 12036(b), 12040(a)(4).

26 Consequently, it would not be possible to apply a single definition of “loaded” to the entirety
27 of new Part 6 without effecting a substantive change. We have therefore limited the application of
28 subdivision (a) of proposed Section 16840 to the provision(s) that would continue existing Section
29 12023. Similarly, we have limited the application of subdivision (b) of proposed Section 16840 to
30 the provisions that would continue existing Sections 12025(b)(6)(A), 12031, and 12035.

31 The staff suspects, however, that in most of the places where the term “loaded” is used without
32 being defined, the definition in proposed Section 16840(b) is intended to apply. At some point in
33 the future, the Legislature might want to consider extending that definition more broadly. Unless
34 the Commission otherwise directs, we will add this issue to the list of minor clean-up issues that
35 the Commission plans to include in its report to the Governor and the Legislature.

36 **§ 16850. “Locked container”**

37 16850. As used in [Sections 12020(b)(17)(E), 12026.1, 12026.2, 12035, 12036,
38 and 12094(b)(4)(E)], “locked container” means a secure container that is fully
39 enclosed and locked by a padlock, keylock, combination lock, or similar locking
40 device. The term “locked container” does not include the utility or glove
41 compartment of a motor vehicle.

42 **Comment.** Section 16850 continues former Sections 12026.2(d), 12035(a)(5), and 12036(a)(4)
43 without substantive change. Section 16850 also continues the combined effect of subdivision (c)
44 and the last clause of paragraph (a)(1) of former Section 12026.1 without substantive change.

45 See Sections 16520 (“firearm”), 16860 (“locking device”).

1 **☞ Staff Note.** Existing Section 12026.2(d) defines “locked container” for purposes of that
2 section. Existing Sections 12035(a)(5) and 12036(a)(4) define “locked container” for purposes of
3 those sections. They incorporate the definition used in Section 12026.2(d).

4 Existing Section 12026.1(c) also defines “locked container.” It is the same as the first sentence
5 of Section 12026.2(d), but it doesn’t include the second sentence (i.e., “The term ‘locked
6 container’ does not include the utility or glove compartment of a motor vehicle.”). However, the
7 last clause of Section 12026.1(a)(1) makes clear that the “locked container” referenced in that
8 section cannot be the utility or glove compartment of a motor vehicle. The definition of “locked
9 container” for purposes of Section 12026.1 is thus substantively the same as the definition in
10 Section 12026.2(d).

11 Sections 12020(b)(17)(E) and 12094(b)(4)(E) use the term “locked container” as “defined in
12 subdivision (d) of Section 12026.2.” But the term “locked container” is also used without
13 definition in several places. See Sections 12071(b)(3)(B), (7)(A)-(C), 12072(c)(2) &
14 (f)(2)(D)(ii)(IV).

15 Consequently, the definition of “locked container” in Sections 12026.2(d) could not be applied
16 to the entirety of new Part 6 without creating a risk of a substantive change. We have therefore
17 limited the application of proposed Section 16850 to the provision(s) that would continue existing
18 Sections 12020(b)(17)(E), 12026.1, 12026.2, 12035, 12036, and 12094(b)(4)(E).

19 The staff suspects, however, that the term “locked container” is intended to have the same
20 meaning throughout Title 2 of Part 4. At some point in the future, the Legislature might want to
21 consider extending the definition to the entirety of new Part 6. Unless the Commission otherwise
22 directs, we will add this issue to the list of minor clean-up issues that the Commission plans to
23 include in its report to the Governor and the Legislature.

24 § 16860. “Locking device”

25 16860. As used in [Sections 12035 and 12036], “locking device” means a
26 device that is designed to prevent a firearm from functioning and, when applied to
27 the firearm, renders the firearm inoperable.

28 **Comment.** Section 16860 continues former Sections 12035(a)(1) and 12036(a)(1) without
29 substantive change.

30 See Section 16520 (“firearm”).

31 **☞ Staff Note.** Existing Section 12035(a)(1) defines “locking device” for purposes of that
32 section. Existing Section 12036(a)(1) applies the same definition to Section 12036. The term is
33 also used without definition in Sections 12026.1(c), 12026.2(d), 12071(b)(7)(A)-(C) & (b)(20)(E).

34 Consequently, the definition of “locking device” in Sections 12035(a)(1) and 12036(a)(1)
35 could not be applied to the entirety of new Part 6 without creating a risk of a substantive change.
36 We have therefore limited the application of proposed Section 16860 to the provision(s) that
37 would continue existing Sections 12035 and 12036.

38 The staff suspects, however, that the term “locking device” is intended to have the same
39 meaning in most of the places where it is used in Title 2 of Part 4. At some point in the future, the
40 Legislature might want to consider extending the definition more broadly in new Part 6. Unless
41 the Commission otherwise directs, we will add this issue to the list of minor clean-up issues that
42 the Commission plans to include in its report to the Governor and the Legislature.

43 It probably would not be wise, however, to extend the definition to the entirety of new Part 6.
44 The definition is specific to the context of rendering a firearm inoperable. It is easy to imagine
45 that the phrase “locking device” might be used in a different context in the future. For instance,
46 an explosive to be used in a mining operation might have to be stored using an adequate “locking
47 device.” The definition in proposed Section 16520 would not be appropriate in that context.

1 **§ 16870. “Long-gun safe”**

2 16870. As used in this part, “long-gun safe” means a locking container
3 designed to fully contain and secure a rifle or shotgun, which has a locking system
4 consisting of either a mechanical combination lock or an electronic combination
5 lock that has at least 1,000 possible unique combinations consisting of a minimum
6 of three numbers, letters, or symbols per combination, and is not listed on the
7 roster maintained pursuant to [Section 12088(d)].

8 **Comment.** Section 16870 continues former Section 12087.6(c) without substantive change. See
9 Sections 17090 (“rifle”), 17190 (“shotgun”).

10 **☞ Staff Notes.**

11 (1) Existing Section 12087.6(c) defines “long-gun safe” for purposes of “this article” – i.e.,
12 the Aroner-Scott Hayden Firearms Safety Act of 1999 (Penal Code §§ 12087-12088.9). The term
13 is also used in Section 12071(b)(20)(G)(ii)(II), with a cross-reference to “the standards for
14 department-approved gun safes set forth in Section 12088.2, which is part of the Aroner-Scott
15 Hayden Firearms Safety Act of 1999.

16 Consequently, the definition in Section 12087.6(c) can be applied to the entirety of new Part 6
17 without effecting a substantive change. Proposed Section 16870 would therefore define “long-
18 gun safe” as used “in this part.”

19 2) Existing Section 12087.6 refers to a:

- 20 • “[R]ifle as defined in paragraph (20) of subdivision (c) of Section 12020”
21 • “[S]hotgun as defined in paragraph (21) of subdivision (c) of Section 12020”

22 (Emphasis added.)

23 Unlike existing Section 12087.6, proposed Section 16870 would not cross-refer to the
24 provisions defining “rifle” and “shotgun.” Instead, the Comment would contain such cross-
25 references. The Comment would also state that “Section 16870 continues former Section
26 12601(a)-(b) without substantive change.” The provisions defining the terms “rifle” and
27 “shotgun” are drafted to encompass Section 16870.

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

34 **§ 16880. “Machinegun”**

35 16880. As used in this part, “machinegun” means any weapon that shoots, is
36 designed to shoot, or can readily be restored to shoot, automatically more than one
37 shot, without manual reloading, by a single function of the trigger. The term also
38 includes the frame or receiver of any such weapon, any part designed and intended
39 solely and exclusively, or combination of parts designed and intended, for use in
40 converting a weapon into a machinegun, and any combination of parts from which
41 a machinegun can be assembled if those parts are in the possession or under the
42 control of a person. The term also includes any weapon deemed by the federal
43 Bureau of Alcohol, Tobacco, and Firearms as readily convertible to a machinegun
44 under Chapter 53 (commencing with Section 5801) of Title 26 of the United States
45 Code.

1 **Comment.** Section 16880 continues former Section 12200 without substantive change.

2 **§ 16890. “Magazine”**

3 16890. As used in Section 16201, “magazine” means any ammunition feeding
4 device.

5 **Comment.** Section 16890 continues former Section 12276.1(d)(1) without substantive change.

6 ☞ **Staff Note.** Existing Section 12276.1(d)(1) defines “magazine” as shown above for purposes
7 of that section. Numerous other sections in Title 2 of Part 4 (including some sentencing
8 enhancement provisions) use the term “magazine” without defining it. In one of those sections,
9 the term is clearly intended to refer to reading material instead of an ammunition feeding device.
10 See Section 12020.5 (“any newspaper, magazine, circular, form letter ...”).

11 Consequently, the definition of “magazine” in Section 12276.1(d)(1) could not be applied to
12 the entirety of new Part 6 without creating a risk of a substantive change. Proposed Section
13 16890 must therefore be drafted to apply only to the provision(s) that would continue existing
14 Section 12276.1. Those provisions are proposed Sections 16170(a), 16201, 16202, and 16350. Of
15 those provisions, only proposed Section 16201 uses the term “magazine.” Thus, the definition in
16 proposed Section 16890 would apply only to proposed Section 16201.

17 The staff suspects, however, that the term “magazine” is intended to have the same meaning in
18 most of the other sections that use it in Title 2 of Part 4. At some point in the future, the
19 Legislature might want to consider extending the definition in proposed Section 16890 more
20 broadly. Unless the Commission otherwise directs, we will add this issue to the list of minor
21 clean-up issues that the Commission plans to include in its report to the Governor and the
22 Legislature.

23 **§ 16900. “Magazine disconnect mechanism”**

24 16900. As used in this part, “magazine disconnect mechanism” means a
25 mechanism that prevents a semiautomatic pistol that has a detachable magazine
26 from operating to strike the primer of ammunition in the firing chamber when a
27 detachable magazine is not inserted in the semiautomatic pistol.

28 **Comment.** Section 16900 continues former Section 12126(d) without substantive change.

29 See Sections 16530 (“firearm capable of being concealed upon the person,” “pistol,” and
30 “revolver”), 17140 (“semiautomatic pistol”).

31 **§ 16905. “Major component”**

32 16905. As used in this part, “major component” has the same meaning as in
33 Section 922 of Title 18 of the United States Code.

34 **Comment.** With respect to the definition of “major component,” Section 16905 continues the
35 first paragraph of former Section 12020(c)(22)(C) without substantive change.

36 ☞ **Staff Note.** The first paragraph of existing Section 12020(c)(22)(C) defines “major
37 component” as used “in this paragraph.” The term is not used in any other paragraph in Title 2
38 of Part 4.

39 Consequently, the definition in Section 12020(c)(22)(C) can be applied to the entirety of new
40 Part 6 without effecting a substantive change. Proposed Section 16905 would therefore define
41 “major component” as used “in this part.”

1 **§ 16910. “Malfunction”**

2 16910. As used in Section 16560, “malfunction” means a failure to properly
3 feed, fire, or eject a round, or failure of a pistol to accept or eject the magazine, or
4 failure of a pistol’s slide to remain open after the magazine has been expended.

5 **Comment.** Section 16910 continues former Section 12127(c) without substantive change.

6 See Section 16530 (“firearm capable of being concealed upon the person,” “pistol,” and
7 “revolver”).

8 **§ 16920. “Metal knuckles”**

9 16920. As used in this part, “metal knuckles” means any device or instrument
10 made wholly or partially of metal that is worn for purposes of offense or defense
11 in or on the hand and that either protects the wearer’s hand while striking a blow
12 or increases the force of impact from the blow or injury to the individual receiving
13 the blow. The metal contained in the device may help support the hand or fist,
14 provide a shield to protect it, or consist of projections or studs which would
15 contact the individual receiving a blow.

16 **Comment.** Section 16920 continues former Section 12020(c)(7) without substantive change.

17 **§ 16930. “Multiburst trigger activator”**

18 16930. As used in this part, a “multiburst trigger activator” means either of the
19 following:

20 (a) A device designed or redesigned to be attached to a semiautomatic firearm,
21 which allows the firearm to discharge two or more shots in a burst by activating
22 the device.

23 (b) A manual or power-driven trigger activating device constructed and
24 designed so that when attached to a semiautomatic firearm it increases the rate of
25 fire of that firearm.

26 **Comment.** Section 16930 continues former Section 12020(c)(23) without substantive change.

27 See Section 16520 (“firearm”).

28 ☞ **Staff Note.** Existing Section 12020(c)(23) defines “multiburst trigger activator” as used “in
29 this section.” The term is not used in any other section in Title 2 of Part 4.

30 Consequently, the definition in Section 12020(c)(23) can be applied to the entirety of new Part
31 6 without effecting a substantive change. Proposed Section 16930 would therefore define
32 “multiburst trigger activator” as used “in this part.”

33 **§ 16940. “Nunchaku”**

34 16940. As used in this part, “nunchaku” means an instrument consisting of two
35 or more sticks, clubs, bars or rods to be used as handles, connected by a rope,
36 cord, wire, or chain, in the design of a weapon used in connection with the
37 practice of a system of self-defense such as karate.

38 **Comment.** Section 16940 continues former Section 12020(c)(3) without substantive change.

39 ☞ **Staff Note.** Existing Section 12020(c)(3) defines “nunchaku” for purposes of that section. The
40 only other section in Title 2 of Part 4 that uses the term is Section 12029, which also appears to
41 incorporate the definition given in Section 12020.

1 Consequently, the definition in Section 12020(c)(3) can be applied to the entirety of new Part 6
2 of the Penal Code without effecting a substantive change. Proposed Section 16940 would
3 therefore define “nunchaku” as used “in this part.”

4 **§ 16950. “Off-premises”**

5 16950. As used in [Section 12036], “off-premises” means premises other than
6 the premises where the firearm was stored.

7 **Comment.** Section 16950 continues former Section 12036(a)(3) without substantive change.

8 ☞ **Staff Note.** Existing Section 12036(a)(3) defines “off-premises” as used “in this section.”
9 The term is also used, without definition, in Section 12071(b)(7)(B) & (C).

10 Consequently, the definition of “off-premises” in Section 12036(a)(3) could not be applied to
11 the entirety of new Part 6 without creating a risk of a substantive change. We have therefore
12 limited the application of proposed Section 16950 to the provision(s) that would continue existing
13 Section 12036.

14 The staff suspects, however, that the term “licensed premises” is intended to have the same
15 meaning in Section 12071(b)(7)(B) & (C) as in Section 12036. At some point in the future, the
16 Legislature might want to consider extending the definition in proposed Section 16950 to the
17 provision(s) that would continue existing Section 12071(b)(7)(B) & (C). 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 It probably would not be wise to go further, however, and extend the definition to the entirety
21 of new Part 6. The definition is specific to the context of firearm storage; it refers to “the
22 premises where the firearm was stored.” It is easy to imagine that the phrase “off-premises”
23 might be used in a different context in the future. For instance, a private security guard might be
24 permitted to carry a concealed weapon at a specific location, but not “off-premises.” The
25 definition in proposed Section 16950 would not be appropriate in that context.

26 **§ 16960. “Operation of law”**

27 16960. As used in [Section 12070], “operation of law” includes, but is not
28 limited to, any of the following:

29 (a) The executor or administrator of an estate, if the estate includes a firearm.

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

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

35 (d) A receiver performing the functions of a receiver, if the receivership estate
36 includes a firearm.

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

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

41 (g) A transmutation of property between spouses pursuant to Section 850 of the
42 Family Code.

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

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

5 **Comment.** *Section 16960 continues former Section 12070(c)(2) without substantive change.*

6 **☞ Staff Notes.**

7 (1) *Existing Section 12070(c)(2) defines “operation of law” as shown above for purposes of*
8 *that section. The phrase is also used, without definition, in Section 12807(b). In addition, the*
9 *phrase is repeatedly used in Section 12078(i)(1)-(3). That section does not define “operation of*
10 *law” but does define “A person taking title or possession of firearms by operation of law.” That*
11 *definition is similar, but not identical to, Section 12070(c)(2)’s definition of “operation of law.”*
12 *Despite the definition in Section 12078(u)(2), the phrase “A person taking title or possession of*
13 *firearms by operation of law” is not used anywhere in that section.*

14 *In light of this situation, it would not be possible to apply a single definition of “operation of*
15 *law” to the entirety of new Part 6 without creating a risk of a substantive change. We have*
16 *therefore limited the application of proposed Section 16960 to the provision(s) that would*
17 *continue existing Section 12070.*

18 *The staff suspects, however, that the phrase “operation of law” is intended to have the same*
19 *meaning wherever it is used in Title 2 of Part 4. At some point in the future, the Legislature might*
20 *want to consider (1) conforming the definitions in proposed Sections 16960 (“operation of law”)*
21 *and 16990 (“person taking title or possession of firearm by operation of law”) and (2) extending*
22 *a single definition to the entirety of new Part 6. Unless the Commission otherwise directs, we will*
23 *add this issue to the list of minor clean-up issues that the Commission plans to include in its*
24 *report to the Governor and the Legislature. For further discussion of the definition of “A person*
25 *taking title or possession of firearms by operation of law,” see Memorandum 2007-33,*
26 *Attachment pp. 40-41.*

27 (2) *Section 12070(c)(2) refers repeatedly to “firearms” rather than “a firearm.” The*
28 *Commission’s general practice is to draft statutes using the singular form rather than the plural.*
29 *We followed that practice in drafting proposed Section 16960. These revisions will have no*
30 *substantive impact. See Section 7 (“the singular number includes the plural, and the plural the*
31 *singular”).*

32 **§ 16970. “Person”**

33 *16970. As used in [Sections 12020.5 and 12275-12290], “person” means an*
34 *individual, partnership, corporation, limited liability company, association, or any*
35 *other group or entity, regardless of how it was created.*

36 **Comment.** *Section 16970 continues former Section 12277 without substantive change.*

37 *See also Section 7 (“the word ‘person’ includes a corporation as well as a natural person”).*

38 **☞ Staff Note.** *Existing Section 12277 defines “person” as used in “this chapter” — i.e.,*
39 *Sections 12275-12290. Existing Section 12020.5 incorporates the same definition by reference.*
40 *But many provisions within Title 2 of Part 4 use the word “person” without definition, other than*
41 *the definition in Section 7 (“the word ‘person’ includes a corporation as well as a natural*
42 *person”).*

43 *To complicate things further, Sections 12234, 12303, 12303.6, 12304, 12305, 12320, 12321,*
44 *12420, 12425, and 12520 use the phrase “person, firm, or corporation.” Section 12316 uses the*
45 *phrase “person, corporation, or dealer.” Section 12370 uses the phrase “person or entity.” And*
46 *Section 12403.8 uses the phrase “person, parent, or guardian.”*

47 *Consequently, the definition in Section 12277 could not be applied to the entirety of new Part 6*
48 *without creating a risk of a substantive change. We have therefore limited the application of*

1 *proposed Section 16970 to the provisions that would continue existing Sections 12020.5 and*
2 *12275-12290.*

3 *At some point in the future, however, the Legislature might want to consider applying a single*
4 *definition of “person” to the entirety of new Part 6, or perhaps to the entirety of the Penal Code.*
5 *Unless the Commission otherwise directs, we will add this issue to the list of minor clean-up*
6 *issues that the Commission plans to include in its report to the Governor and the Legislature.*

7 **§ 16980. “Person licensed pursuant to [Section 12071]”**

8 16980. Use of the term “person licensed pursuant to [Section 12071]” is
9 governed by Section 16440.

10 **Comment.** Section 16980 is new. It is intended to help persons locate the definition of “person
11 licensed pursuant to [Section 12071],” which is the same as the definition of “dealer.”

12 **§ 16990. “Person taking title or possession of a firearm by operation of law”**

13 16990. As used in [Section 12078], the phrase “a person taking title or
14 possession of a firearm by operation of law” includes, but is not limited to, any of
15 the following instances in which an individual receives title to, or possession of, a
16 firearm:

17 (a) The executor or administrator of an estate, if the estate includes a firearm.

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

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

23 (d) A receiver performing the functions of a receiver, if the receivership estate
24 includes a firearm.

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

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

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

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

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

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

39 **Comment.** Section 16990 continues former Section 12078(u)(2) without substantive change.

1 **§ 17000. “Personal handgun importer”**

2 17000. (a) As used in this part, “personal handgun importer” means an
3 individual who meets all of the following criteria:

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

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

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

10 (4) The individual is the owner of a handgun.

11 (5) The individual acquired that handgun outside of California.

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

14 (7) The individual intends to possess that handgun within this state on or after
15 January 1, 1998.

16 (8) The handgun was not delivered to the individual by a person licensed
17 pursuant to [Section 12071] who delivered that firearm following the procedures
18 set forth in [Section 12071] and [subdivision (c) of Section 12072].

19 (9) The individual, while a resident of this state, had not previously reported
20 ownership of that handgun to the Department of Justice in a manner prescribed by
21 the department that included information concerning the individual and a
22 description of the firearm.

23 (10) The handgun is not a firearm that is prohibited by [subdivision (a) of
24 Section 12020].

25 (11) The handgun is not an assault weapon.

26 (12) The handgun is not a machinegun.

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

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

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

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

35 **Comment.** Subdivision (a) of Section 17000 continues former Section 12001(n) without
36 substantive change. For guidance on what constitutes an assault weapon, see Sections 16200
37 (“assault weapon”), 16201 (further clarification of “assault weapon”), and 16202 (exemptions
38 from definition of “assault weapon”). For guidance on what constitutes a machinegun, see
39 Section 16880 (“machinegun”).

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

41 See Sections 16520 (“firearm”), 16640 (“handgun”).

42 **Staff Note.** Section 12001(n) was amended in 2007. See 2007 Cal. Stat. ch. 163, § 1.
43 Proposed Section 17000 (previously presented as proposed Section 16040 in Memorandum 2007-
44 20, Attachment pp. 6-7, and as proposed Section 16545 in Memorandum 2007-33, Attachment pp.

1 42-43) has been updated to reflect that amendment. Aside from this revision and renumbering, no
2 other changes have been made.

3 **§ 17010. “Pistol”**

4 17010. Use of the term “pistol” is governed by Section 16530.

5 **Comment.** Section 17010 is new. It is intended to help persons locate key rules relating to use
6 of the term “pistol.”

7 **§ 17020. “Principal place of employment or business”**

8 17020. For purposes of this part, a city or county may be considered an
9 applicant’s “principal place of employment or business” only if the applicant is
10 physically present in the jurisdiction during a substantial part of the applicant’s
11 working hours for purposes of that employment or business.

12 **Comment.** Section 17020 continues former Section 12050(a)(3) without substantive change.

13 **Staff Note.** Existing Section 12050(a)(3) defines “principal place of employment or business”
14 for purposes of “this subdivision.” The term is not used in any other subdivision in Title 2 of Part
15 4.

16 Consequently, the definition in Section 12050(a)(3) can be applied to the entirety of new Part 6
17 without effecting a substantive change. Proposed Section 17020 would therefore define
18 “principal place of employment or business” as used “in this part.”

19 **§ 17030. “Prohibited area”**

20 17030. As used in this part, “prohibited area” means any place where it is
21 unlawful to discharge a weapon.

22 **Comment.** Section 17030 continues former Section 12031(f) without substantive change.

23 **Staff Note.** Existing Section 12031(f) defines “prohibited area” as used “in this section.” The
24 term is not used in any other section in Title 2 of Part 4.

25 Consequently, the definition in Section 12031(f) can be applied to the entirety of new Part 6
26 without effecting a substantive change. Proposed Section 17030 would therefore define
27 “prohibited area” as used “in this part.”

28 **§ 17040. “Public place”**

29 17040. As used in [Section 12556], “public place” means an area open to the
30 public and includes any of the following:

31 (a) A street.

32 (b) A sidewalk.

33 (c) A bridge.

34 (d) An alley.

35 (e) A plaza.

36 (f) A park.

37 (g) A driveway.

38 (h) A front yard.

39 (i) A parking lot.

40 (j) An automobile, whether moving or not.

1 (k) A building open to the general public, including one that serves food or
2 drink, or provides entertainment.

3 (l) A doorway or entrance to a building or dwelling.

4 **Comment.** Section 17040 continues former Section 12556(e) without substantive change.

5 **Staff Note.** A number of provisions in Title 2 of Part 4 refer to a “public place” without
6 definition. See Sections 12031(a) & (e), 12035(b)(2), 12040(a), 12071(b)(7)(A), 12303.2,
7 12590(a). In addition, existing Section 12556(e) defines “public place” for purposes of “this
8 section.” That definition includes “front yards,” which might not be the intent in all of the other
9 provisions that refer to a “public place.”

10 Consequently, Section 12556(e)’s definition of “public place” should not be applied to the
11 entirety of new Part 6 in this nonsubstantive study. Proposed Section 17040 would therefore
12 define “public place” only for purposes of the provision(s) that would continue existing Section
13 12556.

14 § 17050. “Purchase”

15 17050. As used in [Sections 12076 and 12077], “purchase” means the
16 purchase, loan, or transfer of a firearm.

17 **Comment.** Section 17050 continues former Sections 12076(l)(2) and 12077(g)(2) without
18 substantive change.

19 **Staff Note.** Existing Section 12076(l)(2) defines “purchase” for purposes of Section 12076.
20 Existing Section 12077(g)(2) defines “purchase” the same way for purposes of Section 12077.
21 The terms “purchase” and “purchased” are also used without definition in many other places in
22 Title 2 of Part 4. See, e.g., Sections 12020, 12020.3, 12021, 12035. In at least one place, it is
23 clear that a different meaning is intended. See Section 12080 (referring to “purchase” of
24 pamphlet, not firearm).

25 Consequently, the definition of “purchase” in existing Sections 12076(l)(2) and 12077(g)(2)
26 should not be applied to the entirety of new Part 6 in this nonsubstantive study. Proposed Section
27 17050 would therefore define “purchase” only for purposes of the provision(s) that would
28 continue existing Sections 12076 and 12077.

29 The staff suspects, however, that in most of the places where the term “purchase” is used
30 without being defined, the definition in proposed Section 17050 is intended to apply. At some
31 point in the future, the Legislature might want to consider extending that definition more broadly.
32 Unless the Commission otherwise directs, we will add this issue to the list of minor clean-up
33 issues that the Commission plans to include in its report to the Governor and the Legislature.

34 § 17060. “Purchaser”

35 17060. As used in [Sections 12076 and 12077], “purchaser” means the
36 purchaser or transferee of a firearm or a person being loaned a firearm.

37 **Comment.** Section 17060 continues former Sections 12076(l)(1) and 12077(g)(1) without
38 substantive change.

39 **Staff Note.** Existing Section 12076(l)(1) defines “purchaser” for purposes of Section 12076.
40 Existing Section 12077(g)(1) defines “purchaser” the same way for purposes of Section 12077.
41 The term “purchaser” is also used without definition elsewhere in Title 2 of Part 4. See, e.g.,
42 Sections 12071, 12072, 12250.

43 Consequently, the definition of “purchaser” in Sections 12076(l)(1) and 12077(g)(1) could not
44 be applied to the entirety of new Part 6 without creating a risk of a substantive change. Proposed
45 Section 17060 would therefore define “purchaser” only for purposes of the provision(s) that
46 would continue existing Sections 12076 and 12077.

1 The staff suspects, however, that in most, if not all, of the places where the term “purchaser” is
2 used in reference to firearm acquisition without being defined, the definition in proposed Section
3 17060 is intended to apply. At some point in the future, the Legislature might want to consider
4 extending that definition more broadly. Unless the Commission otherwise directs, we will add this
5 issue to the list of minor clean-up issues that the Commission plans to include in its report to the
6 Governor and the Legislature.

7 **§ 17070. “Responsible adult”**

8 17070. As used in this part, “responsible adult” means a person at least 21
9 years of age who is not within a class of persons prohibited from owning or
10 possessing a firearm by virtue of [Section 12021 or 12021.1 of this code], or
11 Section 8100 or 8103 of the Welfare and Institutions Code.

12 **Comment.** Section 17070 continues former Section 12101(e) without substantive change.

13 ☞ **Staff Note.** Existing Section 12101(e) defines “responsible adult” as used “in this section.”
14 The term is not used in any other section in Title 2 of Part 4.

15 Consequently, the definition in Section 12101(e) can be applied to the entirety of new Part 6
16 without effecting a substantive change. Proposed Section 17070 would therefore define
17 “responsible adult” as used “in this part.”

18 **§ 17080. “Revolver”**

19 17080. Use of the term “revolver” is governed by Section 16530.

20 **Comment.** Section 17080 is new. It is intended to help persons locate key rules relating to use
21 of the term “revolver.”

22 **§ 17090. “Rifle”**

23 17090. As used in [Sections 12001(f), 12001.5, 12020, 12021.5, 12029,
24 12072(f)(1)(A), 12323], 16530, 16640, and 16780, “rifle” means a weapon
25 designed or redesigned, made or remade, and intended to be fired from the
26 shoulder and designed or redesigned and made or remade to use the energy of the
27 explosive in a fixed cartridge to fire only a single projectile through a rifled bore
28 for each single pull of the trigger.

29 **Comment.** Section 17090 continues former Sections 12020(c)(20) and 12323(d) without
30 substantive change.

31 ☞ **Staff Note.** Existing paragraph (c)(20) of Section 12020 defines “rifle” for purposes of that
32 section, including the definition of “short-barreled rifle” given in paragraph (c)(2). Existing
33 Section 12323(d) adopts the same definition of “rifle” for purposes of that section. A number of
34 other existing provisions incorporate Sections 12020’s definitions of “rifle” or “short-barreled
35 rifle.” See Sections 12001(f), 12001.5, 12021.5, 12029, 12072(f)(1)(A), 12087.6(c).

36 Other provisions in Title 2 of Part 4 use the term “rifle” or “short-barreled rifle” without
37 definition. See, e.g., Sections 12039, 12095-12099, 12276(a), 12276.1(a)(1)-(3), 12316(a)(1)(B),
38 12601. Still other provisions use the term “rifle” as part of a defined phrase, such as “.50 BMG
39 rifle,” “SKS rifle,” or “antique rifle.” See, e.g., Sections 12022(a)(2), 12275.5, 12278-12281,
40 12301(a)(3). And other provisions use the term “rifle” as part of a phrase that is undefined,
41 either generally or for purposes of that particular provision. See, e.g., Sections 12022.5 (“.50
42 BMG rifle”), 12276.1(a)(1)-(3) (“semiautomatic, centerfire rifle”).

43 Consequently, the definition of “rifle” in Sections 12020(c)(20) and 12323(d) could not be
44 applied to the entirety of new Part 6 without creating a risk of a substantive change. We have
45 therefore limited the application of proposed Section 17090 to the provision(s) that currently

1 incorporate Section 12020(c)(20)'s definition of "rifle" (either directly or by reference to Section
2 12020(c)(2)'s definition of "short-barreled rifle").

3 The staff suspects, however, that the term "rifle" is intended to have the same meaning
4 wherever it is used in Title 2 of Part 4. At some point in the future, the Legislature might want to
5 consider extending the definition in proposed Section 17090 to the entirety of new Part 6. Unless
6 the Commission otherwise directs, we will add this issue to the list of minor clean-up issues that
7 the Commission plans to include in its report to the Governor and the Legislature.

8 **§ 17100. "Sale"**

9 17100. As used in [Sections 12076 and 12077], "sale" means the sale, loan, or
10 transfer of a firearm.

11 **Comment.** Section 17100 continues former Sections 12076(l)(3) and 12077(g)(3) without
12 substantive change.

13 **Staff Note.** Existing Section 12076(l)(3) defines "sale" for purposes of Section 12076.
14 Existing Section 12077(g)(3) defines "sale" the same way for purposes of Section 12077. The
15 term "sale" is also used without definition in many other places in Title 2 of Part 4. See, e.g.,
16 Sections 12001.1, 12001.5, 12020.

17 Consequently, the definition of "sale" in existing Sections 12076(l)(3) and 12077(g)(3) should
18 not be applied to the entirety of new Part 6 in this nonsubstantive study. Proposed Section 17100
19 would therefore define "sale" only for purposes of the provision(s) that would continue existing
20 Sections 12076 and 12077.

21 The staff suspects, however, that in most of the places where the term "sale" is used in
22 reference to a firearm "sale" without being defined, the definition in proposed Section 17100 is
23 intended to apply. At some point in the future, the Legislature might want to consider extending
24 that definition more broadly. Unless the Commission otherwise directs, we will add this issue to
25 the list of minor clean-up issues that the Commission plans to include in its report to the
26 Governor and the Legislature.

27 **§ 17110. "Secure facility" for firearm storage by dealer**

28 17110. As used in [Section 12071], "secure facility" means a building that
29 meets all of the following specifications:

30 (a) All perimeter doorways shall meet one of the following:

31 (1) A windowless steel security door equipped with both a dead bolt and a
32 doorknob lock.

33 (2) A windowed metal door that is equipped with both a dead bolt and a
34 doorknob lock. If the window has an opening of five inches or more measured in
35 any direction, the window shall be covered with steel bars of at least 1/2-inch
36 diameter or metal grating of at least 9 gauge affixed to the exterior or interior of
37 the door.

38 (3) A metal grate that is padlocked and affixed to the licensee's premises
39 independent of the door and doorframe.

40 (b) All windows are covered with steel bars.

41 (c) Heating, ventilating, air-conditioning, and service openings are secured with
42 steel bars, metal grating, or an alarm system.

43 (d) Any metal grates have spaces no larger than six inches wide measured in
44 any direction.

1 (e) Any metal screens have spaces no larger than three inches wide measured in
2 any direction.

3 (f) All steel bars shall be no further than six inches apart.

4 **Comment.** Section 17110 continues former Section 12071(c)(2) without substantive change.

5 See also Sections 17111 (“secure facility” for firearm storage by manufacturer), 17112
6 (special definition of “secure facility” for firearm storage by manufacturer producing fewer than
7 500 firearms per calendar year).

8 **☞ Staff Notes.**

9 (1) Existing Section 12071(c)(2) defines “secure facility” for purposes of that section, which
10 pertains to firearms dealers. Existing Section 12086(d) provides a very different definition of
11 “secure facility” for purposes of that section, which pertains to firearms manufacturers. Existing
12 Section 12086(e) states an exception to the latter definition. The exception pertains to
13 manufacturers producing fewer than 500 firearms per calendar year.

14 Consequently, a single definition of “secure facility” could not be applied to the entirety of
15 new Part 6 without effecting a substantive change. Proposed Section 17110 (“secure facility for
16 firearm storage by dealer”) would therefore define “secure facility” as in existing Section
17 12071(c)(2), and would apply that definition only to the provision(s) that would continue existing
18 Section 12071. Similarly, proposed Section 17111 (“secure facility” for firearm storage by
19 manufacturer) would define “secure facility” as in existing Section 12086(d), and would apply
20 that definition only to the provision(s) that would continue existing Section 12086. Proposed
21 Section 17112 (special definition of “secure facility” for firearm storage by manufacturer
22 producing fewer than 500 firearms per calendar year) would continue the exception stated in
23 Section 12086(e).

24 (2) The drafting of existing Sections 12071(c)(2) and 12086(d)-(e) could perhaps be improved.
25 We have retained the existing language, however, so as not to create a risk of a substantive
26 change.

27 **§ 17111. “Secure facility” for firearm storage by manufacturer**

28 17111. Except as otherwise provided in Section 17112, as used in [Section
29 12086], “secure facility” means that the facility satisfies all of the following:

30 (a) The facility is equipped with a burglar alarm with central monitoring.

31 (b) All perimeter entries to areas in which firearms are stored other than doors,
32 including windows and skylights, are secured with steel window guards or an
33 audible, silent, or sonic alarm to detect entry.

34 (c) All perimeter doorways are designed in one of the following ways:

35 (1) A windowless steel security door equipped with both a deadbolt and a
36 doorknob lock.

37 (2) A windowed metal door equipped with both a deadbolt and a doorknob lock.
38 If the window has an opening of five inches or more measured in any direction, the
39 window is covered with steel bars of at least one-half inch diameter or metal
40 grating of at least nine gauge affixed to the exterior or interior of the door.

41 (3) A metal grate that is padlocked and affixed to the licensee’s premises
42 independent of the door and doorframe.

43 (4) Hinges and hasps attached to doors by welding, riveting, or bolting with nuts
44 on the inside of the door.

1 (5) Hinges and hasps installed so that they cannot be removed when the doors
2 are closed and locked.

3 (d) Heating, ventilating, air-conditioning, and service openings are secured with
4 steel bars, metal grating, or an alarm system.

5 (e) No perimeter metal grates are capable of being entered by any person.

6 (f) Steel bars used to satisfy the requirements of this section are not capable of
7 being entered by any person.

8 (g) Perimeter walls of rooms in which firearms are stored are constructed of
9 concrete or at least 10-gauge expanded steel wire mesh utilized along with typical
10 wood frame and drywall construction. If firearms are not stored in a vault, the
11 facility shall use an exterior security-type door along with a high security, single-
12 key deadbolt, or other door that is more secure. All firearms shall be stored in a
13 separate room away from any general living area or work area. Any door to the
14 storage facility shall be locked while unattended.

15 (h) Perimeter doorways, including the loading dock area, are locked at all times
16 when not attended by paid employees or contracted employees, including security
17 guards.

18 (i) Except when a firearm is currently being tested, any ammunition on the
19 premises is removed from all manufactured guns and stored in a separate and
20 locked room, cabinet, or box away from the storage area for the firearms.
21 Ammunition may be stored with a weapon only in a locked safe.

22 **Comment.** Section 17111 continues former Section 12086(d) without substantive change.

23 See Section 16520 (“firearm”). See also Sections 17110 (“secure facility” for firearm storage
24 by dealer), 17112 (special definition of “secure facility” for firearm storage by manufacturer
25 producing fewer than 500 firearms per calendar year).

26 **§ 17112. Special definition of “secure facility” for firearm storage by manufacturer producing**
27 **fewer than 500 firearms per calendar year**

28 17112. (a) For purposes of [Section 12086], any licensed manufacturer who
29 produces fewer than 500 firearms in a calendar year within this state may
30 maintain a “secure facility” by complying with all of the requirements described
31 in Section 17111, or may design a security plan that is approved by the
32 Department of Justice or the federal Bureau of Alcohol, Tobacco, and Firearms.

33 (b) If a security plan is approved by the federal Bureau of Alcohol, Tobacco,
34 and Firearms, the approved plan, along with proof of approval, shall be filed with
35 the Department of Justice and the local police department. If there is no police
36 department, the filing shall be with the county sheriff’s office.

37 (c) If a security plan is approved by the Department of Justice, the approved
38 plan, along with proof of approval, shall be filed with the local police department.
39 If there is no police department, the filing shall be with the county sheriff’s office.

40 **Comment.** Section 17112 continues former Section 12086(e) without substantive change.

41 See Section 16520 (“firearm”). See also Sections 17110 (“secure facility” for firearm storage
42 by dealer), 17111 (“secure facility” for firearm storage by manufacturer).

1 § 17120. “Secured”

2 17120. As used in [Section 12071], “secured” means a firearm that is made
3 inoperable in one or more of the following ways:

4 (a) The firearm is inoperable because it is secured by a firearm safety device
5 listed on the department’s roster of approved firearm safety devices pursuant to
6 [Section 12088(d)].

7 (b) The firearm is stored in a locked gun safe or long-gun safe which meets the
8 standards for department-approved gun safes set forth in [Section 12088.2].

9 (c) The firearm is stored in a distinct locked room or area in the building that is
10 used to store firearms that can only be unlocked by a key, a combination, or
11 similar means.

12 (d) The firearm is secured with a hardened steel rod or cable that is at least one-
13 eighth of an inch in diameter through the trigger guard of the firearm. The steel
14 rod or cable is secured with a hardened steel lock that has a shackle. The lock and
15 shackle is protected or shielded from the use of a boltcutter and the rod or cable is
16 anchored in a manner that prevents the removal of the firearm from the premises.

17 **Comment.** Section 17120 continues former Section 12071(b)(20)(G)(ii) without substantive
18 change.

19 See Sections 16520 (“firearm”), 16540 (“firearm safety device), 16610 (“gun safe”), 16870
20 (“long-gun safe”).

21 **Staff Note.** Existing Section 12071(b)(20)(G)(ii) defines “secured” for purposes of Section
22 12071. The term “secured” is also used in a variety of other ways in Title 2 of Part 4. See Section
23 12001.1(d) (undetectable knife “secured from unauthorized handling”), 12020(b)(9) (instruments
24 or devices “secured from unauthorized handling”), 12071.1(o)(2) (firearms “secured in a
25 manner that prevents them from being operated”), 12071.4(b)(5) & (j) (same), 12086(d)(2) & (4)
26 (“secured with steel window guards”), 12090 (“secured written permission”); see also Sections
27 12070(c)(2)(B) (“secured creditor”), 12078(u)(2)(B) (same), 12807(b)(2) (same).

28 Consequently, the definition of “secured” in Section 12071(b)(20)(G)(ii) should not be applied
29 to the entirety of new Part 6. Proposed Section 17120 would therefore define the term only for
30 purposes of the provision(s) that would continue existing Section 12071.

31 § 17125. “Security Exemplar”

32 17125. As used in this part, “Security Exemplar” has the same meaning as in
33 Section 922 of Title 18 of the United States Code.

34 **Comment.** With respect to the definition of “Security Exemplar,” Section 17125 continues the
35 first paragraph of former Section 12020(c)(22)(C) without substantive change.

36 **Staff Note.** Existing Section 12020(c)(22)(C) defines “Security Exemplar” as used “in this
37 paragraph.” The term is not used in any other paragraph in Title 2 of Part 4.

38 Consequently, the definition in Section 12020(c)(22)(C) can be applied to the entirety of new
39 Part 6 without effecting a substantive change. Proposed Section 17125 would therefore define
40 “Security Exemplar” as used “in this part.”

41 § 17130. “Seller”

42 17130. As used in [Section 12076], “seller” means, if the transaction is being
43 conducted pursuant to [Section 12082], the person selling, loaning, or
44 transferring the firearm.

1 **Comment.** Section 17130 continues former Section 12076(l)(4) without substantive change.

2 **☞ Staff Note.** Existing Section 12076(l)(4) defines “seller” for purposes of Section 12076. The
3 term “seller” is also used without definition elsewhere in Title 2 of Part 4. See, e.g., Sections
4 12071, 12082, 12086.

5 Consequently, the definition of “seller” in Section 12076(l)(4) could not be applied to the
6 entirety of new Part 6 without creating a risk of a substantive change. Proposed Section 17130
7 would therefore define “seller” only for purposes of the provision(s) that would continue existing
8 Section 12076.

9 The staff suspects, however, that in most, if not all, of the places where the term “seller” is
10 used in reference to a firearm transaction without being defined, a definition similar to or the
11 same as the one in proposed Section 17130 is intended to apply. At some point in the future, the
12 Legislature might want to consider whether a definition of “seller” could be applied more
13 broadly in new Part 6. Unless the Commission otherwise directs, we will add this issue to the list
14 of minor clean-up issues that the Commission plans to include in its report to the Governor and
15 the Legislature.

16 **§ 17140. “Semiautomatic pistol”**

17 17140. As used in [Section 12126], “semiautomatic pistol” means a pistol with
18 an operating mode that uses the energy of the explosive in a fixed cartridge to
19 extract a fired cartridge and chamber a fresh cartridge with each single pull of the
20 trigger.

21 **Comment.** Section 17140 continues former Section 12126(e) without substantive change.

22 See Sections 16530 (“firearm capable of being concealed upon the person,” “pistol,” and
23 “revolver”), 17010 (“pistol”).

24 **☞ Staff Notes.**

25 (1) Existing Section 12126(e) defines “semiautomatic pistol” for purposes of that section. The
26 term is also used without definition elsewhere in Title 2 of Part 4. See Sections 12071(b)(8)(D)(i),
27 12130(d)(1)-(3), 12132(i), 12276.1(a)(4)-(5).

28 Consequently, the definition in Section 12126(e) could not be applied to the entirety of new
29 Part 6 without creating a risk of a substantive change. We have therefore limited the application
30 of proposed Section 17140 to the provision(s) that would continue existing Section 12126.

31 The staff suspects, however, that the term “semiautomatic pistol” is intended to have the same
32 meaning throughout Title 2 of Part 4. At some point in the future, the Legislature might want to
33 consider extending the definition in proposed Section 17140 more broadly. Unless the
34 Commission otherwise directs, we will add this issue to the list of minor clean-up issues that the
35 Commission plans to include in its report to the Governor and the Legislature.

36 (2) Existing Section 12126(e) refers to “a pistol, **as defined in subdivision (a) of Section 12001**
37 **....**” (Emphasis added.) Unlike existing Section 12126(e), proposed Section 17140 would not
38 cross-refer to the provision defining “pistol.” Instead, the Comment would contain such a cross-
39 reference. The Comment would also state that “Section 17140 continues former Section 12126(e)
40 without substantive change.” The provision defining the term “pistol” (proposed Section 16530;
41 see also proposed Section 17010) is drafted to encompass Section 17140.

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

1 § 17150. “Series”

2 17150. As used in Section 16200, “series” includes all other models that are
3 only variations, with minor differences, of those models listed in subdivision (a) of
4 Section 16200, regardless of the manufacturer.

5 **Comment.** Section 17150 continues former Section 12276(e) without substantive change.

6 **Staff Note.** Existing Section 12276(e) explains how the term “series” is used in that section,
7 which refers to series of certain rifles. Without defining “series,” existing Section 12075 refers to
8 the “series and sheet numbers of the register.” Similarly, without defining “series,” existing
9 Section 12127 refers to firing a “series of 50 rounds.”

10 It is clear that “series” has a different import in each of the three contexts. It is also clear that
11 the explanatory language in Section 12276(e) is specific to the rifle series described in Section
12 12276(a).

13 Consequently, that language should not be applied to the entirety of new Part 6. Proposed
14 Section 17150 would therefore define “series” only for purposes of the provision (proposed
15 Section 16200) that would continue existing Section 12276(a)-(d) & (f).

16 § 17160. “Shobi-zue”

17 17160. As used in this part, a “shobi-zue” means a staff, crutch, stick, rod, or
18 pole concealing a knife or blade within it, which may be exposed by a flip of the
19 wrist or by a mechanical action.

20 **Comment.** Section 17160 continues former Section 12020(c)(16) without substantive change.

21 **Staff Note.** Existing Section 12020(c)(16) defines “shobi-zue” as used “in this section.” The
22 term is not used in any other section in Title 2 of Part 4.

23 Consequently, the definition in Section 12020(c)(16) can be applied to the entirety of new Part
24 6 without effecting a substantive change. Proposed Section 17160 would therefore define “shobi-
25 zue” as used “in this part.”

26 § 17170. “Short-barreled shotgun”

27 17170. As used in [Sections 12001.5, 12020, 12029, 12072], 16530, and 16640,
28 “short-barreled shotgun” means any of the following:

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

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

33 (c) Any weapon made from a shotgun (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 18 inches in length.

36 (d) Any device that may be readily restored to fire a fixed shotgun shell 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, can be
41 readily assembled if those parts are in the possession or under the control of the
42 same person.

43 **Comment.** Section 17170 continues former Section 12020(c)(1) without substantive change.

1 See Sections 16520 (“firearm”), 17190 (“shotgun”).

2 **☞ Staff Note.** Proposed Section 17170 has been previously presented. See Memorandum 2007-
3 33, Attachment pp. 43-44. We have added a reference to the definition of “shotgun” to the
4 Comment. Aside from this revision and renumbering, we have not made any changes in it.

5 **§ 17180. “Short-barreled rifle”**

6 17180. As used in [Sections 12001.5, 12020, 12029, 12072], 16530, and 16640,
7 “short-barreled rifle” means any of the following:

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

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

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

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

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

20 **Comment.** Section 17180 continues former Section 12020(c)(2) without substantive change.

21 See Section 17090 (“rifle”).

22 **☞ Staff Note.** Proposed Section 17180 has been previously presented. See Memorandum 2007-
23 33, Attachment pp. 44-45. We have added a reference to the definition of “rifle” to the Comment.
24 Aside from this revision and renumbering, we have not made any changes in it.

25 **§ 17190. “Shotgun”**

26 17190. As used in [Sections 12001.5, 12020, 12021.5, 12029, 12072(f)(1)(A)],
27 16530, 16640, and 16870, “shotgun” means a weapon designed or redesigned,
28 made or remade, and intended to be fired from the shoulder and designed or
29 redesigned and made or remade to use the energy of the explosive in a fixed
30 shotgun shell to fire through a smooth bore either a number of projectiles (ball
31 shot) or a single projectile for each pull of the trigger.

32 **Comment.** Section 17190 continues former Section 12020(c)(21) without substantive change.

33 **☞ Staff Note.** Existing paragraph (c)(21) of Section 12020 defines “shotgun” for purposes of
34 that section, including the definition of “short-barreled shotgun” given in paragraph (c)(1). A
35 number of other existing provisions incorporate Sections 12020’s definitions of “shotgun” or
36 “short-barreled shotgun.” See Sections 12001(f), 12001.5, 12021.5(b), (c)(2), (3) & (6), 12029,
37 12072(f)(1)(A), 12087.6(c). Still other existing provisions use the term “shotgun,” “short-
38 barreled shotgun,” “semiautomatic shotgun”, or “shotgun shell” without definition. See Sections
39 12039, 12095(a) & (b)(1), 12096-12099, 12276(c), 12276.1, 12301(a)(1) & (3), 12323(b),
40 12601(b)(3)-(4) & (c).

41 Consequently, the definition of “shotgun” in Section 12020(c)(21) could not be applied to the
42 entirety of new Part 6 without creating a risk of a substantive change. We have therefore limited
43 the application of proposed Section 17190 to the provision(s) that currently incorporate Section

1 12020(c)(21)'s definition of "shotgun" (either directly or by reference to Section 12020(c)(1)'s
2 definition of "short-barreled shotgun").

3 The staff suspects, however, that the term "shotgun" is intended to have the same meaning
4 wherever it is used in Title 2 of Part 4. At some point in the future, the Legislature might want to
5 consider extending the definition in proposed Section 17190 to the entirety of new Part 6. Unless
6 the Commission otherwise directs, we will add this issue to the list of minor clean-up issues that
7 the Commission plans to include in its report to the Governor and the Legislature.

8 **§ 17200. "Shuriken"**

9 17200. As used in this part, a "shuriken" means any instrument, without
10 handles, consisting of a metal plate having three or more radiating points with one
11 or more sharp edges and designed in the shape of a polygon, trefoil, cross, star,
12 diamond, or other geometric shape, for use as a weapon for throwing.

13 **Comment.** Section 17200 continues former Section 12020(c)(11) without substantive change.

14 **☞ Staff Note.** Existing Section 12020(c)(11) defines "shuriken" for purposes of that section.
15 The only other section in Title 2 of Part 4 that uses the term is Section 12029, which also appears
16 to incorporate the definition given in Section 12020.

17 Consequently, the definition in Section 12020(c)(11) can be applied to the entirety of new Part
18 6 of the Penal Code without effecting a substantive change. Proposed Section 17200 would
19 therefore define "shuriken" as used "in this part."

20 **§ 17210. "Silencer"**

21 17210. As used in [Sections 12500-12520], "silencer" means any device or
22 attachment of any kind designed, used, or intended for use in silencing,
23 diminishing, or muffling the report of a firearm. The term "silencer" also includes
24 any combination of parts, designed or redesigned, and intended for use in
25 assembling a silencer or fabricating a silencer and any part intended only for use
26 in such assembly or fabrication.

27 **Comment.** Section 17210 continues former Section 12500 without substantive change.

28 **☞ Staff Note.** Existing Section 12500 defines "silencer" for purposes of the chapter containing
29 that section — i.e., Sections 12500-12520. Aside from that chapter, the term "silencer" is used
30 only once in Title 2 of Part 4. Section 12776.1(a)(4)(A) uses the term without defining it.

31 Because Section 12776.1(a)(4)(A) refers to a "silencer" without defining the term, the
32 definition in Section 12500 could not be applied to the entirety of new Part 6 without creating a
33 risk of a substantive change. We have therefore limited the application of proposed Section 17210
34 to the provision(s) that would continue existing Sections 12500-12520.

35 The staff suspects, however, that the term "silencer" is intended to have the same meaning
36 throughout Title 2 of Part 4. At some point in the future, the Legislature might want to consider
37 extending the definition to the entirety of new Part 6. Unless the Commission otherwise directs,
38 we will add this issue to the list of minor clean-up issues that the Commission plans to include in
39 its report to the Governor and the Legislature.

40 **§ 17220. "SKS rifle"**

41 17220. Notwithstanding paragraph (11) of subdivision (a) of Section 16200, an
42 "SKS rifle" under [Section 12881] means any SKS rifle commonly referred to as
43 an "SKS Sporter" version, manufactured to accept a detachable AK-47 magazine
44 and imported into this state and sold by a licensed gun dealer, or otherwise

1 lawfully possessed in this state by a resident of this state who is not a licensed gun
2 dealer, between January 1, 1992, and December 19, 1997.

3 **Comment.** Section 17220 continues former Section 12281(i) without substantive change.

4 **☞ Staff Note.** Existing Section 12281(i) defines “SKS rifle” for purposes of that section. The
5 term is not used in any other section in Title 2 of Part 4.

6 In a list of rifles classified as assault weapons, however, Section 12276(a)(11) refers without
7 definition to an “SKS with detachable magazine.” Section 12281(i) makes clear that its definition
8 of “SKS rifle” applies “[n]otwithstanding paragraph (11) of subdivision (a) of Section 12276
9”

10 Consequently, the definition of “SKS rifle” in Section 12281(i) should not be applied to the
11 entirety of new Part 6. Proposed Section 17220 would therefore define the term only for purposes
12 of the provision(s) that would continue existing Section 12281.

13 § 17230. “Stun gun”

14 17230. As used in this part, “stun gun” includes any item, except a taser, used
15 or intended to be used as either an offensive or defensive weapon capable of
16 temporarily immobilizing a person by the infliction of an electrical charge.

17 **Comment.** Section 17230 continues former Section 12650 without substantive change.

18 **☞ Staff Note.** Existing Section 12650 defines “stun gun” for purposes of the chapter containing
19 that section — i.e., Sections 12550-12654. Aside from that chapter, the term “stun gun” is not
20 used in Title 2 of Part 4.

21 Consequently, the definition of “stun gun” in Section 12650 can be applied to the entirety of
22 new Part 6 without effecting a substantive change. Proposed Section 17230 would therefore
23 define “stun gun” as used “in this part.”

24 § 17240. “Tear gas”

25 17240. (a) As used in this part, “tear gas” applies to and includes any liquid,
26 gaseous or solid substance intended to produce temporary physical discomfort or
27 permanent injury through being vaporized or otherwise dispersed in the air.

28 (b) Notwithstanding subdivision (a), “tear gas” does not apply to, and does not
29 include, any substance registered as an economic poison as provided in Chapter 2
30 (commencing with Section 12751) of Division 7 of the Food and Agricultural
31 Code, provided that such substance is not intended to be used to produce
32 discomfort or injury to human beings.

33 **Comment.** Section 17240 continues former Section 12401 without substantive change.

34 **☞ Staff Note.** Existing Section 12401 defines “tear gas” for purposes of the chapter containing
35 that section — i.e., Sections 12401-12426. The immediately adjacent provision, existing Section
36 12402, defines “tear gas weapon” for purposes of the same chapter. Aside from that chapter, the
37 only other place in Title 2 of Part 4 that uses the term “tear gas” is Section 12601(b)(7), which
38 adopts Section 12402’s definition of “tear gas weapon.”

39 Consequently, the definition of “tear gas” in Section 12401 can be applied to the entirety of
40 new Part 6 without effecting a substantive change. Proposed Section 17240 would therefore
41 define “tear gas” as used “in this part.”

42 § 17250. “Tear gas weapon”

43 17250. As used in this part, “tear gas weapon” applies to and includes:

1 (a) Any shell, cartridge, or bomb capable of being discharged or exploded,
2 when the discharge or explosion will cause or permit the release or emission of
3 tear gas.

4 (b) Any revolver, pistol, fountain pen gun, billy, or other form of device,
5 portable or fixed, intended for the projection or release of tear gas, except those
6 regularly manufactured and sold for use with firearm ammunition.

7 **Comment.** Section 17250 continues former Section 12402 without substantive change.

8 **☞ Staff Note.** Existing Section 12402 defines “tear gas weapon” for purposes of the chapter
9 containing that section — i.e., Sections 12401-12426. Aside from that chapter, the only other
10 place in Title 2 of Part 4 that uses the term “tear gas weapon” is Section 12601(b)(7), which
11 adopts the definition in Section 12402.

12 Consequently, the definition of “tear gas weapon” in Section 12402 can be applied to the
13 entirety of new Part 6 without effecting a substantive change. Proposed Section 17250 would
14 therefore define “tear gas weapon” as used “in this part.”

15 **§ 17260. “Transaction”**

16 17260. (a) As used in Section 16730, “transaction” means a single sale, lease,
17 or transfer of any number of pistols, revolvers, or other firearms capable of being
18 concealed upon the person.

19 (b) As used in [Section 12077(d)], “transaction” means a single sale, loan, or
20 transfer of any number of firearms that are not handguns.

21 **Comment.** Subdivision (a) of Section 17260 continues the second sentence of former Section
22 12070(c)(1)(A) without substantive change.

23 Subdivision (b) continues the second sentence of former Section 12077(d)(4) without
24 substantive change.

25 See Sections 16520 (“firearm”), 16530 (“firearm capable of being concealed upon the
26 person,” “pistol,” and “revolver”), 16640 (“handgun”), 17010 (“pistol”), 17080 (“revolver”).

27 **☞ Staff Notes.**

28 (1) Existing Section 12070(c)(1)(A) defines “transaction” for purposes of Section 12070(c)(1)’s
29 definition of “infrequent.” Existing Section 12077(d)(4) provides a different definition of
30 “transaction” for purposes of Section 12077(d). Numerous other provisions in Title 2 of Part 4
31 use the term “transaction” without defining it. See Sections 12020(b)(11), (13)-(14), 12071(b)(5)
32 & (18)(B), (e)(3)(C), 12072(a)(9)(B)(viii) & (d), 12073(b), 12076(b)(2) & (5), (f)(2), (i)(1)-(2),
33 (j), (l)(4), 12076.5(b), 12077(b)(1), 12078(a)(1)-(2) & (8)(E), (t)(1), 12082(a), 12088.9(a). See
34 also Section 12071(b)(17), which uses the term “firearms transaction record”, and
35 12071(c)(4)(A), which defines “firearms transaction record” for purposes of Section
36 12071(b)(17).

37 Consequently, it would not be possible to apply a single definition of “transaction” to the
38 entirety of new Part 6 without effecting a substantive change. We have therefore limited the
39 application of subdivision (a) of proposed Section 17260 to proposed Section 16730, which
40 would continue existing Section 12070(c)(1). Similarly, we have limited the application of
41 subdivision (b) of proposed Section 17260 to the provision(s) that would continue existing
42 Sections 12077(d).

43 (2) The term “handgun” encompasses “any pistol, revolver, or firearm capable of being
44 concealed upon the person.” See proposed Section 16640, which would continue existing Section
45 12001(a)(2) without substantive change.

46 Consequently, proposed Section 17260(a) could be shortened as follows, without changing its
47 meaning:

1 17260. (a) As used in Section 16730, “transaction” means a single sale, lease, or
2 transfer of any number of ~~pistols, revolvers, or other firearms capable of being~~
3 ~~concealed upon the person~~ handguns.

4 A revision like this was recently made in Section 12001(n).

5 Should a similar revision be made in proposed Section 17260(a)? That would mirror the
6 language used in proposed Section 17260(b), which refers to “a single sale, loan, or transfer of
7 any number of firearms that are **not handguns**.” (Emphasis added.) We invite comment on this
8 point.

9 § 17270. “Unconventional pistol”

10 17270. As used in this part, an “unconventional pistol” means a firearm with
11 both of the following characteristics:

12 (a) It does not have a rifled bore.

13 (b) It has a barrel or barrels of less than 18 inches in length or has an overall
14 length of less than 26 inches.

15 **Comment.** Section 17270 continues former Section 12020(c)(12) without substantive change.
16 See Sections 16520 (“firearm”), 17010 (“pistol”).

17 **Staff Note.** Existing Section 12020(c)(12) defines “unconventional pistol” as used “in this
18 section.” The term is not used in any other section in Title 2 of Part 4.

19 Consequently, the definition in Section 12020(c)(12) can be applied to the entirety of new Part
20 6 without effecting a substantive change. Proposed Section 17270 would therefore define
21 “unconventional pistol” as used “in this part.”

22 § 17280. “Undetectable firearm”

23 17280. As used in this part, “undetectable firearm” means a weapon that meets
24 either of the following requirements:

25 (a) After removal of grips, stocks, and magazines, the weapon is not as
26 detectable as the Security Exemplar, by a walk-through metal detector calibrated
27 and operated to detect the Security Exemplar.

28 (b) Any major component of the weapon, when subjected to inspection by the
29 types of X-ray machines commonly used at airports, does not generate an image
30 that accurately depicts the shape of the component. Barium sulfate or other
31 compounds may be used in the fabrication of the component.

32 **Comment.** Section 17280 continues former Section 12020(c)(22)(A)-(B) without substantive
33 change.

34 See Sections 16520(a) & (f) (“firearm”), 16905 (“major component”), 17125 (“Security
35 Exemplar”).

36 **Staff Notes.**

37 (1) Existing Section 12020(c)(22) defines “undetectable firearm” as used “in this section.” The
38 term is not used in any other section in Title 2 of Part 4.

39 Consequently, the definition in Section 12020(c)(22) can be applied to the entirety of new Part
40 6 without effecting a substantive change. Proposed Section 17280 would therefore define
41 “undetectable firearm” as used “in this part.”

42 (2) The first paragraph of existing Section 12020(c)(22)(C) contains definitions of “firearm,”
43 “major component,” and “Security Exemplar,” for use in interpreting Section 12020(c)(22)(A)-
44 (B). Instead of placing these definitions within proposed Section 17280, we have (1) modified the

1 definition of “firearm” (proposed Section 16520) to continue the definition given in Section
2 12020(c)(22)(C) and (2) inserted definitions of “major component” (proposed Section 16905)
3 and “Security Exemplar” (proposed Section 17125) alphabetically in the list of definitions.

4 (3) The second paragraph of existing Section 12020(c)(22)(C) is substantive, not definitional. It
5 reads:

6 All firearm detection equipment newly installed in nonfederal public buildings in this
7 state shall be of a type identified by either the United States Attorney General, the Secretary
8 of Transportation, or the Secretary of the Treasury, as appropriate, as available state-of-the-
9 art equipment capable of detecting an undetectable firearm, as defined, while distinguishing
10 innocuous metal objects likely to be carried on one’s person sufficient for reasonable passage
11 of the public.

12 Instead of placing this paragraph in “Division 2. Definitions” of “Title. 1. Preliminary
13 Provisions,” we suggest placing it in “Chapter 7. Undetectable Firearm” of “Division 3.
14 Disguised or Misleading Appearance” of “Title 4. Firearms and Similar Weapons.” We have
15 followed that approach in proposed Section 17280 and in the outline attached to Memorandum
16 2008-16.

17 **§ 17290. “Undetectable knife”**

18 17290. As used in this part, “undetectable knife” means any knife or other
19 instrument, with or without a handguard, that satisfies all of the following
20 requirements:

21 (a) It is capable of ready use as a stabbing weapon that may inflict great bodily
22 injury or death.

23 (b) It is commercially manufactured to be used as a weapon.

24 (c) It is not detectable by a metal detector or magnetometer, either handheld or
25 otherwise, which is set at standard calibration.

26 **Comment.** Section 17290 continues the second sentence of former Section 12001.1(a) without
27 substantive change.

28 **Staff Note.** Existing Section 12001.1(a) defines “undetectable knife” as used “in this
29 section.” The term is not used in any other section in Title 2 of Part 4.

30 Consequently, the definition in Section 12001.1(a) can be applied to the entirety of new Part 6
31 without effecting a substantive change. Proposed Section 17290 would therefore define
32 “undetectable knife” as used “in this part.

33 **§ 17300. “Unsafe handgun”**

34 17300. As used in this part, “unsafe handgun” means any pistol, revolver, or
35 other firearm capable of being concealed upon the person, for which any of the
36 following is true:

37 (a) For a revolver:

38 (1) It does not have a safety device that, either automatically in the case of a
39 double-action firing mechanism, or by manual operation in the case of a single-
40 action firing mechanism, causes the hammer to retract to a point where the firing
41 pin does not rest upon the primer of the cartridge.

42 (2) It does not meet the firing requirement for handguns.

43 (3) It does not meet the drop safety requirement for handguns.

44 (b) For a pistol:

1 (1) *It does not have a positive manually operated safety device, as determined by*
2 *standards relating to imported guns promulgated by the federal Bureau of*
3 *Alcohol, Tobacco, and Firearms.*

4 (2) *It does not meet the firing requirement for handguns.*

5 (3) *It does not meet the drop safety requirement for handguns.*

6 (4) *Commencing January 1, 2006, for a center fire semiautomatic pistol that is*
7 *not already listed on the roster pursuant to [Section 12131], it does not have*
8 *either a chamber load indicator, or a magazine disconnect mechanism.*

9 (5) *Commencing January 1, 2007, for all center fire semiautomatic pistols that*
10 *are not already listed on the roster pursuant to [Section 12131], it does not have*
11 *both a chamber load indicator and if it has a detachable magazine, a magazine*
12 *disconnect mechanism.*

13 (6) *Commencing January 1, 2006, for all rimfire semiautomatic pistols that are*
14 *not already listed on the roster pursuant to [Section 12131], it does not have a*
15 *magazine disconnect mechanism, if it has a detachable magazine.*

16 (7)(A) *Commencing January 1, 2010, for all semiautomatic pistols that are not*
17 *already listed on the roster pursuant to [Section 12131], it is not designed and*
18 *equipped with a microscopic array of characters that identify the make, model,*
19 *and serial number of the pistol, etched or otherwise imprinted in two or more*
20 *places on the interior surface or internal working parts of the pistol, and that are*
21 *transferred by imprinting on each cartridge case when the firearm is fired,*
22 *provided that the Department of Justice certifies that the technology used to create*
23 *the imprint is available to more than one manufacturer unencumbered by any*
24 *patent restrictions.*

25 (B) *As specified in Section _____, the Attorney General may also approve a*
26 *method of equal or greater reliability and effectiveness in identifying the specific*
27 *serial number of a firearm from spent cartridge casings discharged by that*
28 *firearm.*

29 (C) *The microscopic array of characters required by this section shall not be*
30 *considered the name of the maker, model, manufacturer's number, or other mark*
31 *of identification, including any distinguishing number or mark assigned by the*
32 *Department of Justice, within the meaning of [Sections 12090 and 12094].*

33 **Comment.** *Section 17300 continues the introductory clause and subdivisions (a) and (b)(1)-(6)*
34 *of former Section 12126 without substantive change. Section 17300 also continues the first*
35 *sentence, part of the second sentence, and the last sentence of former Section 12126(b)(7) without*
36 *substantive change. The remainder of former Section 12126(b)(7) is continued in Section _____*
37 *without substantive change.*

38 *See Sections 16380 (“chamber load indicator”), 16500 (“drop safety requirement for*
39 *handguns”), 16520 (“firearm”), 16530 (“firearm capable of being concealed upon the person,”*
40 *“pistol,” and “revolver”), 16560 (“firing requirement for handguns”), 16640 (“handgun”),*
41 *16900 (“magazine disconnect mechanism”), 17010 (“pistol”), 17080 (“revolver”), 17140*
42 *(“semiautomatic pistol”).*

1 **☞ Staff Notes.**

2 (1) Existing Section 12126(a)-(b) defines “unsafe handgun” as used “in this chapter” – i.e.,
3 Sections 12125-12133. Aside from that chapter, the term is not used in Title 2 of Part 4.

4 Consequently, the definition in Section 12126(a)-(b) can be applied to the entirety of new Part
5 6 without effecting a substantive change. Proposed Section 17300 would therefore define “unsafe
6 handgun” as used “in this part.”

7 (2) Existing Section 12126(a)-(b) refers to:

- 8 • “[A]ny pistol, revolver, or other firearm capable of being concealed upon the person,
9 **as defined in subdivision (a) of Section 12001**”
- 10 • “[T]he firing requirement for handguns **pursuant to Section 12127**”
- 11 • “[T]he drop safety requirement for handguns **pursuant to Section 12128**”

12 (Emphasis added.) “Firing requirement for handguns” and “drop safety requirement for
13 handguns” are defined terms. See proposed Sections 16500, 16560.

14 Unlike existing Section 12126(a)-(b), proposed Section 17300 would not cross-refer to the
15 provisions defining “pistol, revolver, or other firearm capable of being concealed upon the
16 person,” “firing requirement for handguns,” and “drop safety requirement for handguns.”
17 Instead, the Comment would contain such cross-references. The Comment would also state that
18 “Section 17300 continues the introductory clause and subdivisions (a) and (b) of former Section
19 12126 without substantive change.” The provisions defining the terms are all drafted to
20 encompass Section 17300.

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

27 (3) The drafting of existing Section 12126(a)-(b) could perhaps be improved. We have stuck
28 close to the existing language, however, so as not to create a risk of a substantive change.

29 A possibility that occurred to us would be to break the material into three separate provisions,
30 along the following lines:

31 17300. As used in this part, “unsafe handgun” means any pistol, revolver, or other
32 firearm capable of being concealed upon the person, for which any of the
33 circumstances specified in Section 17301 or 17302 are true.

34 17301. A revolver is an “unsafe handgun” if any of the following are true:

35 (a) It does not have a safety device that, either automatically in the case of a
36 double-action firing mechanism, or by manual operation in the case of a single-
37 action firing mechanism, causes the hammer to retract to a point where the firing pin
38 does not rest upon the primer of the cartridge.

39 (b) It does not meet the firing requirement for handguns.

40 (c) It does not meet the drop safety requirement for handguns.

41 17302. A pistol is an “unsafe handgun” if any of the following are true:

42 (a) It does not have a positive manually operated safety device, as determined by
43 standards relating to imported guns promulgated by the federal Bureau of Alcohol,
44 Tobacco, and Firearms.

45 (b) It does not meet the firing requirement for handguns.

46 (c) It does not meet the drop safety requirement for handguns.

47 (d) It is a center fire semiautomatic pistol, it was not listed on the roster pursuant
48 to [Section 12131] by January 1, 2006, and it does not have either a chamber load
49 indicator or a magazine disconnect mechanism.

1 (5) It is a center fire semiautomatic pistol, it was not listed on the roster pursuant
2 to [Section 12131] by January 1, 2007, and it does not have both a chamber load
3 indicator and, if it has a detachable magazine, a magazine disconnect mechanism.

4 (6) It is a rimfire semiautomatic pistol, it was not listed on the roster pursuant to
5 [Section 12131] by January 1, 2006, and, if it has a detachable magazine, it does not
6 have a magazine disconnect mechanism.

7 (7) It is a semiautomatic pistol, it is not listed on the roster pursuant to [Section
8 12131] by January 1, 2010, and it is not designed and equipped with a microscopic
9 array of characters that

10 This or other means of improving the drafting might be worth considering in the future. Unless
11 the Commission otherwise directs, we will add this matter to the list of minor clean-up issues that
12 the Commission plans to include in its report to the Governor and the Legislature.

13 When and if this matter is considered, one point to examine is the meaning of Section 12126's
14 introductory clause, which says: "As used in this chapter, 'unsafe handgun' means any pistol,
15 revolver, **or other firearm capable of being concealed upon the person**, ... for which any of the
16 following is true" (Emphasis added.) Subdivision (a) specifies unsafe conditions for a "pistol"
17 and subdivision (b) specifies unsafe conditions for a "revolver." It is not clear what rules would
18 pertain to any "other firearm capable of being concealed upon the person." Is that phrase
19 surplusage? If so, it should be deleted. If not, clarification would be helpful.

20 A related point is that the term "handgun" encompasses "any pistol, revolver, or firearm
21 capable of being concealed upon the person." See proposed Section 16640, which would
22 continue existing Section 12001(a)(2) without substantive change.

23 Consequently, proposed Section 17300 could perhaps be shortened as follows:

24 17300. As used in this part, "unsafe handgun" means any ~~pistol, revolver, or other~~
25 ~~firearm capable of being concealed upon the person~~, handgun for which any of the
26 following is true

27 A revision like this was recently made in Section 12001(n).

28 Would such a revision also be appropriate in this context? Given the uncertainty relating to
29 any "other firearm capable of being concealed upon the person," we would not make such a
30 revision in this nonsubstantive study. This drafting issue does, however, warrant future
31 consideration.

32 (5) Existing Section 12126(b)(7) reads:

33 12126. As used in this chapter, "unsafe handgun" means any pistol, revolver, or
34 other firearm capable of being concealed upon the person, as defined in subdivision
35 (a) of Section 12001, for which any of the following is true:

36

37 (b) For a pistol:

38

39 (7) Commencing January 1, 2010, for all semiautomatic pistols that are not
40 already listed on the roster pursuant to Section 12131, it is not designed and
41 equipped with a microscopic array of characters that identify the make, model, and
42 serial number of the pistol, etched or otherwise imprinted in two or more places on
43 the interior surface or internal working parts of the pistol, and that are transferred
44 by imprinting on each cartridge case when the firearm is fired, provided that the
45 Department of Justice certifies that the technology used to create the imprint is
46 available to more than one manufacturer unencumbered by any patent restrictions.
47 The Attorney General may also approve a method of equal or greater reliability and
48 effectiveness in identifying the specific serial number of a firearm from spent
49 cartridge casings discharged by that firearm than that which is set forth in this
50 paragraph, to be thereafter required as otherwise set forth by this paragraph where
51 the Attorney General certifies that this new method is also unencumbered by any

1 patent restrictions. Approval by the Attorney General shall include notice of that fact
2 via regulations adopted by the Attorney General for purposes of implementing that
3 method for purposes of this paragraph. The microscopic array of characters required
4 by this section shall not be considered the name of the maker, model, manufacturer's
5 number, or other mark of identification, including any distinguishing number or mark
6 assigned by the Department of Justice, within the meaning of Sections 12090 and
7 12094.

8 *The provision contains both definitional and substantive material.*

9 *Instead of placing all of that material in "Division 2. Definitions" of "Title. 1. Preliminary*
10 *Provisions," we suggest placing some of it in "Division 12. Miscellaneous Duties of the*
11 *Department of Justice" of "Title 4. Firearms and Similar Weapons." We have followed that*
12 *approach in proposed Section 17300 and in the outline attached to Memorandum 2008-16.*

13 **§ 17310. "Used firearm"**

14 *17310. As used in this part, "used firearm" means a firearm that has been sold*
15 *previously at retail and is more than three years old.*

16 **Comment.** *Section 17310 continues the last sentence of former Section 12070(b)(5) without*
17 *substantive change.*

18 *See Section 16520 ("firearm").*

19 **Staff Note.** *The last sentence of existing Section 12070(b)(5) defines "used firearm" as used*
20 *"in this paragraph." The term is not used in any other paragraph in Title 2 of Part 4.*

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 17310 would therefore define "used*
23 *firearm" as used "in this part."*

24 **§ 17320. "Violent felony"**

25 *17320. For purposes of [Section 12370] only, "violent felony" refers to the*
26 *specific crimes listed in subdivision (c) of Section 667.5, and to crimes defined*
27 *under the applicable laws of the United States or any other state, government, or*
28 *country that are reasonably equivalent to the crimes listed in subdivision (c) of*
29 *Section 667.5.*

30 **Comment.** *Section 17320 continues former Section 12370(e) without substantive change.*

31 **Staff Note.** *Existing Section 12370(e) defines "violent felony" as shown above for purposes*
32 *of "this section only." (Emphasis added.) The term "violent felony" is not used elsewhere in Title*
33 *2 of Part 4. But existing Section 12021.1(b) lists crimes that are considered to be a violent offense*
34 *for purposes of that section. That list differs from the one in Section 667.5(c), which is referenced*
35 *in Section 12370(e). Existing Section 12022.2(b) incorporates Section 12021.1(b)'s usage of the*
36 *term "violent offense."*

37 *Proposed Section 17320 would continue Section 12370(e)'s definition of "violent felony." To*
38 *avoid any possibility of a substantive change, the proposed provision would expressly state that it*
39 *applies "only" for purposes of the provision(s) that would continue Section 12370.*

40 *We have not included a definition of "violent offense" in "Division 2. Definitions" of "Title 1.*
41 *Preliminary Provisions." Section 12021(b) states:*

42 *(b) As used in this section, a violent offense includes any of the following:*

43 *(1) Murder or voluntary manslaughter.*

44 *(2)*

45 *Notably, the term "violent offense" is not enclosed in quotation marks and that term is not used*
46 *elsewhere in Section 12021. Instead, subdivisions (a) and (c) cross-refer to subdivision (b).*

1 *Perhaps we are being overly cautious, but we felt it best not to treat subdivision (b) as a*
2 *definition and separate it from the other material now in Section 12021. Does the Commission*
3 *agree with that decision, or should we include a definition of “violent offense” here? Comments*
4 *on this point would be especially useful.*

5 **§ 17330. “Wallet gun”**

6 17330. As used in this part, “wallet gun” means any firearm mounted or
7 enclosed in a case, resembling a wallet, designed to be or capable of being carried
8 in a pocket or purse, if the firearm may be fired while mounted or enclosed in the
9 case.

10 **Comment.** Section 17330 continues former Section 12020(c)(4) without substantive change.
11 See Section 16520 (“firearm”).

12 **§ 17340. “Wholesaler”**

13 17340. (a) As used in this part, “wholesaler” means any person who is licensed
14 as a dealer pursuant to Chapter 44 (commencing with Section 921) of Title 18 of
15 the United States Code and the regulations issued pursuant thereto, who sells,
16 transfers, or assigns firearms, or parts of firearms, to persons who are licensed as
17 manufacturers, importers, or gunsmiths pursuant to Chapter 44 (commencing with
18 Section 921) of Title 18 of the United States Code, or persons licensed pursuant to
19 [Section 12071], and includes persons who receive finished parts of firearms and
20 assemble them into completed or partially completed firearms in furtherance of
21 that purpose.

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

28 **Comment.** Section 17340 continues former Section 12001(h) without substantive change.
29 See Sections 16520 (“firearm”), 16630 (“gunsmith”).

30 **§ 17350. “Writing pen knife”**

31 17350. As used in this part, “writing pen knife” means a device that appears to
32 be a writing pen but has concealed within it a pointed, metallic shaft that is
33 designed to be a stabbing instrument which is exposed by mechanical action or
34 gravity which locks into place when extended or the pointed, metallic shaft is
35 exposed by the removal of the cap or cover on the device.

36 **Comment.** Section 17350 continues former Section 12020(c)(19) without substantive change.

37 **§ 17360. “Zip gun”**

38 17360. As used in this part, “zip gun” means any weapon or device that meets
39 all of the following criteria:

1 (a) It was not imported as a firearm by an importer licensed pursuant to Chapter
2 44 (commencing with Section 921) of Title 18 of the United States Code and the
3 regulations issued pursuant thereto.

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

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

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

14 **Comment.** Section 17360 continues former Section 12020(c)(10) without substantive change.
15 See Section 16520 (“firearm”).

16 TITLE 2. WEAPONS GENERALLY

17 DIVISION 1. MISCELLANEOUS RULES RELATING TO WEAPONS 18 GENERALLY

19 § 17500. Bearing deadly weapon with intent to assault

20 17500. Every person having upon the person any deadly weapon, with intent to
21 assault another, is guilty of a misdemeanor.

22 **Comment.** Section 17500 continues former Section 12024 without substantive change.

23 § 17505. Advertising sale of prohibited weapon or device

24 17505. It shall be unlawful for any person, as defined in [Section 12277], to
25 advertise the sale of any weapon or device, the possession of which is prohibited
26 by [Section 12020, 12220, 12280, 12303, 12320, 12321, 12355, or 12520], in any
27 newspaper, magazine, circular, form letter, or open publication that is published,
28 distributed, or circulated in this state, or on any billboard, card, label, or other
29 advertising medium, or by means of any other advertising device.

30 **Comment.** Section 17505 continues former Section 12020.5 without substantive change.

31 § 17510. Picketing with deadly weapon

32 17510. (a) Any person who does any of the following acts while engaged in
33 picketing, or other informational activities in a public place relating to a
34 concerted refusal to work, is guilty of a misdemeanor:

35 (1) Carries concealed upon the person, or within any vehicle which is under the
36 person’s control or direction, any pistol, revolver, or other firearm capable of
37 being concealed upon the person.

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

3 (3) Carries a deadly weapon.

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

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

9 **Comment.** Subdivision (a) of Section 17510 continues former Section 12590(a)(1)-(3) without
10 substantive change.

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

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

15 See Sections 16520 ("firearm"), 16530 ("firearm capable of being concealed upon the
16 person," "pistol," and "revolver").

17 **Staff Note.** Proposed Section 17510 has been previously presented. See Memorandum 2007-
18 33, Attachment pp. 47-48. Aside from renumbering, we have not made any changes in it. We have
19 italicized it here to raise a drafting issue.

20 Specifically, the term "handgun" encompasses "any pistol, revolver, or firearm capable of
21 being concealed upon the person." See proposed Section 16640, which would continue existing
22 Section 12001(a)(2) without substantive change.

23 Consequently, proposed Section 17510(a)(1) could be shortened as follows, without changing
24 its meaning:

25 (1) Carries concealed upon the person, or within any vehicle which is under the
26 person's control or direction, any ~~pistol, revolver, or other firearm capable of being~~
27 ~~concealed upon the person~~ handgun.

28 A revision like this was recently made in Section 12001(n).

29 Should a similar revision be made in proposed Section 17510(a)(1)? We invite comment on this
30 point.

31 DIVISION 2. GENERALLY PROHIBITED WEAPONS

32 CHAPTER 1. EXEMPTIONS

33 § 17700. Exemption for antique firearm

34 17700. The provisions listed in Section 16590 do not apply to an antique
35 firearm.

36 **Comment.** Section 17700 continues the first sentence of former Section 12020(b)(5) without
37 substantive change.

38 See Section 16170 ("antique firearm").

39 § 17705. Exemption for firearm or ammunition constituting curio or relic

40 17705. (a) The provisions listed in Section 16590 do not apply to any firearm or
41 ammunition that is a curio or relic as defined in Section 478.11 of Title 27 of the

1 Code of Federal Regulations and that is in the possession of a person permitted to
2 possess the items under Chapter 44 (commencing with Section 921) of Title 18 of
3 the United States Code and the regulations issued pursuant thereto.

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

13 **Comment.** Section 17705 continues former Section 12020(b)(7) without substantive change.
14 See Section 16520 (“firearm”).

15 **§ 17710. Exemption for “any other weapon” in possession of person permitted to possess it**
16 **under federal Gun Control Act of 1968**

17 17710. (a) The provisions listed in Section 16590 do not apply to “any other
18 weapon” as defined in subsection (e) of Section 5845 of Title 26 of the United
19 States Code, which is in the possession of a person permitted to possess the
20 weapons under the federal Gun Control Act of 1968 (Public Law 90-618), as
21 amended, and the regulations issued pursuant thereto.

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

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

32 **Comment.** Section 17710 continues former Section 12020(b)(8) without substantive change.

33 **§ 17715. Exemption for historical society, museum, or institutional collection**

34 17715. The provisions listed in Section 16590 do not apply to an instrument or
35 device that is possessed by a federal, state, or local historical society, museum, or
36 institutional collection that is open to the public if all of the following conditions
37 are satisfied:

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

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

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

41 **Comment.** Section 17715 continues former Section 12020(b)(9) without substantive change.

1 See Section 16520 (“firearm”).

2 **§ 17720. Exemption for motion picture, television, video production, or entertainment event**

3 17720. The provisions listed in Section 16590 do not apply to an instrument or
4 device, other than a short-barreled shotgun or a short-barreled rifle, which is
5 possessed or used during the course of a motion picture, television, or video
6 production or entertainment event by an authorized participant therein in the
7 course of making that production or event or by an authorized employee or agent
8 of the entity producing that production or event.

9 **Comment.** Section 17720 continues former Section 12020(b)(10) without substantive change.

10 **§ 17725. Exemption for person who sells to historical society, museum, or institutional**
11 **collection, or for purposes of entertainment event**

12 17725. The provisions listed in Section 16590 do not apply to an instrument or
13 device, other than a short-barreled shotgun or a short-barreled rifle, which is sold
14 by, manufactured by, exposed or kept for sale by, possessed by, imported by, or
15 lent by a person who is in the business of selling instruments or devices listed in
16 Section 16590 solely to the entities referred to in Sections 17715 and 17720 when
17 engaging in transactions with those entities.

18 **Comment.** Section 17725 continues former Section 12020(b)(11) without substantive change.
19 See Sections 17170 (“short-barreled shotgun”), 17180 (“short-barreled rifle”).

20 **§ 17730. Exemption for law enforcement or person who sells to law enforcement**

21 17730. The provisions listed in Section 16590 do not apply to any of the
22 following:

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

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

32 (c) A weapon, device, or ammunition, other than a short-barreled rifle or a short-
33 barreled shotgun, which is sold by, manufactured by, exposed or kept for sale by,
34 possessed by, imported by, or lent by, a person who is in the business of selling
35 weapons, devices, and ammunition listed in Section 16590 solely to the entities
36 referred to in subdivision (a) when engaging in transactions with those entities.

37 **Comment.** Subdivisions (a) and (b) of Section 17730 continue former Section 12020(b)(12)
38 without substantive change.

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

40 See Sections 17170 (“short-barreled shotgun”), 17180 (“short-barreled rifle”).

1 **§ 17735. Exemption for transportation of non-firearm to law enforcement for disposition**
2 **according to law**

3 17735. The provisions listed in Section 16590 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 17735 continues former Section 12020(b)(16) without substantive change.
15 See Section 16520 ("firearm").

16 **§ 17740. Exemption for transportation of firearm to law enforcement for disposition**
17 **according to law**

18 17740. The provisions listed in Section 16590 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 17740 continues former Section 12020(b)(17) without substantive change.
35 See Sections 16520 ("firearm"), 16850 ("locked container"), 17170 ("short-barreled shotgun"),
36 17180 ("short-barreled rifle").

37 **§ 17745. Exemption for possession by forensic laboratory**

38 17745. The provisions listed in Section 16590 do not apply to the possession of
39 any weapon, device, or ammunition by a forensic laboratory or by any authorized
40 agent or employee thereof in the course and scope of the person's authorized
41 activities.

42 **Comment.** Section 17745 continues former Section 12020(b)(18) without substantive change.

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CHAPTER 2. MISCELLANEOUS PROVISIONS

§ 17800. Distinct and separate offense

17800. For purposes of the provisions listed in Section 16590, a violation as to each firearm, weapon, or device enumerated in any of those provisions shall constitute a distinct and separate offense.

Comment. Section 17800 continues former Section 12001(*l*) without substantive change.

DIVISION 3. SURRENDER AND DISPOSAL OF WEAPONS
CONSTITUTING A NUISANCE

§ 18000. Surrender of specified weapons constituting nuisance

18000. (a) Any weapon described in [Section 12028(a)], or, upon conviction of the defendant or upon a juvenile court finding that an offense that would be a misdemeanor or felony if committed by an adult was committed or attempted by the juvenile with the use of a firearm, any weapon described in [Section 12028(b)], shall be surrendered to one of the following:

(1) The sheriff of a county.

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

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

(4) The Commissioner of the California Highway Patrol.

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

Comment. Subdivision (a) of Section 18000 continues the first sentence of former Section 12028(c) without substantive change.

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

See Section 16520 (“firearm”).

§ 18005. Disposal of weapons constituting nuisance

18005. (a) An officer to whom weapons are surrendered under Section 18000, except upon the certificate of a judge of a court of record, or of the district attorney of the county, that the retention thereof is necessary or proper to the ends of justice, may annually, between the 1st and 10th days of July, in each year, offer the weapons, which the officer in charge of them considers to have value with respect to sporting, recreational, or collection purposes, for sale at public auction to persons licensed pursuant to [Section 12071] to engage in businesses involving any weapon purchased.

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

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

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

19 **Comment.** Subdivision (a) of Section 18005 continues the third sentence of former Section
20 12028(c) without substantive change.

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

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

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

25 § 18010. Treatment of other weapons constituting nuisance

26 18010. (a) The Attorney General, district attorney, or city attorney may bring an
27 action to enjoin the manufacture of, importation of, keeping for sale of, offering or
28 exposing for sale, giving, lending, or possession of, any item that constitutes a
29 nuisance under [Section 12029].

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

32 (c) These weapons shall be destroyed in the same manner described in Section
33 18005, except that upon the certification of a judge or of the district attorney that
34 the ends of justice will be served thereby, the weapon shall be preserved until the
35 necessity for its use ceases.

36 **Comment.** Subdivision (a) of Section 18010 continues the end of the first sentence of former
37 Section 12029 without substantive change.

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

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

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

3 CHAPTER 1. SEIZURE AND SUBSEQUENT PROCEDURES

4 **§ 18250. Seizure of firearm or other deadly weapon at scene of domestic violence**

5 18250. If any of the following persons is at the scene of a domestic violence
6 incident involving a threat to human life or a physical assault, that person shall
7 take temporary custody of any firearm or other deadly weapon in plain sight or
8 discovered pursuant to a consensual or other lawful search as necessary for the
9 protection of the peace officer or other persons present:

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

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

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

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

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

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

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

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

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

25 **Comment.** Section 18250 continues the first sentence of former Section 12028.5(b) without
26 substantive change.

27 For what constitutes a domestic violence incident, see Sections 16120 ("abuse"), 16490
28 ("domestic violence"). For what constitutes a deadly weapon, see Section 16430 ("deadly
29 weapon"); see also Section 16520 ("firearm").

30 See Sections 18255 (receipt for weapon), 18260 (delivery of deadly weapon seized by peace
31 officer for community college or school district), 18265 (holding period), 18270 (return of stolen
32 weapon), 18275 (sale or destruction of deadly weapon held longer than one year), 18500 (no
33 liability for act in good faith under this division). For procedures applicable when a law
34 enforcement agency has reasonable cause to believe that return of a weapon would endanger the
35 victim of a domestic violence incident or a person who reported the incident, see Sections 18400-
36 18420.

37 **§ 18255. Receipt for weapon**

38 18255. (a) Upon taking custody of a firearm or other deadly weapon pursuant to
39 this division, the officer shall give the owner or person who possessed the firearm
40 a receipt.

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

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

7 **Comment.** Subdivision (a) of Section 18255 continues the second sentence of former Section
8 12028.5(b) without substantive change.

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

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

13 For what constitutes a deadly weapon, see Section 16430 (“deadly weapon”). See also Section
14 16520 (“firearm”).

15 See Sections 18250 (seizure of firearm or other deadly weapon at scene of domestic violence),
16 18260 (delivery of deadly weapon seized by peace officer for community college or school
17 district), 18265 (holding period), 18270 (return of stolen weapon), 18275 (sale or destruction of
18 deadly weapon held longer than one year), 18500 (no liability for act in good faith under this
19 division). For procedures applicable when a law enforcement agency has reasonable cause to
20 believe that return of a weapon would endanger the victim of a domestic violence incident or a
21 person who reported the incident, see Sections 18400-18420.

22 **§ 18260. Delivery of deadly weapon seized by peace officer for community college or school**
23 **district**

24 18260. Any peace officer, as defined in subdivisions (a) and (b) of Section
25 830.32, who takes custody of a firearm or deadly weapon pursuant to this division,
26 shall deliver the firearm within 24 hours to the city police department or county
27 sheriff’s office in the jurisdiction where the college or school is located.

28 **Comment.** Section 18260 continues former Section 12028.5(c) without substantive change.

29 For what constitutes a deadly weapon, see Section 16430 (“deadly weapon”). See also Section
30 16520 (“firearm”).

31 See Sections 18250 (seizure of firearm or other deadly weapon at scene of domestic violence),
32 18255 (receipt for weapon), 18265 (holding period), 18270 (return of stolen weapon), 18275 (sale
33 or destruction of deadly weapon held longer than one year), 18500 (no liability for act in good
34 faith under this division). For procedures applicable when a law enforcement agency has
35 reasonable cause to believe that return of a weapon would endanger the victim of a domestic
36 violence incident or a person who reported the incident, see Sections 18400-18420.

37 **§ 18265. Holding period**

38 18265. (a) No firearm or other deadly weapon taken into custody pursuant to
39 this division shall be held less than 48 hours.

40 (b) Except as provided in 18400, if a firearm or other deadly weapon is not
41 retained for use as evidence related to criminal charges brought as a result of the
42 domestic violence incident or is not retained because it was illegally possessed, the
43 firearm or other deadly weapon shall be made available to the owner or person
44 who was in lawful possession 48 hours after the seizure, or as soon thereafter as

1 possible, but no later than five business days after the owner or person who was in
2 lawful possession demonstrates compliance with [Section 12021.3].

3 (c) In any civil action or proceeding for the return of firearms or ammunition or
4 other deadly weapon seized by any state or local law enforcement agency and not
5 returned within five business days after the initial seizure, except as provided in
6 Section 18270, the court shall allow reasonable attorney's fees to the prevailing
7 party.

8 **Comment.** Subdivision (a) of Section 18265 continues the fifth sentence of former Section
9 12028.5(b) without substantive change.

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

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

14 For what constitutes a domestic violence incident, see Sections 16120 ("abuse"), 16490
15 ("domestic violence"). For what constitutes a deadly weapon, see Section 16430 ("deadly
16 weapon"); see also Section 16520 ("firearm").

17 See Sections 18250 (seizure of firearm or other deadly weapon at scene of domestic violence),
18 18255 (receipt for weapon), 18260 (delivery of deadly weapon seized by peace officer for
19 community college or school district), 18270 (return of stolen weapon), 18275 (sale or
20 destruction of deadly weapon held longer than one year), 18500 (no liability for act in good faith
21 under this division). For procedures applicable when a law enforcement agency has reasonable
22 cause to believe that return of a weapon would endanger the victim of a domestic violence
23 incident or a person who reported the incident, see Sections 18400-18420.

24 § 18270. Return of stolen weapon

25 18270. If a firearm or other deadly weapon has been stolen and has been seized
26 pursuant to this division, it shall be restored to the lawful owner upon satisfaction
27 of all of the following conditions:

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

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

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

32 **Comment.** Section 18270 continues former Section 12028.5(d) without substantive change.

33 For what constitutes a deadly weapon, see Section 16430 ("deadly weapon"); see also Section
34 16520 ("firearm").

35 See Sections 18250 (seizure of firearm or other deadly weapon at scene of domestic violence),
36 18255 (receipt for weapon), 18260 (delivery of deadly weapon seized by peace officer for
37 community college or school district), 18265 (holding period), 18275 (sale or destruction of
38 deadly weapon held longer than one year), 18500 (no liability for act in good faith under this
39 division). For procedures applicable when a law enforcement agency has reasonable cause to
40 believe that return of a weapon would endanger the victim of a domestic violence incident or a
41 person who reported the incident, see Sections 18400-18420.

42 § 18275. Sale or destruction of deadly weapon held longer than one year

43 18275. (a) Any firearm or other deadly weapon that has been taken into custody
44 and held by any of the following law enforcement authorities for longer than 12
45 months, and has not been recovered by the owner or person who had lawful

1 possession at the time it was taken into custody, shall be considered a nuisance
2 and sold or destroyed as provided in Section 18005:

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

4 (2) A marshal's office.

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

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

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

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

11 (b) If a firearm or other deadly weapon is not recovered within 12 months due to
12 an extended hearing process as provided in Section 18420, it is not subject to
13 destruction until the court issues a decision, and then only if the court does not
14 order the return of the firearm or other deadly weapon to the owner.

15 **Comment.** Section 18275 continues former Section 12028.5(e) without substantive change.

16 For what constitutes a deadly weapon, see Section 16430 ("deadly weapon"); see also Section
17 16520 ("firearm").

18 See Sections 18250 (seizure of firearm or other deadly weapon at scene of domestic violence),
19 18255 (receipt for weapon), 18260 (delivery of deadly weapon seized by peace officer for
20 community college or school district), 18265 (holding period), 18270 (return of stolen weapon),
21 18500 (no liability for act in good faith under this division). For procedures applicable when a
22 law enforcement agency has reasonable cause to believe that return of a weapon would endanger
23 the victim of a domestic violence incident or a person who reported the incident, see Sections
24 18400-18420.

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

27 **§ 18400. Petition to determine whether weapon should be returned**

28 18400. (a) When a law enforcement agency has reasonable cause to believe that
29 the return of a firearm or other deadly weapon seized under this division would be
30 likely to result in endangering the victim or the person who reported the assault or
31 threat, the agency shall so advise the owner of the firearm or other deadly weapon,
32 and within 60 days of the date of seizure, initiate a petition in superior court to
33 determine if the firearm or other deadly weapon should be returned.

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

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

39 **Comment.** Section 18400 continues former Section 12028.5(f) without substantive change.

40 For what constitutes a deadly weapon, see Section 16430 ("deadly weapon"); see also Section
41 16520 ("firearm").

42 See Sections 18405 (notice of petition), 18410 (hearing on petition), 18415 (order of default),
43 18420 (petition for second hearing).

1 See also Sections 18250 (seizure of firearm or other deadly weapon at scene of domestic
2 violence), 18255 (receipt for weapon), 18260 (delivery of deadly weapon seized by peace officer
3 for community college or school district), 18265 (holding period), 18270 (return of stolen
4 weapon), 18275 (sale or destruction of deadly weapon held longer than one year), 18500 (no
5 liability for act in good faith under this division).

6 **§ 18405. Notice of petition**

7 18405. If a petition is filed under Section 18400, the law enforcement agency
8 shall inform the owner or person who had lawful possession of the firearm or other
9 deadly weapon, at that person's last known address, by registered mail, return
10 receipt requested, that the person has 30 days from the date of receipt of the notice
11 to respond to the court clerk to confirm the person's desire for a hearing, and that
12 the failure to respond shall result in a default order forfeiting the confiscated
13 firearm or other deadly weapon.

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

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

21 **Comment.** Section 18405 continues former Section 12028.5(g) without substantive change.

22 For what constitutes a deadly weapon, see Section 16430 ("deadly weapon"); see also Section
23 16520 ("firearm").

24 See Sections 18400 (petition to determine whether weapon should be returned), 18410 (hearing
25 on petition), 18415 (order of default), 18420 (petition for second hearing).

26 See also Sections 16120 ("abuse"), 16490 ("domestic violence"), 18250 (seizure of firearm or
27 other deadly weapon at scene of domestic violence), 18255 (receipt for weapon), 18260 (delivery
28 of deadly weapon seized by peace officer for community college or school district), 18265
29 (holding period), 18270 (return of stolen weapon), 18275 (sale or destruction of deadly weapon
30 held longer than one year), 18500 (no liability for act in good faith under this division).

31 **§ 18410. Hearing on petition**

32 18410. (a) If the person who receives a petition under Section 18405 requests a
33 hearing, the court clerk shall set a hearing no later than 30 days from receipt of
34 that request.

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

37 (c) Unless it is shown by a preponderance of the evidence that the return of the
38 firearm or other deadly weapon would result in endangering the victim or the
39 person reporting the assault or threat, the court shall order the return of the firearm
40 or other deadly weapon and shall award reasonable attorney's fees to the
41 prevailing party.

42 **Comment.** Section 18410 continues former Section 12028.5(h) without substantive change.

43 For what constitutes a deadly weapon, see Section 16430 ("deadly weapon"); see also Section
44 16520 ("firearm").

1 See Sections 18400 (petition to determine whether weapon should be returned), 18405 (notice
2 of petition), 18415 (order of default), 18420 (petition for second hearing).

3 See also Sections 16120 (“abuse”), 16490 (“domestic violence”), 18250 (seizure of firearm or
4 other deadly weapon at scene of domestic violence), 18255 (receipt for weapon), 18260 (delivery
5 of deadly weapon seized by peace officer for community college or school district), 18265
6 (holding period), 18270 (return of stolen weapon), 18275 (sale or destruction of deadly weapon
7 held longer than one year), 18500 (no liability for act in good faith under this division).

8 **§ 18415. Order of default**

9 18415. If the person who receives a petition under Section 18405 does not
10 request a hearing or does not otherwise respond within 30 days of the receipt of
11 the notice, the law enforcement agency may file a petition for an order of default
12 and may dispose of the firearm or other deadly weapon as provided in Section
13 18005.

14 **Comment.** Section 18415 continues former Section 12028.5(i) without substantive change.

15 For what constitutes a deadly weapon, see Section 16430 (“deadly weapon”); see also Section
16 16520 (“firearm”).

17 See Sections 18400 (petition to determine whether weapon should be returned), 18405 (notice
18 of petition), 18410 (hearing on petition), 18420 (petition for second hearing).

19 See also Sections 16120 (“abuse”), 16490 (“domestic violence”), 18250 (seizure of firearm or
20 other deadly weapon at scene of domestic violence), 18255 (receipt for weapon), 18260 (delivery
21 of deadly weapon seized by peace officer for community college or school district), 18265
22 (holding period), 18270 (return of stolen weapon), 18275 (sale or destruction of deadly weapon
23 held longer than one year), 18500 (no liability for act in good faith under this division).

24 **§ 18420. Petition for second hearing**

25 18420. (a) If, at a hearing under Section 18410, the court does not order the
26 return of the firearm or other deadly weapon to the owner or person who had
27 lawful possession, that person may petition the court for a second hearing within
28 12 months from the date of the initial hearing.

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

34 (c) If the owner or person who had lawful possession does not petition the court
35 within this 12-month period for a second hearing or is unsuccessful at the second
36 hearing in gaining return of the firearm or other deadly weapon, the firearm or
37 other deadly weapon may be disposed of as provided in Section 18005.

38 **Comment.** Section 18420 continues former Section 12028.5(j) without substantive change.

39 For what constitutes a deadly weapon, see Section 16430 (“deadly weapon”); see also Section
40 16520 (“firearm”).

41 See Sections 18400 (petition to determine whether weapon should be returned), 18405 (notice
42 of petition), 18410 (hearing on petition), 18415 (order of default).

43 See also Sections 18250 (seizure of firearm or other deadly weapon at scene of domestic
44 violence), 18255 (receipt for weapon), 18260 (delivery of deadly weapon seized by peace officer
45 for community college or school district), 18265 (holding period), 18270 (return of stolen

1 weapon), 18275 (sale or destruction of deadly weapon held longer than one year), 18500 (no
2 liability for act in good faith under this division).

3 CHAPTER 3. LIABILITY

4 **§ 18500. No liability for act in good faith under this division**

5 18500. The law enforcement agency, or the individual law enforcement officer,
6 shall not be liable for any act in the good faith exercise of this division.

7 **Comment.** Section 18500 continues former Section 12028.5(k) without substantive change.