

Memorandum 2008-26

**Nonsubstantive Reorganization of Deadly Weapon Statutes:
Title 4. Firearms and Similar Weapons (Divisions 1-3)**

The Commission is preparing a tentative recommendation that would reorganize the substance of Penal Code Sections 12000-12809 in a user-friendly manner in a new Part 6 of the Penal Code. To that end, attached is a draft of Divisions 1-3 of "Title 4. Firearms and Similar Weapons" of new Part 6.

Commissioners and other interested persons should review the attached draft and determine whether any revisions are needed before it is incorporated into a tentative recommendation. The staff appreciates and wishes to express its gratitude for the effort this entails. Although the material may be dry and difficult to read, careful review will help ensure that the Commission's final recommendation is well-drafted, well-received by the Legislature and the Governor, and ultimately useful to the citizens of California. Comments from Commission members, stakeholders, and other informed persons are invaluable in achieving this goal.

Staff Notes ( **Staff Note**) in the attached draft raise matters for Commissioners and other 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,

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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 2008-22.

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.

1 TITLE 4. FIREARMS AND SIMILAR WEAPONS

2 DIVISION 1. PRELIMINARY PROVISIONS

3 § 23500. Dangerous Weapons Control Law

4 23500. [This chapter] shall be known and may be cited as “The Dangerous
5 Weapons Control Law.”

6 **Comment.** Section 23500 continues former Section 12000 without substantive change.

7 **Staff Note.** Existing Section 12000 says: “*This chapter* shall be known and may be cited as
8 “The Dangerous Weapons Control Law.” (Emphasis added.) The chapter referenced is “Chapter
9 1. Firearms” of “Title 2. Control of Deadly Weapons” of “Part 4. Prevention of Criminals.” That
10 chapter contains numerous provisions: Penal Code Sections 12000-12101. It will be extensively
11 reorganized in the Commission’s nonsubstantive study.

12 In drafting proposed Section 23500, we have bracketed the reference to “this chapter,” instead
13 of trying to conform it to the Commission’s new numbering scheme, which is not yet complete.
14 When we replace the bracketed reference later in this study, we will need to be particularly
15 careful to ensure that the substance of Section 12000 is properly preserved.

16 § 23505. Severability

17 23505. If any section, subsection, sentence, clause, or phrase of [this chapter] is
18 for any reason held unconstitutional, that decision does not affect the validity of
19 the remaining portions of [this chapter]. The Legislature hereby declares that it
20 would have passed [this chapter] and each section, subsection, sentence, clause,
21 and phrase of it, irrespective of the fact that any one or more other sections,
22 subsections, sentences, clauses, or phrases be declared unconstitutional.

23 **Comment.** Section 23505 continues former Section 12003 without substantive change.

1 **☞ Staff Note.** In three places, existing Section 12003 refers to “this chapter.” As with proposed
2 Section 23500, the chapter referenced is “Chapter 1. Firearms” of “Title 2. Control of Deadly
3 Weapons” of “Part 4. Prevention of Criminals.”

4 In drafting proposed Section 23505, we have bracketed the references to “this chapter,” instead
5 of trying to conform them to the Commission’s new numbering scheme, which is not yet
6 complete. When we replace the bracketed references later in this study, we will need to be
7 particularly careful to ensure that the substance of Section 12003 is properly preserved.

8 **§ 23510. Distinct and separate offense despite reference to “any firearm”**

9 23510. For purposes of [Sections 12021, 12021.1, 12025, 12070, 12072, 12073,
10 12078, 12101, and 12801 of this code], and Sections 8100, 8101, and 8103 of the
11 Welfare and Institutions Code, notwithstanding the fact that the term “any
12 firearm” may be used in those sections, each firearm or the frame or receiver of
13 each firearm constitutes a distinct and separate offense under those sections.

14 **Comment.** Section 23510 continues former Section 12001(k) without substantive change.
15 See Section 16520 (“firearm”).

16 **§ 23515. Violent use of firearm**

17 23515. As used in [this chapter], an offense that involves the violent use of a
18 firearm includes any of the following:

19 (a) A violation of paragraph (2) or (3) of subdivision (a) of Section 245 or a
20 violation of subdivision (d) of Section 245.

21 (b) A violation of Section 246.

22 (c) A violation of paragraph (2) of subdivision (a) of Section 417.

23 (d) A violation of subdivision (c) of Section 417.

24 **Comment.** Section 23515 continues former Section 12001.6 without substantive change.
25 See Section 16520 (“firearm”).

26 **☞ Staff Notes.**

27 (1) Existing Section 12001.6 specifies what constitutes violent use of a firearm “[a]s used *in*
28 *this chapter.*” (Emphasis added.) As with proposed Section 23500, the chapter referenced is
29 “Chapter 1. Firearms” of “Title 2. Control of Deadly Weapons” of “Part 4. Prevention of Crime
30 and Apprehension of Criminals.”

31 In drafting proposed Section 23515, we have bracketed the reference to “this chapter,” instead
32 of trying to conform it to the Commission’s new numbering scheme, which is not yet complete.
33 When we replace the bracketed reference later in this study, we will need to be particularly
34 careful to ensure that the substance of Section 12001.6 is properly preserved.

35 (2) According to the outline attached to Memorandum 2008-22, the substance of existing
36 Section 12001.6 should be placed in “Chapter 2. Definitions” of “Division 1. Preliminary
37 Provisions” of “Title 4. Firearms and Similar Weapons.” No other material is to be placed in that
38 chapter. The preceding chapter, entitled “Chapter 1. General Provisions,” is to contain the
39 substance of existing Sections 12000, 12001(k), and 12003.

40 For the following reasons, we have not followed that approach:

- 41 • The Commission has decided that virtually all of the definitions now in Title 2 of
42 Part 4 of the Penal Code should be consolidated in “Division 2. Definitions” of
43 “Title 1. Preliminary Provisions” of new Part 6 of the Penal Code. See Minutes
44 (June 2007), p. 9; Minutes (Aug. 2007), p. 8; Minutes (April 2008), p. 6; see also
45 Memorandum 2008-23.

- Existing Section 12001.6 is framed as a substantive provision, not as a definition. Consequently, it does not belong in a chapter or division entitled “Definitions.”

Instead, we have placed the substance of existing Section 12001.6 in “Division 1. Preliminary Provisions” of “Title 4. Firearms and Similar Weapons.” As drafted, that division also contains the substance of existing Sections 12000, 12001(k), and 12003. It is not divided into chapters, as that appears unnecessary.

We hope this approach is acceptable to the Commission. We invite comment on the matter. If no concerns are expressed, we will revise the outline to reflect this approach.

(3) Existing Section 12370(e) defines “**violent felony**” for purposes of that section. The substance of Section 12370(e) would be continued in proposed Section 17320, which would be located in “Division 2. Definitions” of “Title 1. Preliminary Provisions.”

Existing Section 12021(b) states which offenses are a “**violent offense**” as used “in this section.” As previously explained, we have not treated this provision as a definition. See Memorandum 2008-17, Attachment pp. 58-59. Instead, its substance would be placed in “Chapter 3. Person Convicted of Specified Offense, Addicted to Narcotic, or Subject to Court Order” of “Division 9. Special Firearm Rules Relating to Particular Persons” of “Title 4. Firearms and Similar Weapons.”

Finally, existing Section 12001.6 specifies what constitutes “**violent use of a firearm.**” It would be continued by proposed Section 23515, as shown above.

The Comment to proposed Section 23515 would not refer to proposed Section 17320 (defining “violent felony”) or the provision that would continue Section 12021(b) (specifying which offenses are a “violent offense” as used in existing Section 12021). We thought such references would be more likely to generate confusion than to provide useful clarification.

We encourage comment on this point.

DIVISION 2. FIREARM SAFETY DEVICES AND GUN SAFES

Staff Notes.

(1) The terms “firearm safety device” and “firearms safety device” are both used in Title 2 of Part 4 of the Penal Code. See Memorandum 2007-33, Attachment p. 29. Because the Commission’s general practice is to draft statutes using the singular form rather than the plural, proposed Section 16540 would define “firearm safety device,” not “firearms safety device.” See *id.*; see also Memorandum 2008-23, Attachment p. 16. As previously discussed, we intend to use the term “firearm safety device” consistently throughout new Part 6. See Memorandum 2007-33, Attachment p. 29.

(2) In the outline of new Part 6, this division is entitled “Firearm Safety Devices,” the same as existing Article 4.5 (commencing with Section 12087) of Chapter 1 of Title 2 of Part 4 of the Penal Code. See Memorandum 2008-22, Exhibit p. 14. In this draft, however, the staff has not used that title. Instead, the division is entitled “Firearm Safety Devices and Gun Safes,” which more fully reflects the content of the division. Unless the Commission otherwise directs, we will revise the outline to conform to this approach.

§ 23620. Aroner-Scott-Hayden Firearms Safety Act of 1999

23620. This division and Sections 16540, 16610, and 16870 shall be known and may be cited as the “Aroner-Scott-Hayden Firearms Safety Act of 1999.”

Comment. Section 23620 continues former Section 12087 without substantive change.

 **Staff Note.** The Aroner-Scott Hayden Firearms Safety Act includes definitions of “firearms safety device,” “gun safe,” and “long-gun safe.” See Section 12087.6. These definitions would be continued in “Division 2. Definitions” of “Title 1. Preliminary Provisions” of new Part 6. See

1 proposed Sections 16540 (“firearm safety device”), 16610 (“gun safe”), 16870 (“long-gun safe”).
2 Proposed Section 23620 would reflect as much.

3 According to the outline attached to Memorandum 2008-22, the substance of existing Section
4 12087.6 should be placed in “Division 2. Firearm Safety Devices” of “Title 4. Firearms and
5 Similar Weapons.” However, that substance consists entirely of the three definitions that have
6 been placed in “Division 2. Definitions” of “Title 1. Preliminary Provisions.” Consequently, we
7 have not placed any of it in “Division 2. Firearm Safety Devices.” Unless the Commission
8 otherwise directs, we will revise the outline to reflect this.

9 **§ 23625. Limitations on application**

10 23625. (a) This division does not apply to the commerce of any antique firearm.

11 (b)(1) This division does not apply to the commerce of any firearm intended to
12 be used by a salaried, full-time peace officer, as defined in Chapter 4.5
13 (commencing with Section 830) of Title 3 of Part 2, for purposes of law
14 enforcement.

15 (2) Nothing in this division precludes a local government, local agency, or state
16 law enforcement agency from requiring its peace officers to store their firearms in
17 gun safes or attach firearm safety devices to those firearms.

18 **Comment.** Section 23625 continues former Section 12088.8 without substantive change.

19 See Sections 16170 (“antique firearm”), 16520 (“firearm”), 16540 (“firearm safety device”),
20 16610 (“gun safe”).

21 **Staff Note.** Existing Section 12088.8 refers to “any firearm defined as an ‘antique firearm’ in
22 paragraph (16) of subsection (a) of Section 921 of Title 18 of the United States Code.” In
23 proposed Section 23625, we have (1) replaced that reference with “any antique firearm,” and (2)
24 included a reference to the definition of “antique firearm” in the Comment, which also states that
25 “Section 23625 continues former Section 12088.8 without substantive change.”

26 We chose this approach because it would further the Legislature’s directive to “[a]void
27 unnecessary use of cross-references” while “[n]either expand[ing] nor contract[ing] the scope of
28 criminal liability under current provisions.” 2006 Cal. Stat. res. ch. 128. Because courts give great
29 weight to the Commission’s comments, we think this would be sufficient to preserve the
30 substance of Section 12088.8. See 2006-2007 Annual Report, 36 Cal. L. Revision Comm’n
31 Reports 1, 18-24 (2006).

32 **§ 23630. Legislative findings**

33 23630. The Legislature makes the following findings:

34 (a) In the years 1987 to 1996, nearly 2,200 children in the United States under
35 the age of 15 years died in unintentional shootings. In 1996 alone, 138 children
36 were shot and killed unintentionally. Thus, more than 11 children every month, or
37 one child every three days, were shot or killed unintentionally in firearms-related
38 incidents.

39 (b) The United States leads the industrialized world in the rates of children and
40 youth lost to unintentional, firearms-related deaths. A 1997 study from the federal
41 Centers for Disease Control and Prevention reveals that for unintentional firearm-
42 related deaths for children under the age of 15, the rate in the United States was
43 nine times higher than in 25 other industrialized countries combined.

1 (c) While the number of unintentional deaths from firearms is an unacceptable
2 toll on America’s children, nearly eight times that number are treated in U.S.
3 hospital emergency rooms each year for nonfatal unintentional gunshot wounds.

4 (d) A study of unintentional firearm deaths among children in California found
5 that unintentional gunshot wounds most often involve handguns.

6 (e) A study in the December 1995 issue of the Archives of Pediatric and
7 Adolescent Medicine found that children as young as three years old are strong
8 enough to fire most commercially available handguns. The study revealed that 25
9 percent of three to four year olds and 70 percent of five to six year olds had
10 sufficient finger strength to fire 59 (92 percent) of the 64 commonly available
11 handguns referenced in the study.

12 (f) The Government Accounting Office (GAO), in its March 1991 study,
13 “Accidental Shootings: Many Deaths and Injuries Caused by Firearms Could be
14 Prevented,” estimates that 31 percent of accidental deaths caused by firearms
15 might be prevented by the addition of two safety devices: a child-resistant safety
16 device that automatically engages and a device that indicates whether the gun is
17 loaded. According to the study results, of the 107 unintentional firearms-related
18 fatalities the GAO examined for the calendar years 1988 and 1989, 8 percent could
19 have been prevented had the firearm been equipped with a child-resistant safety
20 device. This 8 percent represents instances in which children under the age of six
21 unintentionally shot and killed themselves or other persons.

22 (g) Currently, firearms are the only products manufactured in the United States
23 that are not subject to minimum safety standards.

24 (h) A 1997 public opinion poll conducted by the National Opinion Research
25 Center at the University of Chicago in conjunction with the Johns Hopkins Center
26 for Gun Policy and Research found that 74 percent of Americans support safety
27 regulation of the firearms industry.

28 (i) Some currently available trigger locks and other similar devices are
29 inadequate to prevent the accidental discharge of the firearms to which they are
30 attached, or to prevent children from gaining access to the firearm.

31 **Comment.** Section 23630 continues former Section 12087.5 without substantive change.
32 See Sections 16520 (“firearm”), 16640 (“handgun”).

33 **§ 23635. Firearm safety device requirement, warning requirement for noncomplying long-**
34 **gun safe, and warning described in Section 23640**

35 23635. (a) Any firearm sold or transferred in this state by a licensed firearms
36 dealer, including a private transfer through a dealer, and any firearm manufactured
37 in this state, shall include or be accompanied by a firearm safety device that is
38 listed on the Department of Justice’s roster of approved firearm safety devices and
39 that is identified as appropriate for that firearm by reference to either the
40 manufacturer and model of the firearm, or to the physical characteristics of the
41 firearm that match those listed on the roster for use with the device.

1 (b) The sale or transfer of a firearm shall be exempt from subdivision (a) if both
2 of the following apply:

3 (1) The purchaser or transferee owns a gun safe that meets the standards set
4 forth in Section 23650. Gun safes shall not be required to be tested, and therefore
5 may meet the standards without appearing on the Department of Justice roster.

6 (2) The purchaser or transferee presents an original receipt for purchase of the
7 gun safe, or other proof of purchase or ownership of the gun safe as authorized by
8 the Attorney General, to the firearms dealer. The dealer shall maintain a copy of
9 this receipt or proof of purchase with the dealer's record of sales of firearms.

10 (c) The sale or transfer of a firearm shall be exempt from subdivision (a) if all of
11 the following apply:

12 (1) The purchaser or transferee purchases an approved safety device no more
13 than 30 days prior to the day the purchaser or transferee takes possession of the
14 firearm.

15 (2) The purchaser or transferee presents the approved safety device to the
16 firearms dealer when picking up the firearm.

17 (3) The purchaser or transferee presents an original receipt to the firearms
18 dealer, which shows the date of purchase, the name, and the model number of the
19 safety device.

20 (4) The firearms dealer verifies that the requirements in paragraphs (1) to (3),
21 inclusive, have been satisfied.

22 (5) The firearms dealer maintains a copy of the receipt along with the dealer's
23 record of sales of firearms.

24 (d)(1) Any long-gun safe commercially sold or transferred in this state, or
25 manufactured in this state for sale in this state, that does not meet the standards for
26 gun safes adopted pursuant to Section 23650 shall be accompanied by the
27 following warning:

28 "WARNING: This gun safe does not meet the safety standards for gun safes
29 specified in California Penal Code Section 23650. It does not satisfy the
30 requirements of Penal Code Section 23635, which mandates that all firearms sold
31 in California be accompanied by a firearm safety device or proof of ownership, as
32 required by law, of a gun safe that meets the Section 23650 minimum safety
33 standards developed by the California Attorney General."

34 (2) This warning shall be conspicuously displayed in its entirety on the principal
35 display panel of the gun safe's package, on any descriptive materials that
36 accompany the gun safe, and on a label affixed to the front of the gun safe.

37 (3) This warning shall be displayed in both English and Spanish, in conspicuous
38 and legible type in contrast by typography, layout, or color with other printed
39 matter on the package or descriptive materials, in a manner consistent with Part
40 1500.121 of Title 16 of the Code of Federal Regulations, or successor regulations
41 thereto.

42 (e) Any firearm sold or transferred in this state by a licensed firearms dealer,
43 including a private transfer through a dealer, and any firearm manufactured in this

1 state, shall be accompanied by warning language or a label as described in Section
2 23640.

3 **Comment.** Subdivision (a) of Section 23635 continues former Section 12088.1(a) without
4 substantive change.

5 Subdivision (b) continues former Section 12088.1(d) without substantive change.

6 Subdivision (c) continues former Section 12088.1(e) without substantive change.

7 Subdivision (d) continues former Section 12088.1(c) without substantive change.

8 Subdivision (e) continues former Section 12088.1(b) without substantive change.

9 See Sections 16440 (“dealer”), 16520 (“firearm”), 16540 (“firearm safety device”), 16610
10 (“gun safe”), 16870 (“long-gun safe”).

11 **Staff Note.** Existing Section 12088.1 addresses three distinct subjects:

- 12 (1) The firearm safety device requirement and exemptions from that requirement,
- 13 (2) The warning requirement for a long-gun safe that does not comply with the
14 standards for gun safes.
- 15 (3) The warning requirement of Section 12088.3.

16 In drafting proposed Section 23635 we have:

- 17 • Put all of the material relating to the firearm safety device requirement at the
18 beginning (subdivisions (a)-(c)).
- 19 • Put the material relating to the warning requirement for a noncomplying long-gun
20 safe next (subdivision (d)).
- 21 • Put the material relating to the warning requirement of Section 12088.3 at the end
22 (subdivision (e)), where it will be adjacent to the provision that continues Section
23 12088.3.

24 We considered the alternative of dividing the material into three distinct sections. However,
25 existing Section 12088.6 provides:

26 *Any violation of Section 12088.1 or Section 12088.3 is punishable by a fine of one*
27 *thousand dollars (\$1,000). On the second violation of any of those sections, the licensed*
28 *firearm manufacturer shall be ineligible to manufacture, or the licensed firearm dealer*
29 *shall be ineligible to sell, firearms in this state for 30 days, and shall be punished by a*
30 *fine of one thousand dollars (\$1,000). On the third violation of any of those sections, a*
31 *firearm manufacturer shall be permanently ineligible to manufacture firearms in this*
32 *state. On the third violation of any of those sections, a licensed firearm dealer shall be*
33 *permanently ineligible to sell firearms in this state.*

34 (Emphasis added.) We worried that if the material in Section 12088.1 were divided into three
35 distinct sections, it might be difficult to properly adjust the language now in Section 12088.6, to
36 ensure that there would be no substantive change. We therefore decided to leave the material in
37 Section 12088.1 in a single section, instead of dividing it up.

38 This might be an appropriate subject for future legislative clean-up. We are not sure, however,
39 whether to include the matter on the Commission’s list of “Minor Clean-up Issues for Possible
40 Future Legislative Attention.”

41 Our concern is that the project might be too controversial to be a *minor* clean-up issue. In
42 particular, existing Section 12088.1(b) (proposed Section 23635(e)) says: “Any firearm sold or
43 transferred in this state by a licensed firearms dealer, including a private transfer through a dealer,
44 and any firearm manufactured in this state, shall be accompanied by warning language or a label
45 as described in Section 12088.3.” That provision seems to some extent redundant with the
46 language of existing Section 12088.3(a) (proposed Section 23640(a)). Its inclusion in Section
47 12088.1 might mean, however, that the same misconduct is punishable under both Section
48 12088.1 and Section 12088.3.

1 We do not know whether this is in fact the case. The possibility of such an interpretation, and
2 of disrupting it in a clean-up project, may make such clean-up controversial. We encourage
3 comments on this matter. Absent further input and instructions from the Commission, we will not
4 include the project on the list of “Minor Clean-up Issues for Possible Future Legislative
5 Attention.”

6 **§ 23640. Warning label**

7 23640. (a) The packaging of any firearm and any descriptive materials that
8 accompany any firearm sold or transferred in this state, or delivered for sale in this
9 state, by any licensed manufacturer, or licensed dealer, shall bear a label
10 containing the following warning statement:

11 **WARNING**

12 Children are attracted to and can operate firearms that
13 can cause severe injuries or death.

14 Prevent child access by always keeping guns locked
15 away and unloaded when not in use. If you keep a
16 loaded firearm where a child obtains and improperly
17 uses it, you may be fined or sent to prison.

18 A yellow triangle containing an exclamation mark shall appear immediately before
19 the word “Warning” on the label.

20 (b) If the firearm is sold or transferred without accompanying packaging, the
21 warning label or notice shall be affixed to the firearm itself by a method to be
22 prescribed by regulation of the Attorney General.

23 (c) The warning statement required under subdivisions (a) and (b) shall satisfy
24 both of the following requirements:

25 (1) It shall be displayed in its entirety on the principal display panel of the
26 firearm’s package, and on any descriptive materials that accompany the firearm.

27 (2) It shall be displayed in both English and Spanish, in conspicuous and legible
28 type in contrast by typography, layout, or color with other printed matter on that
29 package or descriptive materials, in a manner consistent with Part 1500.121 of
30 Title 16, of the Code of Federal Regulations, or successor regulations thereto.

31 **Comment.** Section 23640 continues former Section 12088.3 without substantive change.
32 See Section 16520 (“firearm”).

33 **§ 23645. Punishment for violation of Section 23635 or 23640**

34 23645. (a) Any violation of Section 23635 or Section 23640 is punishable by a
35 fine of one thousand dollars (\$1,000).

36 (b) On a second violation of any of those sections, a licensed firearm
37 manufacturer shall be ineligible to manufacture, or a licensed firearm dealer shall
38 be ineligible to sell, firearms in this state for 30 days, and shall be punished by a
39 fine of one thousand dollars (\$1,000).

1 (c)(1) On a third violation of any of those sections, a firearm manufacturer shall
2 be permanently ineligible to manufacture firearms in this state.

3 (2) On a third violation of any of those sections, a licensed firearm dealer shall
4 be permanently ineligible to sell firearms in this state.

5 **Comment.** Section 23645 continues former Section 12088.6 without substantive change.
6 See Sections 16440 (“dealer”), 16520 (“firearm”).

7 **§ 23650. Minimum safety standard for firearm safety devices and gun safes**

8 23650. (a) The Attorney General shall develop regulations to implement a
9 minimum safety standard for firearm safety devices and gun safes to significantly
10 reduce the risk of firearm-related injuries to children 17 years of age and younger.
11 The final standard shall do all of the following:

12 (1) Address the risk of injury from unintentional gunshot wounds.

13 (2) Address the risk of injury from self-inflicted gunshot wounds by
14 unauthorized users.

15 (3) Include provisions to ensure that all firearm safety devices and gun safes are
16 reusable and of adequate quality and construction to prevent children and
17 unauthorized users from firing the firearm and to ensure that these devices cannot
18 be readily removed from the firearm or that the firearm cannot be readily removed
19 from the gun safe except by an authorized user utilizing the key, combination, or
20 other method of access intended by the manufacturer of the device.

21 (4) Include additional provisions as appropriate.

22 (b) The Attorney General may consult, for the purposes of guidance in
23 development of the standards, test protocols such as those described in Title 16
24 (commencing with Part 1700) of the Code of Federal Regulations, relating to
25 poison prevention packaging standards. These protocols may be consulted to
26 provide suggestions for potential methods to utilize in developing standards and
27 shall serve as guidance only. The Attorney General shall also give appropriate
28 consideration to the use of devices that are not detachable, but are permanently
29 installed and incorporated into the design of a firearm.

30 (c) The Attorney General shall commence development of regulations under this
31 section no later than January 1, 2000. The Attorney General shall adopt and issue
32 regulations implementing a final standard no later than January 1, 2001. The
33 Attorney General shall report to the Legislature on these standards by January 1,
34 2001. The final standard shall be effective January 1, 2002.

35 **Comment.** Section 23650 continues former Section 12088.2 without substantive change.
36 See Sections 16520 (“firearm”), 16540 (“firearm safety device”), 16610 (“gun safe”).

37 **Staff Note.** Existing Section 12088.2 contains deadlines for the Attorney General to meet in
38 developing the minimum safety standard for firearm safety devices. In drafting proposed Section
39 23650, we were not sure whether and how to update the references to those deadlines, which have
40 long since passed. We decided to consolidate them in subdivision (c). That required minimal
41 revisions of the existing language, because almost all of the deadlines were already stated at the
42 end of Section 12088.2.

1 Could proposed Section 23650(c) be deleted as obsolete? Comments on this point would be
2 useful.

3 The point could perhaps be studied as a clean-up project after this nonsubstantive study is
4 completed. Unless the Commission otherwise directs, we will include it on the Commission’s list
5 of “Minor Clean-up Issues for Possible Future Legislative Attention.”

6 **§ 23655. Testing of firearm safety devices**

7 23655. (a) The Department of Justice shall certify laboratories to verify
8 compliance with standards for firearm safety devices set forth in Section 23650.

9 (b) The Department of Justice may charge any laboratory that is seeking
10 certification to test firearm safety devices a fee not exceeding the costs of
11 certification, including costs associated with the development and approval of
12 regulations and standards pursuant to Section 23650.

13 (c) The certified laboratory shall, at the manufacturer’s or dealer’s expense, test
14 a firearm safety device and submit a copy of the final test report directly to the
15 Department of Justice, along with the firearm safety device. The department shall
16 notify the manufacturer or dealer of its receipt of the final test report and the
17 department’s determination as to whether the firearm safety device tested may be
18 sold in this state.

19 (d) Commencing on July 1, 2001, the Department of Justice shall compile,
20 publish, and maintain a roster listing all of the firearm safety devices that have
21 been tested by a certified testing laboratory, have been determined to meet the
22 department’s standards for firearm safety devices, and may be sold in this state.

23 (e) The roster shall list, for each firearm safety device, the manufacturer, model
24 number, and model name.

25 (f) The department may randomly retest samples obtained from sources other
26 than directly from the manufacturer of the firearm safety device listed on the roster
27 to ensure compliance with the requirements of this division.

28 (g) Firearm safety devices used for random sample testing and obtained from
29 sources other than the manufacturer shall be in new, unused condition, and still in
30 the manufacturer’s original and unopened package.

31 **Comment.** Section 23655 continues former Section 12088 without substantive change.

32 See Sections 16440 (“dealer”), 16520 (“firearm”), 16540 (“firearm safety device”).

33 **§ 23660. Sale, distribution, or manufacture of unlisted or noncomplying firearm safety**
34 **device**

35 23660. (a) No person shall keep for commercial sale, offer, or expose for
36 commercial sale, or commercially sell any firearm safety device that is not listed
37 on the roster maintained pursuant to subdivision (d) of Section 23655, or that does
38 not comply with the standards for firearm safety devices adopted pursuant to
39 Section 23650.

40 (b) No person may distribute as part of an organized firearm safety program,
41 with or without consideration, any firearm safety device that is not listed on the
42 roster maintained pursuant to subdivision (d) of Section 23655, or that does not

1 comply with the standards for firearm safety devices adopted pursuant to Section
2 23650.

3 **Comment.** Subdivision (a) of Section 23660 continues former Section 12088.15(a) without
4 substantive change.

5 Subdivision (b) continues former Section 12088.15(b) without substantive change.

6 See Sections 16520 (“firearm”), 16540 (“firearm safety device”).

7 **§ 23665. Sale or manufacture of noncomplying long-gun safe**

8 23665. (a) No long-gun safe may be manufactured in this state for sale in this
9 state that does not comply with the standards for gun safes adopted pursuant to
10 Section 23650, unless the long-gun safe is labeled by the manufacturer consistent
11 with the requirements of Section 23635.

12 (b)(1) Any person who keeps for commercial sale, offers, or exposes for
13 commercial sale, or who commercially sells a long-gun safe that does not comply
14 with the standards for gun safes adopted pursuant to Section 23650, and who
15 knows or has reason to know, that the long-gun safe in question does not meet the
16 standards for gun safes adopted pursuant to Section 23650, is in violation of this
17 section, and is punishable as provided in Section 23670, unless the long-gun safe
18 is labeled pursuant to Section 23635.

19 (2) Any person who keeps for commercial sale, offers, or exposes for
20 commercial sale, or who commercially sells a long-gun safe that does not comply
21 with the standards for gun safes adopted pursuant to Section 23650, and who
22 removes or causes to be removed, from the long-gun safe, the label required
23 pursuant to Section 23635, is in violation of this section, and is punishable as
24 provided in Section 23670.

25 **Comment.** Subdivision (a) of Section 23665 continues former Section 12088.15(c) without
26 substantive change.

27 Subdivision (b) continues former Section 12088.15(d) without substantive change.

28 See Sections 16610 (“gun safe”), 16870 (“long-gun safe”).

29 **§ 23670. Punishment for violation of Section 23660 or 23665**

30 23670. (a)(1) A violation of Section 23660 or 23665 is punishable by a civil fine
31 of up to five hundred dollars (\$500).

32 (2) A second violation of any of those sections, which occurs within five years
33 of the date of a previous offense, is punishable by a civil fine of up to one
34 thousand dollars (\$1,000) and, if the violation is committed by a licensed firearms
35 dealer, the dealer shall be ineligible to sell firearms in this state for 30 days.

36 (3) A third or subsequent violation that occurs within five years of two or more
37 previous offenses is punishable by a civil fine of up to five thousand dollars
38 (\$5,000) and, if the violation is committed by a licensed firearms dealer, the
39 firearms dealer shall be permanently ineligible to sell firearms in this state.

40 (b) The Attorney General, a district attorney, or a city attorney may bring a civil
41 action for a violation of Section 23660 or 23665.

1 **Comment.** Subdivision (a) of Section 23670 continues former Section 12088.15(e) without
2 substantive change.

3 Subdivision (b) continues former Section 12088.15(f) without substantive change.

4 See Sections 16440 (“dealer”), 16520 (“firearm”).

5 **§ 23675. Effect of compliance**

6 23675. Compliance with the requirements set forth in this division does not
7 relieve any person from liability to any other person as may be imposed pursuant
8 to common law, statutory law, or local ordinance.

9 **Comment.** Section 23675 continues former Section 12088.7 without substantive change.

10 **§ 23680. Recall, replacement, or correction of nonconforming device**

11 23680. (a) If at any time the Attorney General determines that a gun safe or
12 firearm safety device subject to the provisions of this division and sold after
13 January 1, 2002, does not conform with the standards required by subdivision (a)
14 of Section 23635 or Section 23650, the Attorney General may order the recall and
15 replacement of the gun safe or firearm safety device, or order that the gun safe or
16 firearm safety device be brought into conformity with those requirements.

17 (b) If the firearm safety device can be separated and reattached to the firearm
18 without damaging the firearm, the licensed manufacturer or licensed firearms
19 dealer shall immediately provide a conforming replacement as instructed by the
20 Attorney General.

21 (c) If the firearm safety device cannot be separated from the firearm without
22 damaging the firearm, the Attorney General may order the recall and replacement
23 of the firearm.

24 **Comment.** Section 23680 continues former Section 12088.4 without substantive change.

25 See Sections 16440 (“dealer”), 16520 (“firearm”), 16540 (“firearm safety device”), 16610
26 (“gun safe”).

27 **§ 23685. Report of incident in which child suffers unintentional or self-inflicted gunshot**
28 **wound**

29 23685. Each lead law enforcement agency investigating an incident shall report
30 to the State Department of Health Services any information obtained that
31 reasonably supports the conclusion that:

32 (a) A child 18 years of age or younger suffered an unintentional or self-inflicted
33 gunshot wound inflicted by a firearm that was sold or transferred in this state, or
34 manufactured in this state.

35 (b) Whether as a result of that incident the child died, suffered serious injury, or
36 was treated for an injury by a medical professional.

37 **Comment.** Section 23685 continues former Section 12088.5 without change.

38 See Section 16520 (“firearm”).

39 **Staff Note.** Existing Section 12088.5 is poorly worded. The staff thinks it could be reworded
40 along the following lines without any change in meaning:

1 12088.5. (a) Each lead law enforcement agency investigating an incident shall report to the
2 State Department of Health Services any information obtained that reasonably supports the
3 conclusion ~~that:~~ that a

4 ~~(a)~~ A child 18 years of age or younger suffered an unintentional or self-inflicted gunshot
5 wound inflicted by a firearm that was sold or transferred in this state, or manufactured in this
6 state.

7 ~~(b) Whether~~ Each agency shall further report whether, as a result of that incident, the child
8 died, suffered serious injury, or was treated for an injury by a medical professional.

9 Should this language be used in proposed Section 23685? To avoid any risk of a substantive
10 change, we retained the current wording, despite its shortcomings. Unless the Commission
11 otherwise directs, we will proceed with that approach and add this issue to the Commission's list
12 of "Minor Clean-up Issues for Possible Future Legislative Attention."

13 **§ 23690. Fee**

14 23690. (a)(1) The Department of Justice may require each dealer to charge each
15 firearm purchaser or transferee a fee not to exceed one dollar (\$1) for each firearm
16 transaction.

17 (2) The fee shall be for the purpose of supporting department program costs
18 related to this act, including the establishment, maintenance, and upgrading of
19 related database systems and public rosters.

20 (b)(1) There is hereby created within the General Fund the Firearm Safety
21 Account.

22 (2) Revenue from the fee imposed by subdivision (a) shall be deposited into the
23 Firearm Safety Account and shall be available for expenditure by the Department
24 of Justice upon appropriation by the Legislature.

25 (3) Expenditures from the Firearm Safety Account shall be limited to program
26 expenditures as defined by subdivision (a).

27 **Comment.** Section 23690 continues former Section 12088.9 without substantive change.
28 See Sections 16440 ("dealer"), 16520 ("firearm").

29 **DIVISION 3. DISGUISED OR MISLEADING APPEARANCE**

30 **CHAPTER 1. MISCELLANEOUS PROVISIONS**

31 **§ 23800. Bright orange or bright green firearm**

32 23800. Any person who, for commercial purposes, purchases, sells,
33 manufactures, ships, transports, distributes, or receives a firearm, where the
34 coloration of the entire exterior surface of the firearm is bright orange or bright
35 green, either singly, in combination, or as the predominant color in combination
36 with other colors in any pattern, is liable for a civil fine in an action brought by the
37 city attorney of the city, or the district attorney for the county, of not more than ten
38 thousand dollars (\$10,000).

39 **Comment.** Section 23800 continues former Section 12020.3 without substantive change.
40 See Section 16520 ("firearm").

1 **☞ Staff Note.** Existing Section 12020.3 (proposed Section 23800) establishes the odd crime of
2 having a bright orange or bright green gun. The provision does not address other bright-colored
3 guns, such as a bright purple or bright pink gun.

4 In contrast, existing Section 12556 criminalizes public display of an imitation firearm, but
5 includes an exception for an imitation firearm that is entirely “white, bright red, bright orange,
6 bright yellow, bright green, bright blue, bright pink, or bright purple” See Section
7 12556(d)(13) (proposed Section 24135(m)). The intent seems to be that you cannot be charged
8 with the crime of displaying a simulated gun if it is marked in ways that law enforcement will
9 recognize as identifying an imitation. The risk of public alarm and confusion would also be
10 reduced if the item is colored like a toy.

11 Similarly, the intent of existing Section 12020.3 might be to prohibit someone from carrying a
12 real gun that is marked in the way that police will see it as an imitation. That could let someone
13 get away with carrying a real gun around in public, in an inappropriate way.

14 In combination, then, existing Sections 12020.3 and 12556(d)(13) may be intended to clearly
15 distinguish between real guns (not brightly colored) and fake guns (brightly colored). If so, the
16 two sections serve a logical purpose.

17 If that is the purpose, however, Section 12020.3 is too narrow and is not properly coordinated
18 with Section 12556(d)(13). Section 12020.3 should instead prohibit carrying a real gun that is
19 colored in the way that is described in 12556(d)(13). That would include white, yellow, red,
20 purple, etc.

21 Because this is strictly a nonsubstantive study, proposed Section 23800 would simply preserve
22 existing Section 12020.3. Unless the Commission otherwise directs, however, we will include the
23 question of its scope on the Commission’s list of “Minor Clean-up Issues for Possible Future
24 Legislative Attention.”

25 CHAPTER 2. OBLITERATION OF IDENTIFICATION MARKS

26 **§ 23900. Obliteration of firearm identification marks prohibited**

27 23900. Any person who changes, alters, removes, or obliterates the name of the
28 maker, model, manufacturer’s number, or other mark of identification, including
29 any distinguishing number or mark assigned by the Department of Justice, on any
30 pistol, revolver, or any other firearm, without first having secured written
31 permission from the department to make that change, alteration, or removal shall
32 be punished by imprisonment in the state prison.

33 **Comment.** Section 23900 continues former Section 12090 without substantive change.

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

36 **§ 23905. Presumption**

37 23905. Possession of any pistol or revolver upon which the name of the maker,
38 model, manufacturer’s number or other mark of identification has been changed,
39 altered, removed, or obliterated, shall be presumptive evidence that the possessor
40 has changed, altered, removed, or obliterated the same.

41 **Comment.** Section 23905 continues former Section 12091 without change. Continuation of
42 this material is not intended to reflect any determination regarding its constitutionality. For a case
43 discussing the constitutionality of former Section 12091, see *In re Christopher K.*, 91 Cal. App.
44 4th 853, 110 Cal. Rptr. 914 (2001).

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

1 **☞ Staff Note.** The case cited in the Comment, *In re Christopher K.*, held Section 12091
2 unconstitutional.

3 The Commission has previously discussed the import of judicial decisions interpreting or
4 determining the constitutionality of a deadly weapons provision. It decided:

5 If a provision has been invalidated by the court of last resort, then it should not be
6 continued in the Commission’s proposed nonsubstantive reorganization of the deadly
7 weapon statutes. Short of that, the provision should be included in the proposed
8 legislation but (1) the Commission’s report should make clear that the Commission has
9 not passed judgment on its constitutionality or the correctness of any judicial decision
10 interpreting it, and (2) the proposed legislation should include an uncodified provision
11 to similar effect.

12 Minutes (April 2008), pp. 5-6. The Commission further decided that the Comment to the
13 provision that continues Section 12091 “should state that the recodification is not intended to
14 reflect any assessment of the constitutionality of the provision.” Minutes (April 2007), p. 11.

15 Proposed Section 23905 implements that guidance regarding Section 12091.

16 **§ 23910. Assignment of number or mark when firearm lacks one**

17 23910. The Department of Justice upon request may assign a distinguishing
18 number or mark of identification to any firearm whenever the firearm lacks a
19 manufacturer’s number or other mark of identification, or whenever the
20 manufacturer’s number or other mark of identification or a distinguishing number
21 or mark assigned by the department has been destroyed or obliterated.

22 **Comment.** Section 23910 continues former Section 12092 without substantive change.

23 See Section 16520 (“firearm”).

24 **§ 23915. Additional number or identifying indicium**

25 23915. (a) Any person may place or stamp on any pistol, revolver, or other
26 firearm any number or identifying indicium, provided the number or identifying
27 indicium does not change, alter, remove, or obliterate the manufacturer’s name,
28 number, model, or other mark of identification.

29 (b) This section does not prohibit restoration by the owner of the name of the
30 maker or model, or of the original manufacturer’s number or other mark of
31 identification, when that restoration is authorized by the department.

32 (c) This section does not prevent any manufacturer from placing in the ordinary
33 course of business the name of the maker, model, manufacturer’s number, or other
34 mark of identification upon a new firearm.

35 **Comment.** Section 23915 continues former Section 12093 without substantive change.

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

38 **§ 23920. Possession, sale, or purchase of firearm with knowledge of obliteration of**
39 **identifying number or mark**

40 23920. Subject to Section 23925, any person who, with knowledge of any
41 change, alteration, removal, or obliteration described in this section, buys,
42 receives, disposes of, sells, offers for sale, or has in possession any pistol,
43 revolver, or other firearm that has had the name of the maker or model, or the

1 manufacturer's number or other mark of identification, including any
2 distinguishing number or mark assigned by the Department of Justice, changed,
3 altered, removed, or obliterated, is guilty of a misdemeanor.

4 **Comment.** Section 23920 continues former Section 12094(a) without substantive change.
5 For circumstances in which this section is inapplicable, see Section 23925 (exemptions).
6 See Sections 16520 ("firearm"), 16530 ("firearm capable of being concealed upon the person,"
7 "pistol," and "revolver").

8 **§ 23925. Exemptions**

9 23925. Section 23920 does not apply to any of the following:

10 (a) The acquisition or possession of a firearm described in Section 23920 by any
11 member of the military forces of this state or of the United States, while on duty
12 and acting within the scope and course of employment.

13 (b) The acquisition or possession of a firearm described in Section 23920 by any
14 peace officer described in Chapter 4.5 (commencing with Section 830) of Title 3
15 of Part 2, while on duty and acting within the scope and course of employment.

16 (c) The acquisition or possession of a firearm described in Section 23920 by any
17 employee of a forensic laboratory, while on duty and acting within the scope and
18 course of employment.

19 (d) The possession and disposition of a firearm described in Section 23920 by a
20 person who meets all of the following:

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

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

27 (3) If the person is transporting the firearm, the person is transporting it to a law
28 enforcement agency in order to deliver it to the agency for the agency's
29 disposition according to law.

30 (4) If the person is transporting the firearm to a law enforcement agency, the
31 person has given prior notice to the agency that the person is transporting the
32 firearm to that agency for the agency's disposition according to law.

33 (5) The firearm is transported in a locked container.

34 **Comment.** Section 23925 continues former Section 12094(b) without substantive change.
35 See Sections 16520 ("firearm"), 16850 ("locked container").

36 **Staff Note.** Existing Section 12094(b)(4)(E) refers to "a locked container as defined in
37 subdivision (d) of Section 12026.2." In proposed Section 23925, we have (1) replaced that
38 reference with "a locked container," and (2) included a reference to the definition of "locked
39 container" in the Comment, which also states that "Section 23925 continues former Section
40 12094(b) without substantive change."

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

1 substance of Section 12094(b)(4)(E). See 2006-2007 Annual Report, 36 Cal. L. Revision
2 Comm'n Reports 1, 18-24 (2006).

3 CHAPTER 3. BB DEVICES AND IMITATION FIREARMS

4 **☞ Staff Note.** According to the outline attached to Memorandum 2008-22, the substance of
5 existing Section 12550.6 should be placed in this chapter. However, that substance consists
6 entirely of definitions that have been placed in “Division 2. Definitions” of “Title 1. Preliminary
7 Provisions.” Consequently, we have not placed any of it in this chapter. Unless the Commission
8 otherwise directs, we will revise the outline to reflect as much.

9 Article 1. BB Devices

10 **§ 24010. Sale of BB device to minor**

11 24010. A person who sells a BB device to a minor is guilty of a misdemeanor.

12 **Comment.** Section 24010 continues former Section 12551 without substantive change.
13 See Section 16250 (“BB device”).

14 **§ 24020. Furnishing BB device to minor without parental permission**

15 24020. (a) A person who furnishes a BB device to a minor, without the express
16 or implied permission of a parent or legal guardian of the minor, is guilty of a
17 misdemeanor.

18 (b) As used in this section, “furnishes” means any of the following:

19 (1) A loan.

20 (2) A transfer that does not involve a sale.

21 **Comment.** Section 24020 continues former Section 12552 without substantive change.
22 See Section 16250 (“BB device”).

23 **☞ Staff Note.** We have placed the definition of “furnishes” here, instead of in “Division 2.
24 Definitions” of “Title 1. Preliminary Provisions.” For discussion of that approach, see
25 Memorandum 2008-23, p. 3. The Commission should assess how well it works to put the
26 definition of “furnishes” in close proximity to the provision in which the term is used as defined.

27 Article 2. Imitation Firearms

28 **§ 24110. Consequences of making imitation firearm or specified device look more like**
29 **firearm**

30 24110. (a) A person who changes, alters, removes, or obliterates any coloration
31 or markings that are required by any applicable state or federal law or regulation,
32 for any imitation firearm, or any device described in [subdivision (c) of Section
33 12555], in a way that makes the imitation firearm or device look more like a
34 firearm, is guilty of a misdemeanor.

35 (b) This section does not apply to a manufacturer, importer, or distributor of
36 imitation firearms.

37 (c) This section does not apply to lawful use in theatrical productions, including
38 motion pictures, television, and stage productions.

1 **Comment.** Section 24110 continues former Section 12553(a) without substantive change.
2 See Sections 16520 (“firearm”), 16700 (“imitation firearm”).

3 **§ 24115. Failure to comply with federal law or regulation on marking of toy, look-alike, or**
4 **imitation firearm**

5 24115. A manufacturer, importer, or distributor of imitation firearms that fails to
6 comply with any applicable federal law or regulation governing the marking of a
7 toy, look-alike, or imitation firearm, as defined by federal law or regulation, is
8 guilty of a misdemeanor.

9 **Comment.** Section 24115 continues former Section 12553(b) without substantive change.
10 See Section 16700 (“imitation firearm”).

11 **Staff Note.** Existing Section 12553(b) refers to “a toy, look-alike or imitation firearm *as*
12 *defined by federal law or regulation ...*” (Emphasis added.) Proposed Section 24115 would
13 continue the italicized language.

14 However, existing Section 12550 defines “imitation firearm” as used “in this article.” The
15 article referenced includes Section 12553.

16 There is thus an ambiguity regarding interpretation of the term “imitation firearm” in existing
17 Section 12553(b): Does the definition in Section 12550 apply, or a definition in “federal law or
18 regulation,” which we were unable to locate?

19 Proposed Section 24115 would continue the ambiguity. The definition of “imitation firearm” in
20 proposed Section 16700(a) would extend to the entirety of new Part 6, but proposed Section
21 24115 would refer to “a toy, look-alike, or imitation firearm, *as defined by federal law or*
22 *regulation....*”

23 Under the circumstances, the staff was not sure whether to refer to proposed Section 16700’s
24 definition of “imitation firearm” in the Comment. We decided to do so because our consistent
25 practice has been: “Whenever a defined term is used in a substantive provision to which the
26 definition applies, the definition will be referenced in the Law Revision Commission’s Comment
27 to that provision.” Memorandum 2008-22, Exhibit p. 1.

28 Comments on this point would be useful. We would also appreciate input on whether the
29 ambiguity should be included on the Commission’s list of “Minor Clean-up Issues for Possible
30 Future Legislative Attention.” Unless the Commission otherwise directs, we will include the issue
31 on that list.

32 **§ 24120. Advisory requirement for imitation firearm**

33 24120. (a) Any imitation firearm manufactured after July 1, 2005, shall, at the
34 time of offer for sale in this state, be accompanied by a conspicuous advisory in
35 writing as part of the packaging, but not necessarily affixed to the imitation
36 firearm, to the effect that the product may be mistaken for a firearm by law
37 enforcement officers or others, that altering the coloration or markings required by
38 state or federal law or regulations so as to make the product look more like a
39 firearm is dangerous, and may be a crime, and that brandishing or displaying the
40 product in public may cause confusion and may be a crime.

41 (b) Any manufacturer, importer, or distributor that fails to comply with this
42 advisory for any imitation firearm manufactured after July 1, 2005, shall be liable
43 for a civil fine for each action brought by a city attorney or district attorney of not
44 more than one thousand dollars (\$1,000) for the first action, five thousand dollars

1 (\$5,000) for the second action, and ten thousand dollars (\$10,000) for the third
2 action and each subsequent action.

3 **Comment.** Section 24120 continues former Section 12554 without substantive change.
4 See Sections 16520 (“firearm”), 16700 (“imitation firearm”).

5 **§ 24125. Unlawful commercial activities relating to imitation firearms**

6 24125. (a) A person who, for commercial purposes, purchases, sells,
7 manufactures, ships, transports, distributes, or receives, by mail order or in any
8 other manner, an imitation firearm (as defined in subdivisions (a) and (b) of
9 Section 16700), except as authorized by this section, is liable for a civil fine in an
10 action brought by the city attorney or the district attorney of not more than ten
11 thousand dollars (\$10,000) for each violation.

12 (b) The manufacture, purchase, sale, shipping, transport, distribution, or receipt,
13 by mail or in any other manner, of an imitation firearm (as defined in subdivisions
14 (a) and (b) of Section 16700) is authorized if the device is manufactured,
15 purchased, sold, shipped, transported, distributed, or received for any of the
16 following purposes:

17 (1) Solely for export in interstate or foreign commerce.

18 (2) Solely for lawful use in theatrical productions, including motion picture,
19 television, and stage productions.

20 (3) For use in a certified or regulated sporting event or competition.

21 (4) For use in military or civil defense activities, or ceremonial activities.

22 (5) For public displays authorized by public or private schools.

23 **Comment.** Section 24125 continues former Section 12555(a)-(b) without substantive change.

24 **Staff Note.** Existing Section 12555(c) provides special rules for interpretation of the term
25 “imitation firearm” as used in that section. Proposed Section 16700(b) would continue those
26 special rules; proposed Section 16700(a) would continue the generally applicable definition of
27 “imitation firearm.” See Memorandum 2008-23, Attachment pp. 21-22.

28 In two places, proposed Section 24125 would refer to “an imitation firearm (*as defined in*
29 *subdivisions (a) and (b) of Section 16700*).” (Emphasis added.) We included these parentheticals
30 to help alert readers to the special rules for interpretation of the term “imitation firearm” as used
31 in that section.

32 We invite comment on this approach.

33 **§ 24130. Display of imitation firearm in public place**

34 24130. (a) No person may openly display or expose any imitation firearm in a
35 public place.

36 (b) As used in this section, “public place” means an area open to the public and
37 includes any of the following:

38 (1) A street.

39 (2) A sidewalk.

40 (3) A bridge.

41 (4) An alley.

42 (5) A plaza.

- 1 (6) A park.
- 2 (7) A driveway.
- 3 (8) A front yard.
- 4 (9) A parking lot.
- 5 (10) An automobile, whether moving or not.
- 6 (11) A building open to the general public, including one that serves food or
- 7 drink, or provides entertainment.
- 8 (12) A doorway or entrance to a building or dwelling.

9 **Comment.** Subdivision (a) of Section 24130 continues former Section 12556(a) without
10 substantive change.

11 For circumstances in which this section is inapplicable, see Section 24135 (exemptions). For
12 consequences of violating this section, see Section 24140 (punishment).

13 Subdivision (b) continues former Section 12556(e) without substantive change.

14 See Section 16700 (“imitation firearm”).

15 **Staff Note.** We have placed the definition of “public place” here, instead of in “Division 2.
16 Definitions” of “Title 1. Preliminary Provisions.” For discussion of that approach, see
17 Memorandum 2008-23, p. 9. The Commission should assess how well it works to put the
18 definition of “public place” in close proximity to the provision in which the term is used as
19 defined.

20 § 24135. Exemptions

21 24135. Section 24130 does not apply in any of the following circumstances:

22 (a) The imitation firearm is packaged or concealed so that it is not subject to
23 public viewing.

24 (b) The imitation firearm is displayed or exposed in the course of commerce,
25 including a commercial film or video production, or for service, repair, or
26 restoration of the imitation firearm.

27 (c) The imitation firearm is used in a theatrical production, a motion picture,
28 video, television, or stage production.

29 (d) The imitation firearm is used in conjunction with a certified or regulated
30 sporting event or competition.

31 (e) The imitation firearm is used in conjunction with lawful hunting, or a lawful
32 pest control activity.

33 (f) The imitation firearm is used or possessed at a certified or regulated public or
34 private shooting range.

35 (g) The imitation firearm is used at a fair, exhibition, exposition, or other similar
36 activity for which a permit has been obtained from a local or state government.

37 (h) The imitation firearm is used in a military, civil defense, or civic activity,
38 including a flag ceremony, color guard, parade, award presentation, historical
39 reenactment, or memorial.

40 (i) The imitation firearm is used for a public display authorized by a public or
41 private school or a display that is part of a museum collection.

42 (j) The imitation firearm is used in a parade, ceremony, or other similar activity
43 for which a permit has been obtained from a local or state government.

1 (k) The imitation firearm is displayed on a wall plaque or in a presentation case.

2 (l) The imitation firearm is used in an area where the discharge of a firearm is
3 lawful.

4 (m) The entire exterior surface of the imitation firearm is white, bright red,
5 bright orange, bright yellow, bright green, bright blue, bright pink, or bright
6 purple, either singly or as the predominant color in combination with other colors
7 in any pattern, or the entire device is constructed of transparent or translucent
8 material that permits unmistakable observation of the device's complete contents.
9 Merely having an orange tip as provided in federal law and regulations does not
10 satisfy this requirement. The entire surface must be colored or transparent or
11 translucent.

12 **Comment.** Section 24135 continues former Section 12556(d) without substantive change.
13 See Section 16700 ("imitation firearm").

14 **Staff Note.** For discussion of proposed Section 12556(m) (existing Section 12556(d)(13)),
15 see the Staff Note to proposed Section 23800.

16 **§ 24140. Punishment**

17 24140. (a) Except as provided in subdivision (b), violation of Section 24130 is
18 an infraction punishable by a fine of one hundred dollars (\$100) for the first
19 offense, and three hundred dollars (\$300) for a second offense.

20 (b) A third or subsequent violation of Section 24130 is punishable as a
21 misdemeanor.

22 (c) Nothing in Sections 24130, 24135, or this section shall be construed to
23 preclude prosecution for a violation of Section 171b, 171.5, or 626.10.

24 **Comment.** Subdivision (a) of Section 24140 continues former Section 12556(b) without
25 substantive change.

26 Subdivision (b) continues former Section 12556(c) without substantive change.

27 Subdivision (c) continues former Section 12556 (f) without substantive change.

28 **CHAPTER 4. CAMOUFLAGING FIREARM CONTAINER**

29 **§ 24310. Prohibition on manufacture, import, sale, gift, loan, or possession of camouflaging**
30 **firearm container**

31 24310. Subject to Chapter 1 (commencing with Section 17700) of Division 2 of
32 Title 2, any person in this state who manufactures or causes to be manufactured,
33 imports into the state, keeps for sale, or offers or exposes for sale, or who gives,
34 lends, or possesses any camouflaging firearm container is punishable by
35 imprisonment in a county jail not exceeding one year or in the state prison.

36 **Comment.** With respect to a camouflaging firearm container, Section 24310 continues former
37 Section 12020(a)(1) without substantive change.

38 For circumstances in which this section is inapplicable, see Sections 16590 ("generally
39 prohibited weapon"), 17700-17745 (exemptions relating to generally prohibited weapons).

40 See Section 16320 ("camouflaging firearm container"). See also Sections 17800 (distinct and
41 separate offense), 24390 (camouflaging firearm container constituting nuisance).

1 **☞ Staff Note.** Existing Section 12020 is an extremely long provision that generally prohibits the
2 manufacture, import, sale, gift, loan, or possession of a long list of weapons and associated
3 equipment. To improve organizational clarity and readability, the Commission decided to divide
4 up the substance of Section 12020 according to the type of weapon or equipment covered.
5 Minutes (April 2007), p. 10; see also Memorandum 2007-15, pp. 7-9. Consistent with that
6 decision, proposed Section 24310 would continue the portion of existing Section 12020(a)(1)
7 relating to a camouflaging firearm container.

8 Existing Section 12020 specifies many situations in which its prohibitions do not apply. Some
9 of these exemptions are expressly limited to a particular type of weapon or equipment. None of
10 them expressly refers to a camouflaging firearm container.

11 Other exemptions to Section 12020 are broad, making it more difficult to determine whether
12 they apply to a particular type of weapon or equipment. For discussion of these broad exemptions
13 and how the Commission plans to handle them in this nonsubstantive study, see the Staff Note to
14 proposed Section 19100 in Memorandum 2008-24. In drafting “Chapter 4. Camouflaging Firearm
15 Container,” we have left room for future insertion of exemptions in case the Legislature
16 undertakes the cleanup project discussed in that Staff Note.

17 **§ 24390. Camouflaging firearm container constituting nuisance**

18 24390. Except as provided in Chapter 1 (commencing with Section 17700) of
19 Division 2 of Title 2, a camouflaging firearm container is a nuisance and is subject
20 to Section 18010.

21 **Comment.** With respect to a camouflaging firearm container, Section 24390 continues the first
22 part of the first sentence of former Section 12029 without substantive change.

23 See Section 16320 (“camouflaging firearm container”).

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

25 12029. Except as provided in Section 12020, blackjacks, slungshots, billies, nunchakus,
26 sandclubs, sandbags, shurikens, metal knuckles, short-barreled shotguns or short-barreled
27 rifles as defined in Section 12020, and *any other item which is listed in subdivision (a) of*
28 *Section 12020 and is not listed in subdivision (a) of Section 12028* are nuisances, and the
29 Attorney General, district attorney, or city attorney may bring an action to enjoin the
30 manufacture of, importation of, keeping for sale of, offering or exposing for sale, giving,
31 lending, or possession of, any of the foregoing items. These weapons shall be subject to
32 confiscation and summary destruction whenever found within the state. These weapons shall
33 be destroyed in the same manner as other weapons described in Section 12028, except that
34 upon the certification of a judge or of the district attorney that the ends of justice will be
35 subserved thereby, the weapon shall be preserved until the necessity for its use ceases.

36 (Emphasis added.) To improve organizational clarity, the Commission decided to divide up the
37 material in this provision according to the type of weapon or equipment covered, with generally
38 applicable language to be placed in the title on “Weapons Generally.” Minutes (April 2007), p.
39 10.

40 Implementing that decision required assessment of which weapons and equipment fall within
41 the catchall provision of Section 12029 — i.e., which weapons and equipment are listed in
42 Section 12020(a) and not in Section 12028(a). By comparing those two sections, the staff
43 determined that the catchall provision encompasses a camouflaging firearm container. See
44 Memorandum 2007-19, pp. 9-10.

45 Thus, proposed Section 24390 would continue the first part of the first sentence of existing
46 Section 12029, as it pertains to a camouflaging firearm container. The generally applicable
47 language in existing Section 12029 would be continued in proposed Section 18010 (reproduced in
48 Memorandum 2008-24, in “Selected Provisions From Drafts Previously Considered”). To assist
49 persons using the code, proposed Section 24390 would cross-refer to proposed Section 18010.

1

CHAPTER 5. CANE GUN

2 **§ 24410. Prohibition on manufacture, import, sale, gift, loan, or possession of cane gun**

3 24410. Subject to Chapter 1 (commencing with Section 17700) of Division 2 of
4 Title 2, any person in this state who manufactures or causes to be manufactured,
5 imports into the state, keeps for sale, or offers or exposes for sale, or who gives,
6 lends, or possesses any cane gun is punishable by imprisonment in a county jail
7 not exceeding one year or in the state prison.

8 **Comment.** With respect to a cane gun, Section 24410 continues former Section 12020(a)(1)
9 without substantive change.

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

12 See Section 16330 (“cane gun”). See also Sections 17800 (distinct and separate offense),
13 24490 (cane gun constituting nuisance).

14 **Staff Note.** As discussed in the Staff Note on proposed Section 24310, the Commission has
15 decided to divide up the substance of existing Section 12020 according to the type of weapon or
16 equipment covered. Consistent with that decision, proposed Section 24410 would continue the
17 portion of existing Section 12020(a)(1) relating to a cane gun.

18 Existing Section 12020 specifies many situations in which its prohibitions do not apply. Some
19 of these exemptions are expressly limited to a particular type of weapon or equipment. None of
20 them expressly refers to a cane gun.

21 Other exemptions to Section 12020 are broad, making it more difficult to determine whether
22 they apply to a particular type of weapon or equipment. For discussion of these broad exemptions
23 and how the Commission plans to handle them in this nonsubstantive study, see the Staff Note to
24 proposed Section 19100 in Memorandum 2008-24. In drafting “Chapter 5. Cane Gun,” we have
25 left room for future insertion of exemptions in case the Legislature undertakes the cleanup project
26 discussed in that Staff Note.

27 **§ 24490. Cane gun constituting nuisance**

28 24490. Except as provided in Chapter 1 (commencing with Section 17700) of
29 Division 2 of Title 2, a cane gun is a nuisance and is subject to Section 18010.

30 **Comment.** With respect to a cane gun, Section 24490 continues the first part of the first
31 sentence of former Section 12029 without substantive change.

32 See Section 16330 (“cane gun”).

33 **Staff Note.** As discussed in the Staff Note on proposed Section 24390, the Commission has
34 decided to divide up the material in existing Section 12029 according to the type of weapon or
35 equipment covered, with generally applicable language to be placed in the title on “Weapons
36 Generally.” Implementing that decision required assessment of which weapons and equipment
37 fall within the catchall provision of Section 12029 — i.e., which weapons and equipment are
38 listed in Section 12020(a) and not in Section 12028(a). By comparing those two sections, the staff
39 determined that the catchall provision encompasses a cane gun. See Memorandum 2007-19, pp.
40 9-10.

41 Thus, proposed Section 24490 would continue the first part of the first sentence of existing
42 Section 12029, as it pertains to a cane gun. The generally applicable language in existing Section
43 12029 would be continued in proposed Section 18010 (reproduced in Memorandum 2008-24, in
44 “Selected Provisions From Drafts Previously Considered”). To assist persons using the code,
45 proposed Section 24490 would cross-refer to proposed Section 18010.

CHAPTER 6. FIREARM NOT IMMEDIATELY RECOGNIZABLE AS A FIREARM

§ 24510. Prohibition on manufacture, import, sale, gift, loan, or possession of firearm not immediately recognizable as firearm

24510. Subject to Chapter 1 (commencing with Section 17700) of Division 2 of Title 2, any person in this state who manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, lends, or possesses any firearm not immediately recognizable as a firearm is punishable by imprisonment in a county jail not exceeding one year or in the state prison.

Comment. With respect to a firearm that is not immediately recognizable as a firearm, Section 24510 continues former Section 12020(a)(1) without substantive change.

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

See Section 16520 (“firearm”). See also Sections 17800 (distinct and separate offense), 24590 (firearm not immediately recognizable as such constitutes nuisance).

Staff Note. As discussed in the Staff Note on proposed Section 24310, the Commission has decided to divide up the substance of existing Section 12020 according to the type of weapon or equipment covered. Consistent with that decision, proposed Section 24510 would continue the portion of existing Section 12020(a)(1) relating to a firearm that is not immediately recognizable as a firearm.

Existing Section 12020 specifies many situations in which its prohibitions do not apply. Some of these exemptions are expressly limited to a particular type of weapon or equipment. None of them expressly refers to a firearm that is not immediately recognizable as a firearm.

Other exemptions to Section 12020 are broad, making it more difficult to determine whether they apply to a particular type of weapon or equipment. For discussion of these broad exemptions and how the Commission plans to handle them in this nonsubstantive study, see the Staff Note to proposed Section 19100 in Memorandum 2008-24. In drafting “Chapter 6. Firearm Not Immediately Recognizable as Firearm,” we have left room for future insertion of exemptions in case the Legislature undertakes the cleanup project discussed in that Staff Note.

§ 24590. Firearm not immediately recognizable as such constitutes nuisance

24590. Except as provided in Chapter 1 (commencing with Section 17700) of Division 2 of Title 2, a firearm not immediately recognizable as a firearm is a nuisance and is subject to Section 18010.

Comment. With respect to a firearm that is not immediately recognizable as a firearm, Section 24590 continues the first part of the first sentence of former Section 12029 without substantive change.

See Section 16520 (“firearm”).

Staff Note. As discussed in the Staff Note on proposed Section 24390, the Commission has decided to divide up the material in existing Section 12029 according to the type of weapon or equipment covered, with generally applicable language to be placed in the title on “Weapons Generally.” Implementing that decision required assessment of which weapons and equipment fall within the catchall provision of Section 12029 — i.e., which weapons and equipment are listed in Section 12020(a) and not in Section 12028(a). By comparing those two sections, the staff determined that the catchall provision encompasses a firearm that is not immediately recognizable as a firearm. See Memorandum 2007-19, pp. 9-10.

1 Thus, proposed Section 24590 would continue the first part of the first sentence of existing
2 Section 12029, as it pertains to a firearm that is not immediately recognizable as a firearm. The
3 generally applicable language in existing Section 12029 would be continued in proposed Section
4 18010 (reproduced in Memorandum 2008-24, in “Selected Provisions From Drafts Previously
5 Considered”). To assist persons using the code, proposed Section 24590 would cross-refer to
6 proposed Section 18010.

7 CHAPTER 7. UNDETECTABLE FIREARM

8 **§ 24610. Prohibition on manufacture, import, sale, gift, loan, or possession of undetectable**
9 **firearm**

10 24610. Subject to Chapter 1 (commencing with Section 17700) of Division 2 of
11 Title 2, any person in this state who manufactures or causes to be manufactured,
12 imports into the state, keeps for sale, or offers or exposes for sale, or who gives,
13 lends, or possesses any undetectable firearm is punishable by imprisonment in a
14 county jail not exceeding one year or in the state prison.

15 **Comment.** With respect to an undetectable firearm, Section 24610 continues former Section
16 12020(a)(1) without substantive change.

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

19 See Section 17280 (“undetectable firearm”). See also Sections 17800 (distinct and separate
20 offense), 24690 (undetectable firearm constituting nuisance).

21 **Staff Note.** As discussed in the Staff Note on proposed Section 24310, the Commission has
22 decided to divide up the substance of existing Section 12020 according to the type of weapon or
23 equipment covered. Consistent with that decision, proposed Section 24610 would continue the
24 portion of existing Section 12020(a)(1) relating to an undetectable firearm.

25 Existing Section 12020 specifies many situations in which its prohibitions do not apply. Some
26 of these exemptions are expressly limited to a particular type of weapon or equipment. None of
27 them expressly refers to an undetectable firearm.

28 Other exemptions to Section 12020 are broad, making it more difficult to determine whether
29 they apply to a particular type of weapon or equipment. For discussion of these broad exemptions
30 and how the Commission plans to handle them in this nonsubstantive study, see the Staff Note to
31 proposed Section 19100 in Memorandum 2008-24. In drafting “Chapter 7. Undetectable
32 Firearm,” we have left room for future insertion of exemptions in case the Legislature undertakes
33 the cleanup project discussed in that Staff Note.

34 **§ 24680. Firearm detection equipment**

35 24680. Any firearm detection equipment newly installed in a nonfederal public
36 building in this state shall be of a type identified by either the United States
37 Attorney General, the Secretary of Transportation, or the Secretary of the
38 Treasury, as appropriate, as available state-of-the-art equipment capable of
39 detecting an undetectable firearm, while distinguishing innocuous metal objects
40 likely to be carried on one’s person sufficient for reasonable passage of the public.

41 **Comment.** Section 24680 continues the second paragraph of former Section 12020(c)(22)(C)
42 without substantive change.

43 See Sections 16520 (“firearm”), 17280 (“undetectable firearm”).

1 **§ 24790. Wallet gun constituting nuisance**

2 24790. Except as provided in Chapter 1 (commencing with Section 17700) of
3 Division 2 of Title 2, a wallet gun is a nuisance and is subject to Section 18010.

4 **Comment.** With respect to a wallet gun, Section 24790 continues the first part of the first
5 sentence of former Section 12029 without substantive change.

6 See Section 17330 (“wallet gun”).

7 ☞ **Staff Note.** As discussed in the Staff Note on proposed Section 24390, the Commission has
8 decided to divide up the material in existing Section 12029 according to the type of weapon or
9 equipment covered, with generally applicable language to be placed in the title on “Weapons
10 Generally.” Implementing that decision required assessment of which weapons and equipment
11 fall within the catchall provision of Section 12029 — i.e., which weapons and equipment are
12 listed in Section 12020(a) and not in Section 12028(a). By comparing those two sections, the staff
13 determined that the catchall provision encompasses a wallet gun. See Memorandum 2007-19, pp.
14 9-10.

15 Thus, proposed Section 24790 would continue the first part of the first sentence of existing
16 Section 12029, as it pertains to a wallet gun. The generally applicable language in existing
17 Section 12029 would be continued in proposed Section 18010 (reproduced in Memorandum
18 2008-24, in “Selected Provisions From Drafts Previously Considered”). To assist persons using
19 the code, proposed Section 24790 would cross-refer to proposed Section 18010.
