

Memorandum 2008-24

**Nonsubstantive Reorganization of Deadly Weapon Statutes:
Title 2. Weapons Generally (Divisions 5 & 6)**

In its nonsubstantive study of the statutes relating to deadly weapons, the Commission is in the process of preparing a tentative recommendation, which will be broadly circulated for comment. The plan is to reorganize the material in Title 2 of Part 4 of the Penal Code (Penal Code §§ 12000-12809) in a user-friendly manner in a new Part 6 of the Penal Code, without making any substantive changes. For an outline of new Part 6, see Memorandum 2008-22. For a draft of "Title 1. Preliminary Provisions," see Memorandum 2008-23.

Title 2 of new Part 6 is entitled "Weapons Generally." It consists of six divisions. A draft of Divisions 1-4 has been previously presented. See Memorandum 2008-17, Attachment pp. 60-73.

Attached is a draft of "Division 5. Destructive Devices, Explosives, and Similar Weapons" and "Division 6. Less Lethal Weapons." For convenient reference, the draft also includes some excerpts from the draft of Title 1 and the draft of Divisions 1-4.

Staff Notes (~~is~~ **Staff Note**) in the attached draft raise matters for Commissioners and interested persons to consider. The staff does 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.

Unless otherwise indicated, all statutory references are to the Penal Code.

Respectfully submitted,

Barbara Gaal
Chief Deputy Counsel

§ 18745. Use or attempted use of destructive device or explosive with intent to commit murder 12

§ 18750. Willful and malicious use of destructive device or explosive resulting in bodily injury 13

§ 18755. Willful and malicious use of destructive device or explosive resulting in death, mayhem, or great bodily injury 13

§ 18780. No probation or suspension of sentence 13

Article 2. Exemptions 13

 § 18800. Use of destructive device or explosive by law enforcement, military, or firefighter..... 13

Article 3. Permit and Inspection 14

 § 18900. Permit for destructive device 14

 § 18905. Permit fees and renewal process 14

 § 18910. Inspection by Department of Justice 16

Article 4. Destructive Device Constituting Nuisance..... 16

 § 19000. Destructive device constituting nuisance..... 16

CHAPTER 2. EXPLOSIVE SUBSTANCE OTHER THAN FIXED AMMUNITION..... 16

 § 19100. Carrying concealed explosive substance other than fixed ammunition 16

 § 19190. Concealed explosive substance constituting nuisance 17

CHAPTER 3. HANDGRENADES 18

 § 19200. Prohibition on manufacture, import, sale, gift, loan, or possession of metal military practice handgrenade or metal replica handgrenade 18

 § 19205. Toy or permanently inoperative handgrenade 19

 § 19290. Metal military practice handgrenade or metal replica handgrenade constituting nuisance 19

DIVISION 6. LESS LETHAL WEAPONS 20

 § 19400. Less lethal weapon or ammunition for official use by peace officer or custodial officer..... 20

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 2008-22.

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.

SELECTED PROVISIONS FROM DRAFTS PREVIOUSLY CONSIDERED

Staff Note. The material shown below has previously been considered by the Commission. It is reproduced here so that it can easily be referenced in reviewing the new material presented later in this document. A few minor changes have been made, as explained in the Staff Notes accompanying the pertinent provisions.

TITLE 1. PRELIMINARY PROVISIONS

....

DIVISION 2. DEFINITIONS

.....

§ 16460. “Destructive device”

16460. (a) As used in [Sections 12030], 16510, and 16780, and in Chapter 1 (commencing with Section 18710) of Division 5 of Title 2, “destructive device” includes any of the following weapons:

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

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

(3) Any weapon of a caliber greater than 0.60 caliber which fires fixed ammunition, or any ammunition therefor, other than a shotgun (smooth or rifled bore) conforming to the definition of a “destructive device” found in subsection

1 (b) of Section 479.11 of Title 27 of the Code of Federal Regulations, shotgun
2 ammunition (single projectile or shot), antique rifle, or an antique cannon.

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

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

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

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

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

20 Subdivision (b) continues the second sentence of the second paragraph of former Section
21 12020(a)(4) without substantive change.

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

23

24 **§ 16510. “Explosive”**

25 16510. As used in Section 16460 and Chapter 1 (commencing with Section
26 18710) of Division 5 of Title 2, “explosive” means any substance, or combination
27 of substances, the primary or common purpose of which is detonation or rapid
28 combustion, and which is capable of a relatively instantaneous or rapid release of
29 gas and heat, or any substance, the primary purpose of which, when combined
30 with others, is to form a substance capable of a relatively instantaneous or rapid
31 release of gas and heat. “Explosive” includes, but is not limited to, any explosive
32 as defined in Section 841 of Title 18 of the United States Code and published
33 pursuant to Section 555.23 of Title 27 of the Code of Federal Regulations, and any
34 of the following:

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

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

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

42 (d) Any material designated as an explosive by the State Fire Marshal. The
43 designation shall be made pursuant to the classification standards established by

1 the United States Department of Transportation. The State Fire Marshal shall
2 adopt regulations in accordance with the Government Code to establish procedures
3 for the classification and designation of explosive materials or explosive devices
4 that are not under the jurisdiction of the United States Department of
5 Transportation pursuant to provisions of Section 841 of Title 18 of the United
6 States Code and published pursuant to Section 555.23 of Title 27 of the Code of
7 Federal Regulations that define explosives.

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

11 (f) As used in Section 16460 and Chapter 1 (commencing with Section 18710)
12 of Division 5 of Title 2, “explosive” does not include any destructive device, nor
13 does it include ammunition or small arms primers manufactured for use in
14 shotguns, rifles, and pistols.

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

20 See Section 16460 (“destructive device”).

21

22 **§ 16590. “Generally prohibited weapon”**

23 16590. As used in this part, “generally prohibited weapon” means any of the
24 following:

25 (a) An air gauge knife, as prohibited by Section 20310.

26 (b) Ammunition that contains or consists of a flechette dart, as prohibited by
27 Section _____.

28 (c) A ballistic knife, as prohibited by Section 21110.

29 (d) A belt buckle knife, as prohibited by Section 20410.

30 (e) A bullet containing or carrying an explosive agent, as prohibited by Section
31 _____.

32 (f) A camouflaging firearm container, as prohibited by Section _____.

33 (g) A cane gun, as prohibited by Section _____.

34 (h) A cane sword, as prohibited by Section 20510.

35 (i) A concealed dagger or dirk, as prohibited by Section 21310.

36 (j) A concealed explosive substance, other than fixed ammunition, as prohibited
37 by Section 19100.

38 (k) A firearm that is not immediately recognizable as a firearm, as prohibited by
39 Section _____.

40 (l) A large-capacity magazine, as prohibited by Section _____.

41 (m) A leaded cane, as prohibited by Section 22210.

42 (n) A lipstick case knife, as prohibited by Section 20610.

43 (o) Metal knuckles, as prohibited by Section 21810.

1 (p) A metal military practice handgrenade or a metal replica handgrenade, as
2 prohibited by Section 19200.

3 (q) A multiburst trigger activator, as prohibited by Section ____.

4 (r) A nunchaku, as prohibited by Section 22010.

5 (s) A shobi-zue, as prohibited by Section 20710.

6 (t) A short-barreled rifle, as prohibited by Section ____.

7 (u) A short-barreled shotgun, as prohibited by Section ____.

8 (v) A shuriken, as prohibited by Section 22410.

9 (w) An unconventional pistol, as prohibited by Section ____.

10 (x) An undetectable firearm, as prohibited by Section ____.

11 (y) A wallet gun, as prohibited by Section ____.

12 (z) A writing pen knife, as prohibited by Section 20910.

13 (aa) A zip gun, as prohibited by Section ____.

14 (bb) An instrument or weapon of the kind commonly known as a billy,
15 blackjack, sandbag, sandclub, sap, or slungshot, as prohibited by Section 22290.

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

19 See Sections 16140 (“air gauge knife”), 16220 (“ballistic knife”), 16260 (“belt buckle knife”),
20 16320 (“camouflaging firearm container”), 16330 (“cane gun”), 16340 (“cane sword”), 16420
21 (“dagger or dirk”), 16510 (“explosive”), 16520 (“firearm”), 16570 (“flechette dart”), 16740
22 (“large capacity magazine”), 16760 (“leaded cane”), 16830 (“lipstick case knife”), 16920 (“metal
23 knuckles”), 16930 (“multiburst trigger activator”), 16940 (“nunchaku”), 17160 (“shobi-zue”),
24 17170 (“short-barreled rifle”), 17180 (“short-barreled shotgun”), 17200 (“shuriken”), 17270
25 (“unconventional pistol”), 17280 (“undetectable firearm”), 17330 (“wallet gun”), 17350 (“writing
26 pen knife”), 17360 (“zip gun”).

27 **Staff Note.** This is the version of proposed Section 16590 presented in Memorandum 2008-
28 23, for consideration at the June meeting. For discussion of differences between this version and
29 the prior version, see the Staff Note to proposed Section 16590 in the attachment to Memorandum
30 2008-23.

31

32 TITLE 2. WEAPONS GENERALLY

33

34 DIVISION 2. GENERALLY PROHIBITED WEAPONS

35 CHAPTER 1. EXEMPTIONS

36 § 17700. Exemption for antique firearm

37 17700. The provisions listed in Section 16590 do not apply to an antique
38 firearm.

1 **Comment.** Section 17700 continues the first sentence of former Section 12020(b)(5) without
2 substantive change.

3 See Section 16170 (“antique firearm”).

4 **§ 17705. Exemption for firearm or ammunition constituting curio or relic**

5 17705. (a) The provisions listed in Section 16590 do not apply to any firearm or
6 ammunition that is a curio or relic as defined in Section 478.11 of Title 27 of the
7 Code of Federal Regulations and that is in the possession of a person permitted to
8 possess the items under Chapter 44 (commencing with Section 921) of Title 18 of
9 the United States Code and the regulations issued pursuant thereto.

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

19 **Comment.** Section 17705 continues former Section 12020(b)(7) without substantive change.

20 See Section 16520 (“firearm”).

21 **§ 17710. Exemption for “any other weapon” in possession of person permitted to possess it**
22 **under federal Gun Control Act of 1968**

23 17710. (a) The provisions listed in Section 16590 do not apply to “any other
24 weapon” as defined in subsection (e) of Section 5845 of Title 26 of the United
25 States Code, which is in the possession of a person permitted to possess the
26 weapons under the federal Gun Control Act of 1968 (Public Law 90-618), as
27 amended, and the regulations issued pursuant thereto.

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

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

38 **Comment.** Section 17710 continues former Section 12020(b)(8) without substantive change.

39 **§ 17715. Exemption for historical society, museum, or institutional collection**

40 17715. The provisions listed in Section 16590 do not apply to an instrument or
41 device that is possessed by a federal, state, or local historical society, museum, or

1 institutional collection that is open to the public if all of the following conditions
2 are satisfied:

- 3 (a) The instrument or device is properly housed.
- 4 (b) The instrument or device is secured from unauthorized handling.
- 5 (c) If the instrument or device is a firearm, it is unloaded.

6 **Comment.** Section 17715 continues former Section 12020(b)(9) without substantive change.
7 See Section 16520 (“firearm”).

8 **§ 17720. Exemption for motion picture, television, video production, or entertainment event**

9 17720. The provisions listed in Section 16590 do not apply to an instrument or
10 device, other than a short-barreled rifle or a short-barreled shotgun, which is
11 possessed or used during the course of a motion picture, television, or video
12 production or entertainment event by an authorized participant therein in the
13 course of making that production or event or by an authorized employee or agent
14 of the entity producing that production or event.

15 **Comment.** Section 17720 continues former Section 12020(b)(10) without substantive change.
16 See Sections 17170 (“short-barreled rifle”), 17180 (“short-barreled shotgun”).

17 **Staff Note.** The second paragraph of the Comment, referring to the definitions of “short-
18 barreled shotgun” and “short-barreled rifle,” is new. We have also put the terms in alphabetical
19 order in the statutory text. Aside from these revisions, we have not made any changes.

20 **§ 17725. Exemption for person who sells to historical society, museum, or institutional**
21 **collection, or for purposes of entertainment event**

22 17725. The provisions listed in Section 16590 do not apply to an instrument or
23 device, other than a short-barreled rifle or a short-barreled shotgun, which is sold
24 by, manufactured by, exposed or kept for sale by, possessed by, imported by, or
25 lent by a person who is in the business of selling instruments or devices listed in
26 Section 16590 solely to the entities referred to in Sections 17715 and 17720 when
27 engaging in transactions with those entities.

28 **Comment.** Section 17725 continues former Section 12020(b)(11) without substantive change.
29 See Sections 17170 (“short-barreled rifle”), 17180 (“short-barreled shotgun”).

30 **Staff Note.** In the text of proposed Section 17725, the staff has put the terms “short-barreled
31 rifle” and “short-barreled shotgun” in alphabetical order. We made a similar revision in the
32 Comment. We also made revisions to reflect the renumbering of the definitions of “short-barreled
33 rifle” and “short-barreled shotgun.” Aside from these revisions, we have not made any changes.

34 **§ 17730. Exemption for law enforcement or person who sells to law enforcement**

35 17730. The provisions listed in Section 16590 do not apply to any of the
36 following:

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

- 41 (b) The possession of any weapon, device, or ammunition, other than a short-
42 barreled rifle or short-barreled shotgun, by a peace officer of any federal, state,

1 county, city and county, or city agency that is charged with the enforcement of any
2 law, when the officer is on duty and the use is authorized by the agency and is
3 within the course and scope of the officer's duties.

4 (c) A weapon, device, or ammunition, other than a short-barreled rifle or a short-
5 barreled shotgun, which is sold by, manufactured by, exposed or kept for sale by,
6 possessed by, imported by, or lent by, a person who is in the business of selling
7 weapons, devices, and ammunition listed in Section 16590 solely to the entities
8 referred to in subdivision (a) when engaging in transactions with those entities.

9 **Comment.** Subdivisions (a) and (b) of Section 17730 continue former Section 12020(b)(12)
10 without substantive change.

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

12 See Sections 17170 ("short-barreled rifle"), 17180 ("short-barreled shotgun").

13 **Staff Note.** In the Comment, the staff has put the terms "short-barreled rifle" and "short-
14 barreled shotgun" in alphabetical order. We also made revisions to reflect the renumbering of the
15 definitions of "short-barreled rifle" and "short-barreled shotgun." Aside from these revisions, we
16 have not made any changes.

17 **§ 17735. Exemption for transportation of non-firearm to law enforcement for disposition**
18 **according to law**

19 17735. The provisions listed in Section 16590 do not apply to an instrument,
20 ammunition, weapon, or device that is not a firearm and is found and possessed by
21 a person who meets all of the following:

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

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

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

30 **Comment.** Section 17735 continues former Section 12020(b)(16) without substantive change.

31 See Section 16520 ("firearm").

32 **§ 17740. Exemption for transportation of firearm to law enforcement for disposition**
33 **according to law**

34 17740. The provisions listed in Section 16590 do not apply to a firearm, other
35 than a short-barreled rifle or short-barreled shotgun, which is found and possessed
36 by a person who meets all of the following:

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

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

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

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

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

8 **Comment.** Section 17740 continues former Section 12020(b)(17) without substantive change.

9 See Sections 16520 (“firearm”), 16850 (“locked container”), 17170 (“short-barreled rifle”),
10 17180 (“short-barreled shotgun”).

11 **Staff Note.** In the Comment, the staff has put the terms “short-barreled rifle” and “short-
12 barreled shotgun” in alphabetical order. We also made revisions to reflect the renumbering of the
13 definitions of “short-barreled rifle” and “short-barreled shotgun.” Aside from these revisions, we
14 have not made any changes.

15 § 17745. Exemption for possession by forensic laboratory

16 17745. The provisions listed in Section 16590 do not apply to the possession of
17 any weapon, device, or ammunition by a forensic laboratory or by any authorized
18 agent or employee thereof in the course and scope of the person’s authorized
19 activities.

20 **Comment.** Section 17745 continues former Section 12020(b)(18) without substantive change.

21 CHAPTER 2. MISCELLANEOUS PROVISIONS

22 § 17800. Distinct and separate offense

23 17800. For purposes of the provisions listed in Section 16590, a violation as to
24 each firearm, weapon, or device enumerated in any of those provisions shall
25 constitute a distinct and separate offense.

26 **Comment.** Section 17800 continues former Section 12001(l) without substantive change.

27 See Section 16520 (“firearm”).

28 **Staff Note.** The second paragraph of the Comment, referring to the definition of “firearm,” is
29 new. Aside from this revision, we have not made any changes.

30 DIVISION 3. SURRENDER, DISPOSAL, AND ENJOINING OF 31 WEAPONS CONSTITUTING A NUISANCE

32 § 18000. Surrender of specified weapons constituting nuisance

33 18000. (a) Any weapon described in [Section 12028(a)], or, upon conviction of
34 the defendant or upon a juvenile court finding that an offense that would be a
35 misdemeanor or felony if committed by an adult was committed or attempted by
36 the juvenile with the use of a firearm, any weapon described in [Section
37 12028(b)], shall be surrendered to one of the following:

38 (1) The sheriff of a county.

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

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

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

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

9 **Comment.** Subdivision (a) of Section 18000 continues the first sentence of former Section
10 12028(c) without substantive change.

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

13 See Section 16520 (“firearm”).

14 **§ 18005. Disposal of weapons constituting nuisance**

15 18005. (a) An officer to whom weapons are surrendered under Section 18000,
16 except upon the certificate of a judge of a court of record, or of the district
17 attorney of the county, that the retention thereof is necessary or proper to the ends
18 of justice, may annually, between the 1st and 10th days of July, in each year, offer
19 the weapons, which the officer in charge of them considers to have value with
20 respect to sporting, recreational, or collection purposes, for sale at public auction
21 to persons licensed pursuant to [Section 12071] to engage in businesses involving
22 any weapon purchased.

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

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

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

41 **Comment.** Subdivision (a) of Section 18005 continues the third sentence of former Section
42 12028(c) without substantive change.

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

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

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

2 **§ 18010. Treatment of other weapons constituting nuisance**

3 18010. (a) The Attorney General, district attorney, or city attorney may bring an
4 action to enjoin the manufacture of, importation of, keeping for sale of, offering or
5 exposing for sale, giving, lending, or possession of, any item that constitutes a
6 nuisance under [Section 12029].

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

9 (c) These weapons shall be destroyed in the same manner described in Section
10 18005, except that upon the certification of a judge or of the district attorney that
11 the ends of justice will be served thereby, the weapon shall be preserved until the
12 necessity for its use ceases.

13 **Comment.** Subdivision (a) of Section 18010 continues the end of the first sentence of former
14 Section 12029 without substantive change.

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

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

19

NEW MATERIAL FOR REVIEW AND PROVISIONAL APPROVAL

<p> Staff Note. The material shown below is new. Commissioners and other interested persons should review it carefully and determine whether any changes are necessary before it is incorporated into a tentative recommendation.</p>

20 **TITLE 2. WEAPONS GENERALLY**

21

22 **DIVISION 5. DESTRUCTIVE DEVICES, EXPLOSIVES, AND**
23 **SIMILAR WEAPONS**

24 **CHAPTER 1. DESTRUCTIVE DEVICES AND EXPLOSIVES GENERALLY**

25 **Article 1. Prohibited Acts**

26 **§ 18710. Unlawful possession of destructive device other than fixed ammunition greater**
27 **than .60 caliber**

28 18710. (a) Except as provided by this chapter, a person, firm, or corporation
29 who, within this state, possesses a destructive device, other than fixed ammunition
30 of a caliber greater than .60 caliber, is guilty of a public offense.

1 (b) A person, firm, or corporation who is convicted of an offense under
2 subdivision (a) shall be punished by imprisonment in the county jail for a term not
3 to exceed one year, or in state prison, or by a fine not to exceed ten thousand
4 dollars (\$10,000), or by both such fine and imprisonment.

5 **Comment.** Section 18710 continues former Section 12303 without substantive change.
6 See Section 16460 (“destructive device”).

7 **§ 18715. Reckless or malicious possession of destructive device or explosive in public place**

8 18715. (a) A person who recklessly or maliciously has in possession a
9 destructive device or an explosive in any of the following places is guilty of a
10 felony:

11 (1) On a public street or highway.

12 (2) In or near any theater, hall, school, college, church, hotel, or other public
13 building.

14 (3) In or near any private habitation.

15 (4) In, on, or near any aircraft, railway passenger train, car, cable road, cable car,
16 or vessel engaged in carrying passengers for hire.

17 (5) In, on, or near any other public place ordinarily passed by human beings.

18 (b) An offense under subdivision (a) is punishable by imprisonment in the state
19 prison for a period of two, four, or six years.

20 **Comment.** Section 18715 continues former Section 12303.2 without substantive change.
21 See Sections 16460 (“destructive device”), 16510 (“explosive”).

22 **§ 18720. Possession of materials with intent to create destructive device or explosive**

23 18720. A person who possesses any substance, material, or any combination of
24 substances or materials, with the intent to make a destructive device or an
25 explosive without first obtaining a valid permit to make that destructive device or
26 explosive, is guilty of a felony, and is punishable by imprisonment in the state
27 prison for two, three, or four years.

28 **Comment.** Section 18720 continues former Section 12312 without substantive change.
29 See Sections 16460 (“destructive device”), 16510 (“explosive”).

30 **§ 18725. Destructive device or explosive on vessel, aircraft, or other vehicle**

31 18725. A person who willfully does any of the following is guilty of a felony
32 and is punishable by imprisonment in the state prison for two, four, or six years:

33 (a) Carries a destructive device or an explosive on a vessel, aircraft, car, or other
34 vehicle that transports passengers for hire.

35 (b) While on board a vessel, aircraft, car, or other vehicle that transports
36 passengers for hire, places or carries a destructive device or an explosive in any
37 hand baggage, roll, or other container.

38 (c) Places a destructive device or an explosive in any baggage that is later
39 checked with a common carrier.

40 **Comment.** Section 18725 continues former Section 12303.1 without substantive change.
41 See Sections 16460 (“destructive device”), 16510 (“explosive”).

1 **§ 18730. Sale or transportation of destructive device other than fixed ammunition greater**
2 **than .60 caliber**

3 18730. Except as provided by this chapter, a person, firm, or corporation who,
4 within this state, sells, offers for sale, or knowingly transports a destructive device,
5 other than fixed ammunition of a caliber greater than .60 caliber, is guilty of a
6 felony and is punishable by imprisonment in the state prison for two, three, or four
7 years.

8 **Comment.** Section 18730 continues former Section 12303.6 without substantive change.
9 See Section 16460 (“destructive device”).

10 **§ 18735. Sale, possession, or transport of fixed ammunition greater than .60 caliber**

11 18735. (a) Except as provided by this chapter, a person, firm, or corporation
12 who, within this state, sells, offers for sale, possesses or knowingly transports any
13 fixed ammunition of a caliber greater than .60 caliber is guilty of a public offense.

14 (b) Upon conviction of an offense under subdivision (a), a person, firm, or
15 corporation shall be punished by imprisonment in the county jail for a term not to
16 exceed six months or by a fine not to exceed one thousand dollars (\$1,000), or by
17 both such fine and imprisonment.

18 (c) A second or subsequent conviction shall be punished by imprisonment in the
19 county jail for a term not to exceed one year, or by imprisonment in the state
20 prison, or by a fine not to exceed three thousand dollars (\$3,000), or by both such
21 fine and imprisonment.

22 **Comment.** Section 18735 continues former Section 12304 without substantive change.

23 **§ 18740. Use or attempted use of destructive device or explosive with intent to cause fear or**
24 **harm**

25 18740. A person who possesses, explodes, ignites, or attempts to explode or
26 ignite a destructive device or an explosive with intent to injure, intimidate, or
27 terrify a person, or with intent to wrongfully injure or destroy any property, is
28 guilty of a felony, and shall be punished by imprisonment in the state prison for a
29 period of three, five, or seven years.

30 **Comment.** Section 18740 continues former Section 12303.3 without substantive change.
31 See Sections 16460 (“destructive device”), 16510 (“explosive”).

32 **§ 18745. Use or attempted use of destructive device or explosive with intent to commit**
33 **murder**

34 18745. A person who explodes, ignites, or attempts to explode or ignite a
35 destructive device or an explosive with intent to commit murder is guilty of a
36 felony, and shall be punished by imprisonment in the state prison for life with the
37 possibility of parole.

38 **Comment.** Section 18745 continues former Section 12308 without substantive change.
39 See Sections 16460 (“destructive device”), 16510 (“explosive”).

1 **§ 18750. Willful and malicious use of destructive device or explosive resulting in bodily**
2 **injury**

3 18750. A person who willfully and maliciously explodes or ignites a destructive
4 device or an explosive that causes bodily injury to a person is guilty of a felony,
5 and shall be punished by imprisonment in the state prison for a period of five,
6 seven, or nine years.

7 **Comment.** Section 18750 continues former Section 12309 without substantive change.
8 See Sections 16460 (“destructive device”), 16510 (“explosive”).

9 **§ 18755. Willful and malicious use of destructive device or explosive resulting in death,**
10 **mayhem, or great bodily injury**

11 18755. (a) A person who willfully and maliciously explodes or ignites a
12 destructive device or an explosive that causes the death of a person is guilty of a
13 felony, and shall be punished by imprisonment in the state prison for life without
14 the possibility of parole.

15 (b) A person who willfully and maliciously explodes or ignites a destructive
16 device or an explosive that causes mayhem or great bodily injury to a person is
17 guilty of a felony, and shall be punished by imprisonment in the state prison for
18 life.

19 **Comment.** Section 18755 continues former Section 12310 without substantive change.
20 See Sections 16460 (“destructive device”), 16510 (“explosive”).

21 **§ 18780. No probation or suspension of sentence**

22 18780. A person convicted of a violation of this chapter shall not be granted
23 probation, and the execution of the sentence imposed upon the person shall not be
24 suspended by the court.

25 **Comment.** Section 18780 continues former Section 12311 without substantive change.

26 **Article 2. Exemptions**

27 **§ 18800. Use of destructive device or explosive by law enforcement, military, or firefighter**

28 18800. (a) Nothing in this chapter prohibits the sale to, purchase by, or
29 possession, transportation, storage, or use of, a destructive device or explosive by
30 any of the following:

31 (1) A peace officer listed in Section 830.1 or 830.2, or a peace officer in the
32 Department of Justice authorized by the Attorney General, while on duty and
33 acting within the scope and course of employment.

34 (2) A member of the Army, Navy, Air Force, or Marine Corps of the United
35 States, or the National Guard, while on duty and acting within the scope and
36 course of employment.

37 (b) Nothing in this chapter prohibits the sale to, or the purchase, possession,
38 transportation, storage, or use by a person who is a regularly employed and paid
39 officer, employee, or member of a fire department or fire protection or firefighting
40 agency of the federal government, the State of California, a city, county, city and
41 county, district, or other public or municipal corporation or political subdivision of

1 this state, while on duty and acting within the scope and course of employment, of
2 any equipment used by that department or agency in the course of fire suppression.

3 **Comment.** Section 18800 continues former Section 12302 without substantive change.
4 See Sections 16460 (“destructive device”), 16510 (“explosive”).

5 Article 3. Permit and Inspection

6 § 18900. Permit for destructive device

7 18900. (a) Every dealer, manufacturer, importer, and exporter of any destructive
8 device, or any motion picture or television studio using destructive devices in the
9 conduct of its business, shall obtain a permit for the conduct of that business from
10 the Department of Justice.

11 (b) Any person, firm, or corporation not mentioned in subdivision (a) shall
12 obtain a permit from the Department of Justice in order to possess or transport any
13 destructive device. No permit shall be issued to any person who meets any of the
14 following criteria:

15 (1) Has been convicted of any felony.

16 (2) Is addicted to the use of any narcotic drug.

17 (3) Is a person in a class prohibited by Section 8100 or 8103 of the Welfare and
18 Institutions Code or [Section 12021 or 12021.1] of this code.

19 (c) An application for a permit shall comply with all of the following:

20 (1) It shall be filed in writing.

21 (2) It shall be signed by the applicant if an individual, or by a member or officer
22 qualified to sign if the applicant is a firm or corporation.

23 (3) It shall state the name, business in which engaged, business address, and a
24 full description of the use to which the destructive devices are to be put.

25 (d) Applications and permits shall be uniform throughout the state on forms
26 prescribed by the Department of Justice.

27 **Comment.** Subdivision (a) of Section 18900 continues former Section 12305(a) without
28 substantive change.

29 Subdivision (b) continues former Section 12305(b) without substantive change.

30 Subdivision (c) continues former Section 12305(c) without substantive change.

31 Subdivision (d) continues former Section 12305(d) without substantive change.

32 See Section 16460 (“destructive device”).

33 § 18905. Permit fees and renewal process

34 18905. (a) Each applicant for a permit under this article shall pay at the time of
35 filing the application a fee not to exceed the application processing costs of the
36 Department of Justice.

37 (b) A permit granted under this article may be renewed one year from the date of
38 issuance, and annually thereafter, upon the filing of a renewal application and the
39 payment of a permit renewal fee not to exceed the application processing costs of
40 the Department of Justice.

1 (c) After the department establishes fees sufficient in amount to cover
2 processing costs, the amount of the fees shall only increase at a rate not to exceed
3 the legislatively approved cost-of-living adjustment for the department.

4 **Comment.** Section 18905 continues former Section 12305(e) without substantive change.

5 **Staff Note.** Existing Section 12305 provides:

6 12305. (a) Every dealer, manufacturer, importer, and exporter of any destructive device,
7 or any motion picture or television studio using destructive devices in the conduct of its
8 business, shall obtain a permit for the conduct of that business from the Department of
9 Justice.

10 (b) Any person, firm, or corporation not mentioned in subdivision (a) shall obtain a permit
11 from the Department of Justice in order to possess or transport any destructive device. No
12 permit shall be issued to any person who meets any of the following criteria:

13 (1) Has been convicted of any felony.

14 (2) Is addicted to the use of any narcotic drug.

15 (3) Is a person in a class prohibited by Section 8100 or 8103 of the Welfare and Institutions
16 Code or Section 12021 or 12021.1 of this code.

17 (c) Applications for permits shall be filed in writing, signed by the applicant if an
18 individual, or by a member or officer qualified to sign if the applicant is a firm or corporation,
19 and shall state the name, business in which engaged, business address and a full description
20 of the use to which the destructive devices are to be put.

21 (d) Applications and permits shall be uniform throughout the state on forms prescribed by
22 the Department of Justice.

23 (e) Each applicant for a permit shall pay at the time of filing his or her application a fee not
24 to exceed the application processing costs of the Department of Justice. A permit granted
25 *pursuant to this article* may be renewed one year from the date of issuance, and annually
26 thereafter, upon the filing of a renewal application and the payment of a permit renewal fee
27 not to exceed the application processing costs of the Department of Justice. After the
28 department establishes fees sufficient in amount to cover processing costs, the amount of the
29 fees shall only increase at a rate not to exceed the legislatively approved cost-of-living
30 adjustment for the department.

31 (f) Except as provided in subdivision (g), the Department of Justice shall, for every person,
32 firm, or corporation to whom a permit is issued *pursuant to this article*, annually conduct an
33 inspection for security and safe storage purposes, and to reconcile the inventory of destructive
34 devices.

35 (g) A person, firm, or corporation with an inventory of fewer than five devices that require
36 any Department of Justice permit shall be subject to an inspection for security and safe
37 storage purposes, and to reconcile inventory, once every five years, or more frequently if
38 determined by the department.

39 (Emphasis added.) Subdivision (e) refers to a permit “granted pursuant to this article” and
40 subdivision (f) refers to a permit “issued pursuant to this article.”

41 However, Section 12305 is not contained within an article. It is located in “Chapter 2.5.
42 Destructive Devices” of “Title 2. Control of Deadly Weapons” of Part 4 of the Penal Code. It is
43 the only provision in that chapter that refers to permits.

44 Consequently, if the existing references to a permit “granted pursuant to this article” and a
45 permit “issued pursuant to this article” are taken literally, they make no sense. We have therefore
46 (1) interpreted them as references to a permit “granted pursuant to *this section*” and a permit
47 “issued pursuant to *this section*,” and (2) drafted proposed Sections 18905 and 18910 accordingly
48 (i.e., we left the references to “this article” intact because proposed “Article 3. Permit and
49 Inspection” would correspond to existing Section 12305).

50 This approach struck the staff as more reasonable than perpetuating references to a nonexistent
51 article of the code. Although this is a strictly nonsubstantive study, some degree of commonsense
52 is appropriate in interpreting existing law. We would exercise such commonsense here and note
53 the situation in the preliminary part of the Commission’s report.

1 We encourage comment on this point.

2 **§ 18910. Inspection by Department of Justice**

3 18910. (a) Except as provided in subdivision (b), the Department of Justice
4 shall, for every person, firm, or corporation to whom a permit is issued under this
5 article, annually conduct an inspection for security and safe storage purposes, and
6 to reconcile the inventory of destructive devices.

7 (b) A person, firm, or corporation with an inventory of fewer than five devices
8 that require any Department of Justice permit shall be subject to an inspection for
9 security and safe storage purposes, and to reconcile inventory, once every five
10 years, or more frequently if determined by the department.

11 **Comment.** Section 18910 continues former Section 12305(f)-(g) without substantive change.
12 See Section 16460 (“destructive device”).

13 **Staff Note.** Existing Section 12305(f) contains an erroneous cross-reference to a nonexistent
14 article. The staff has corrected that cross-reference in drafting proposed Section 18910(a). For
15 further explanation, see the Staff Note for proposed Section 18905.

16 Article 4. Destructive Device Constituting Nuisance

17 **§ 19000. Destructive device constituting nuisance**

18 19000. (a) Possession of a destructive device in violation of this chapter is a
19 public nuisance.

20 (b) The Attorney General or district attorney of any city, county, or city and
21 county may bring an action in the superior court to enjoin the possession of any
22 destructive device.

23 (c) Any destructive device found to be in violation of this chapter shall be
24 surrendered to the Department of Justice, or to the sheriff or chief of police, if the
25 sheriff or chief of police has elected to perform the services required by this
26 section. The department, sheriff, or chief of police shall destroy the destructive
27 device so as to render it unusable and unrepairable as a destructive device, except
28 upon the filing of a certificate with the department by a judge or district attorney
29 stating that the preservation of the destructive device is necessary to serve the ends
30 of justice.

31 **Comment.** Section 19000 continues former Section 12307 without substantive change.
32 See Section 16460 (“destructive device”).

33 CHAPTER 2. EXPLOSIVE SUBSTANCE OTHER THAN FIXED AMMUNITION

34 **§ 19100. Carrying concealed explosive substance other than fixed ammunition**

35 19100. Subject to Chapter 1 (commencing with Section 17700) of Division 2,
36 any person in this state who carries concealed upon the person any explosive
37 substance, other than fixed ammunition, is punishable by imprisonment in a
38 county jail not exceeding one year or in the state prison.

39 **Comment.** Section 19100 continues former Section 12020(a)(3) without substantive change.

1 For circumstances in which this section is inapplicable, see Sections 16590 (“generally
2 prohibited weapon”), 17700-17745 (exemptions relating to generally prohibited weapons).

3 See also Sections 17800 (distinct and separate offense), 19190 (concealed explosive substance
4 constituting nuisance).

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

10 Implementation of that decision is discussed at pages 2-8 of Memorandum 2007-19. Section
11 12020 specifies many situations in which its prohibitions do not apply. Some of these exemptions
12 are expressly limited to a particular type of weapon or equipment. Other exemptions are broad,
13 making it more difficult to determine whether they apply to a particular type of weapon or
14 equipment.

15 Ideally, each exemption applicable to a particular type of weapon or equipment would be stated
16 in close proximity to the provision restricting that type of weapon or equipment. For example,
17 each exemption from proposed Section 19100 would be stated in the same chapter as that
18 provision.

19 Because some exemptions are broad and not completely clear in scope, however, the
20 Commission decided not to follow that approach in this strictly nonsubstantive study. There was
21 too much risk of inadvertently changing the law on whether a particular exemption applies to a
22 particular type of weapon or equipment.

23 Instead, the Commission decided to place Section 12020’s broad exemptions in “Chapter 1.
24 Exemptions” of “Division 2. Generally Prohibited Weapons” of “Title 2. Weapons Generally.”
25 For convenient reference, they are reproduced above in “Selected Provisions From Drafts
26 Previously Considered,” as are the definition of “generally prohibited weapon” (proposed Section
27 16590) and a provision on what constitutes a distinct and separate offense in the context of
28 generally prohibited weapons (proposed Section 17800).

29 To assist persons using the code, both proposed Section 19100 and its Comment would refer to
30 the chapter containing the broad exemptions. We considered the alternative of including such a
31 reference in the Comment alone, because that would most closely track the language of existing
32 Section 12020(a). We feared, however, that such an approach might lead people to overlook the
33 exemptions, particularly if they use a code that does not reproduce the Commission’s Comments.

34 The approach in proposed Section 19100 is still not as user-friendly as we would like, but it
35 seems safest in the context of the current study. Recognizing that there is room for further
36 improvement, the Commission’s list of “Minor Clean-Up Issues for Possible Future Legislative
37 Attention” includes the following project:

38 Consider which exemptions listed in Penal Code Section 12020 apply to which
39 weapons and equipment, and then consider whether to place each of those
40 exemptions in proximity to the provisions governing the weapons or equipment to
41 which it applies.

42 If that project is undertaken, a number of exemptions might be added to the chapter that contains
43 proposed Section 19100. We have left room in the chapter for addition of such material.

44 **§ 19190. Concealed explosive substance constituting nuisance**

45 19190. The unlawful concealed carrying upon the person of any explosive
46 substance other than fixed ammunition, as provided in Section 19100, is a
47 nuisance and is subject to Sections 18000 and 18005.

48 **Comment.** With respect to an explosive substance other than fixed ammunition, Section 19190
49 continues former Section 12028(a) without substantive change.

50 **☞ Staff Note.** Subdivision (a) of existing Section 12028 provides:

1 12028. (a) *The unlawful concealed carrying upon the person of any explosive*
2 *substance, other than fixed ammunition, dirk, or dagger, as provided in Section 12020, the*
3 *unlawful carrying of any handguns in violation of Section 12025, and the unlawful*
4 *possession or carrying of any item in violation of Section 653k is a nuisance.*

5 (Emphasis added.) The remainder of Section 12028 states that firearms constitute a nuisance in
6 certain circumstances, and specifies procedures for surrender and disposal of weapons that
7 constitute a nuisance under the section.

8 To improve organizational clarity, the Commission decided to divide up the substance of
9 Section 12028 according to the type of weapon or equipment covered. The language specifying
10 procedures for surrender and disposal of weapons was to be placed in the title on “Weapons
11 Generally.” Minutes (April 2007), p. 10; see also Memorandum 2007-15, p. 10.

12 Consistent with that decision, proposed Section 19190 would continue the portion of existing
13 Section 12028(a) relating to the unlawful concealed carrying upon the person of any explosive
14 substance, other than fixed ammunition. Proposed Sections 18000-18005 (reproduced above in
15 “Selected Provisions From Drafts Previously Considered”) would continue the provisions
16 specifying procedures for surrender and disposal of such weapons. To assist persons using the
17 code, proposed Section 19190 would cross-refer to proposed Sections 18000-18005.

18 CHAPTER 3. HANDGRENADES

19 **§ 19200. Prohibition on manufacture, import, sale, gift, loan, or possession of metal military**
20 **practice handgrenade or metal replica handgrenade**

21 19200. (a) Subject to Section 19205 and Chapter 1 (commencing with Section
22 17700) of Division 2, any person in this state who manufactures or causes to be
23 manufactured, imports into the state, keeps for sale, or offers or exposes for sale,
24 or who gives, lends, or possesses any metal military practice handgrenade or metal
25 replica handgrenade is punishable by imprisonment in a county jail not exceeding
26 one year or in the state prison.

27 (b) Notwithstanding subdivision (a), a first offense involving any metal military
28 practice handgrenade or metal replica handgrenade shall be punishable only as an
29 infraction unless the offender is an active participant in a criminal street gang as
30 defined in the Street Terrorism and Enforcement and Prevention Act (Chapter 11
31 (commencing with Section 186.20) of Title 7 of Part 1).

32 **Comment.** With respect to a metal military practice handgrenade or metal replica
33 handgrenade, subdivision (a) of Section 19200 continues former Section 12020(a)(1) without
34 substantive change.

35 Subdivision (b) continues the first sentence of the second paragraph of former Section
36 12020(a)(4) without substantive change.

37 For circumstances in which this section is inapplicable, see Sections 16590 (“generally
38 prohibited weapon”), 17700-17745 (exemptions relating to generally prohibited weapons), 19205
39 (toy or permanently inoperative handgrenade).

40 See also Sections 17800 (distinct and separate offense), 19290 (metal military practice
41 handgrenade or metal replica handgrenade constituting nuisance).

42 **Staff Note.** As discussed in the Staff Note to proposed Section 19100, the Commission has
43 decided to divide up the substance of existing Section 12020 according to the type of weapon or
44 equipment covered. Consistent with that decision, proposed Section 19200 would continue
45 portions of existing Section 12020 relating to a metal military practice handgrenade or metal
46 replica handgrenade.

1 Existing Section 12020 specifies many situations in which its prohibitions do not apply. Some
2 of these exemptions are expressly limited to a particular type of weapon or equipment. For
3 example, existing Section 12020(b)(15) creates an exemption that expressly applies to “any
4 plastic toy handgrenade, or any metal military practice handgrenade or metal replica
5 handgrenade” that meets certain criteria. Proposed Section 19205 (referenced in proposed Section
6 19200) would continue that provision.

7 Other exemptions to Section 12020 are broad, making it more difficult to determine whether
8 they apply to a particular type of weapon or equipment. For discussion of these broad exemptions
9 and how the Commission plans to handle them in this nonsubstantive study, see the Staff Note to
10 proposed Section 19100. In drafting “Chapter 3. Handgrenades,” we have left room for future
11 insertion of additional exemptions in case the Legislature undertakes the cleanup project
12 discussed in that Staff Note.

13 **§ 19205. Toy or permanently inoperative handgrenade**

14 19205. Section 19200 does not apply to any plastic toy handgrenade, or any
15 metal military practice handgrenade or metal replica handgrenade that is a relic,
16 curio, memorabilia, or display item, that is filled with a permanent inert substance,
17 or that is otherwise permanently altered in a manner that prevents ready
18 modification for use as a grenade.

19 **Comment.** Section 19205 continues former Section 12020(b)(15) without substantive change.

20 For additional circumstances in which Section 19200 is inapplicable, see Sections 16590
21 (“generally prohibited weapon”), 17700-17745 (exemptions relating to generally prohibited
22 weapons).

23 **§ 19290. Metal military practice handgrenade or metal replica handgrenade constituting
24 nuisance**

25 19290. Except as provided in Section 19205 and in Chapter 1 (commencing with
26 Section 17700) of Division 2, a metal military practice handgrenade or metal
27 replica handgrenade is a nuisance and is subject to Section 18010.

28 **Comment.** With respect to a metal military practice handgrenade or metal replica
29 handgrenade, Section 19290 continues the first part of the first sentence of former Section 12029
30 without substantive change.

31 **☞ Staff Note.** Existing Section 12029 provides:

32 12029. Except as provided in Section 12020, blackjacks, slungshots, billies, nunchakus,
33 sandclubs, sandbags, shurikens, metal knuckles, short-barreled shotguns or short-barreled
34 rifles as defined in Section 12020, and any other item which is listed in subdivision (a) of
35 Section 12020 and is not listed in subdivision (a) of Section 12028 are nuisances, and the
36 Attorney General, district attorney, or city attorney may bring an action to enjoin the
37 manufacture of, importation of, keeping for sale of, offering or exposing for sale, giving,
38 lending, or possession of, any of the foregoing items. These weapons shall be subject to
39 confiscation and summary destruction whenever found within the state. These weapons shall
40 be destroyed in the same manner as other weapons described in Section 12028, except that
41 upon the certification of a judge or of the district attorney that the ends of justice will be
42 subserved thereby, the weapon shall be preserved until the necessity for its use ceases.

43 To improve organizational clarity, the Commission decided to divide up the material in this
44 provision according to the type of weapon or equipment covered, with generally applicable
45 language to be placed in the title on “Weapons Generally.” Minutes (April 2007), p. 10; see also
46 Memorandum 2007-15, pp. 10-12.

1 Implementing that decision required assessment of which weapons and equipment fall within
2 the catchall provision of Section 12029 — i.e., which weapons and equipment are listed in
3 Section 12020(a) and not in Section 12028(a). By comparing those two sections, the staff
4 determined that the catchall provision encompasses a metal military practice handgrenade or
5 metal replica handgrenade. See Memorandum 2007-19, pp. 9-10.

6 Thus, proposed Section 19290 would continue the first part of the first sentence of existing
7 Section 12029, as it pertains to a metal military practice handgrenade or metal replica
8 handgrenade. The generally applicable language in existing Section 12029 would be continued in
9 proposed Section 18010 (reproduced above in “Selected Provisions From Drafts Previously
10 Considered”). To assist persons using the code, proposed Section 19290 would cross-refer to
11 proposed Section 18010.

12 DIVISION 6. LESS LETHAL WEAPONS

13 **§ 19400. Less lethal weapon or ammunition for official use by peace officer or custodial** 14 **officer**

15 19400. A person who is a peace officer or a custodial officer, as defined in
16 Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, may, if
17 authorized by and under the terms and conditions as are specified by the person’s
18 employing agency, purchase, possess, or transport any less lethal weapon or
19 ammunition for a less lethal weapon, for official use in the discharge of the
20 person’s duties.

21 **Comment.** Section 19400 continues former Section 12600 without substantive change.

22 See Section 16780 (“less lethal weapon”).
