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,

Barbara Gaal
Chief Deputy Counsel
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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.

TITLE 4. FIREARMS AND SIMILAR WEAPONS

DIVISION 1. PRELIMINARY PROVISIONS

§ 23500. Dangerous Weapons Control Law

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

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

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

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

§ 23505. Severability

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

Comment. Section 23505 continues former Section 12003 without substantive change.
□ Staff Note. In three places, existing Section 12003 refers to “this chapter.” As with proposed Section 23500, the chapter referenced is “Chapter 1. Firearms” of “Title 2. Control of Deadly Weapons” of “Part 4. Prevention of Criminals.”

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

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

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

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

§ 23515. Violent use of firearm

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

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

(b) A violation of Section 246.

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

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

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

□ Staff Notes.

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

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

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

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

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

proposed Sections 16540 (“firearm safety device”), 16610 (“gun safe”), 16870 (“long-gun safe”).
Proposed Section 23620 would reflect as much.
According to the outline attached to Memorandum 2008-22, the substance of existing Section
12087.6 should be placed in “Division 2. Firearm Safety Devices” of “Title 4. Firearms and
Similar Weapons.” However, that substance consists entirely of the three definitions that have
been placed in “Division 2. Definitions” of “Title 1. Preliminary Provisions.” Consequently, we
have not placed any of it in “Division 2. Firearm Safety Devices.” Unless the Commission
otherwise directs, we will revise the outline to reflect this.

§ 23625. Limitations on application
23625. (a) This division does not apply to the commerce of any antique firearm.
(b)(1) This division does not apply to the commerce of any firearm intended to
be used by a salaried, full-time peace officer, as defined in Chapter 4.5
(commencing with Section 830) of Title 3 of Part 2, for purposes of law
enforcement.
(2) Nothing in this division precludes a local government, local agency, or state
law enforcement agency from requiring its peace officers to store their firearms in
gun safes or attach firearm safety devices to those firearms.
Comment. Section 23625 continues former Section 12088.8 without substantive change.
See Sections 16170 (“antique firearm”), 16520 (“firearm”), 16540 (“firearm safety device”),
16610 (“gun safe”).
☞ Staff Note. Existing Section 12088.8 refers to “any firearm defined as an ‘antique firearm’ in
paragraph (16) of subsection (a) of Section 921 of Title 18 of the United States Code.” In
proposed Section 23625, we have (1) replaced that reference with “any antique firearm,” and (2)
included a reference to the definition of “antique firearm” in the Comment, which also states that
“Section 23625 continues former Section 12088.8 without substantive change.”
We chose this approach because it would further the Legislature’s directive to “[a]void
unnecessary use of cross-references” while “[n]either expand[ing] nor contract[ing] the scope of
weight to the Commission’s comments, we think this would be sufficient to preserve the
substance of Section 12088.8. See 2006-2007 Annual Report, 36 Cal. L. Revision Comm’n

§ 23630. Legislative findings
23630. The Legislature makes the following findings:
(a) In the years 1987 to 1996, nearly 2,200 children in the United States under
the age of 15 years died in unintentional shootings. In 1996 alone, 138 children
were shot and killed unintentionally. Thus, more than 11 children every month, or
one child every three days, were shot or killed unintentionally in firearms-related
incidents.
(b) The United States leads the industrialized world in the rates of children and
youth lost to unintentional, firearms-related deaths. A 1997 study from the federal
Centers for Disease Control and Prevention reveals that for unintentional firearm-
related deaths for children under the age of 15, the rate in the United States was
nine times higher than in 25 other industrialized countries combined.
(c) While the number of unintentional deaths from firearms is an unacceptable
toll on America’s children, nearly eight times that number are treated in U.S.
hospital emergency rooms each year for nonfatal unintentional gunshot wounds.
(d) A study of unintentional firearm deaths among children in California found
that unintentional gunshot wounds most often involve handguns.
(e) A study in the December 1995 issue of the Archives of Pediatric and
Adolescent Medicine found that children as young as three years old are strong
enough to fire most commercially available handguns. The study revealed that 25
percent of three to four year olds and 70 percent of five to six year olds had
sufficient finger strength to fire 59 (92 percent) of the 64 commonly available
handguns referenced in the study.
(f) The Government Accounting Office (GAO), in its March 1991 study,
“Accidental Shootings: Many Deaths and Injuries Caused by Firearms Could be
Prevented,” estimates that 31 percent of accidental deaths caused by firearms
might be prevented by the addition of two safety devices: a child-resistant safety
device that automatically engages and a device that indicates whether the gun is
loaded. According to the study results, of the 107 unintentional firearms-related
fatalities the GAO examined for the calendar years 1988 and 1989, 8 percent could
have been prevented had the firearm been equipped with a child-resistant safety
device. This 8 percent represents instances in which children under the age of six
unintentionally shot and killed themselves or other persons.
(g) Currently, firearms are the only products manufactured in the United States
that are not subject to minimum safety standards.
(h) A 1997 public opinion poll conducted by the National Opinion Research
Center at the University of Chicago in conjunction with the Johns Hopkins Center
for Gun Policy and Research found that 74 percent of Americans support safety
regulation of the firearms industry.
(i) Some currently available trigger locks and other similar devices are
inadequate to prevent the accidental discharge of the firearms to which they are
attached, or to prevent children from gaining access to the firearm.

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

§ 23635. Firearm safety device requirement, warning requirement for noncomplying long-
gun safe, and warning described in Section 23640
23635. (a) Any firearm sold or transferred in this state by a licensed firearms
dealer, including a private transfer through a dealer, and any firearm manufactured
in this state, shall include or be accompanied by a firearm safety device that is
listed on the Department of Justice’s roster of approved firearm safety devices and
that is identified as appropriate for that firearm by reference to either the
manufacturer and model of the firearm, or to the physical characteristics of the
firearm that match those listed on the roster for use with the device.
(b) The sale or transfer of a firearm shall be exempt from subdivision (a) if both
of the following apply:
   (1) The purchaser or transferee owns a gun safe that meets the standards set
forth in Section 23650. Gun safes shall not be required to be tested, and therefore
may meet the standards without appearing on the Department of Justice roster.
   (2) The purchaser or transferee presents an original receipt for purchase of the
gun safe, or other proof of purchase or ownership of the gun safe as authorized by
the Attorney General, to the firearms dealer. The dealer shall maintain a copy of
this receipt or proof of purchase with the dealer’s record of sales of firearms.
   (c) The sale or transfer of a firearm shall be exempt from subdivision (a) if all of
the following apply:
   (1) The purchaser or transferee purchases an approved safety device no more
than 30 days prior to the day the purchaser or transferee takes possession of the
firearm.
   (2) The purchaser or transferee presents the approved safety device to the
firearms dealer when picking up the firearm.
   (3) The purchaser or transferee presents an original receipt to the firearms
dealer, which shows the date of purchase, the name, and the model number of the
safety device.
   (4) The firearms dealer verifies that the requirements in paragraphs (1) to (3),
inclusive, have been satisfied.
   (5) The firearms dealer maintains a copy of the receipt along with the dealer’s
record of sales of firearms.
(d)(1) Any long-gun safe commercially sold or transferred in this state, or
manufactured in this state for sale in this state, that does not meet the standards for
gun safes adopted pursuant to Section 23650 shall be accompanied by the
following warning:
   “WARNING: This gun safe does not meet the safety standards for gun safes
specified in California Penal Code Section 23650. It does not satisfy the
requirements of Penal Code Section 23635, which mandates that all firearms sold
in California be accompanied by a firearm safety device or proof of ownership, as
required by law, of a gun safe that meets the Section 23650 minimum safety
standards developed by the California Attorney General.”
   (2) This warning shall be conspicuously displayed in its entirety on the principal
display panel of the gun safe’s package, on any descriptive materials that
accompany the gun safe, and on a label affixed to the front of the gun safe.
   (3) This warning shall be displayed in both English and Spanish, in conspicuous
and legible type in contrast by typography, layout, or color with other printed
matter on the package or descriptive materials, in a manner consistent with Part
1500.121 of Title 16 of the Code of Federal Regulations, or successor regulations
thereof.
(e) Any firearm sold or transferred in this state by a licensed firearms dealer,
including a private transfer through a dealer, and any firearm manufactured in this
state, shall be accompanied by warning language or a label as described in Section 23640.

Comment. Subdivision (a) of Section 23635 continues former Section 12088.1(a) without substantive change.
Subdivision (b) continues former Section 12088.1(d) without substantive change.
Subdivision (c) continues former Section 12088.1(e) without substantive change.
Subdivision (d) continues former Section 12088.1(c) without substantive change.
Subdivision (e) continues former Section 12088.1(b) without substantive change.
See Sections 16440 (“dealer”), 16520 (“firearm”), 16540 (“firearm safety device”), 16610 (“gun safe”), 16870 (“long-gun safe”).

☞ Staff Note. Existing Section 12088.1 addresses three distinct subjects:
(1) The firearm safety device requirement and exemptions from that requirement,
(2) The warning requirement for a long-gun safe that does not comply with the standards for gun safes.
(3) The warning requirement of Section 12088.3.

In drafting proposed Section 23635 we have:
• Put all of the material relating to the firearm safety device requirement at the beginning (subdivisions (a)-(c)).
• Put the material relating to the warning requirement for a noncomplying long-gun safe next (subdivision (d)).
• Put the material relating to the warning requirement of Section 12088.3 at the end (subdivision (e)), where it will be adjacent to the provision that continues Section 12088.3.

We considered the alternative of dividing the material into three distinct sections. However, existing Section 12088.6 provides:
Any violation of Section 12088.1 or Section 12088.3 is punishable by a fine of one thousand dollars ($1,000). On the second violation of any of those sections, the licensed firearm manufacturer shall be ineligible to manufacture, or the licensed firearm dealer shall be ineligible to sell, firearms in this state for 30 days, and shall be punished by a fine of one thousand dollars ($1,000). On the third violation of any of those sections, a firearm manufacturer shall be permanently ineligible to manufacture firearms in this state. On the third violation of any of those sections, a licensed firearm dealer shall be permanently ineligible to sell firearms in this state.
(Emphasis added.) We worried that if the material in Section 12088.1 were divided into three distinct sections, it might be difficult to properly adjust the language now in Section 12088.6, to ensure that there would be no substantive change. We therefore decided to leave the material in Section 12088.1 in a single section, instead of dividing it up.
This might be an appropriate subject for future legislative clean-up. We are not sure, however, whether to include the matter on the Commission’s list of “Minor Clean-up Issues for Possible Future Legislative Attention.”

Our concern is that the project might be too controversial to be a minor clean-up issue. In particular, existing Section 12088.1(b) (proposed Section 23635(e)) says: “Any firearm sold or transferred in this state by a licensed firearms dealer, including a private transfer through a dealer, and any firearm manufactured in this state, shall be accompanied by warning language or a label as described in Section 12088.3.” That provision seems to some extent redundant with the language of existing Section 12088.3(a) (proposed Section 23640(a)). Its inclusion in Section 12088.1 might mean, however, that the same misconduct is punishable under both Section 12088.1 and Section 12088.3.
We do not know whether this is in fact the case. The possibility of such an interpretation, and of disrupting it in a clean-up project, may make such clean-up controversial. We encourage comments on this matter. Absent further input and instructions from the Commission, we will not include the project on the list of “Minor Clean-up Issues for Possible Future Legislative Attention.”

§ 23640. Warning label

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

WARNING

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

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

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

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

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

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

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

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

§ 23645. Punishment for violation of Section 23635 or 23640

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

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

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

§ 23650. Minimum safety standard for firearm safety devices and gun safes
23650. (a) The Attorney General shall develop regulations to implement a minimum safety standard for firearm safety devices and gun safes to significantly reduce the risk of firearm-related injuries to children 17 years of age and younger. The final standard shall do all of the following:
(1) Address the risk of injury from unintentional gunshot wounds.
(2) Address the risk of injury from self-inflicted gunshot wounds by unauthorized users.
(3) Include provisions to ensure that all firearm safety devices and gun safes are reusable and of adequate quality and construction to prevent children and unauthorized users from firing the firearm and to ensure that these devices cannot be readily removed from the firearm or that the firearm cannot be readily removed from the gun safe except by an authorized user utilizing the key, combination, or other method of access intended by the manufacturer of the device.
(4) Include additional provisions as appropriate.

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


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

☞ Staff Note. Existing Section 12088.2 contains deadlines for the Attorney General to meet in developing the minimum safety standard for firearm safety devices. In drafting proposed Section 23650, we were not sure whether and how to update the references to those deadlines, which have long since passed. We decided to consolidate them in subdivision (c). That required minimal revisions of the existing language, because almost all of the deadlines were already stated at the end of Section 12088.2.
Could proposed Section 23650(c) be deleted as obsolete? Comments on this point would be useful.

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

§ 23655. Testing of firearm safety devices

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

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

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

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

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

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

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

Comment. Section 23655 continues former Section 12088 without substantive change. See Sections 16440 (“dealer”), 16520 (“firearm”), 16540 (“firearm safety device”).

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

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

(b) No person may distribute as part of an organized firearm safety program, with or without consideration, any firearm safety device that is not listed on the roster maintained pursuant to subdivision (d) of Section 23655, or that does not
§ 23660. Sale or manufacture of noncomplying long-gun safe

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

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

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

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

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

§ 23670. Punishment for violation of Section 23660 or 23665

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

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

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

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

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

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

See Sections 16520 (“firearm”), 16540 (“firearm safety device”).
Comment. Subdivision (a) of Section 23670 continues former Section 12088.15(e) without substantive change.

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

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

§ 23675. Effect of compliance

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

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

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

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

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

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

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

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

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

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

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

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

Comment. Section 23685 continues former Section 12088.5 without change.

See Section 16520 (“firearm”).

Staff Note. Existing Section 12088.5 is poorly worded. The staff thinks it could be reworded along the following lines without any change in meaning:
12088.5. (a) Each lead law enforcement agency investigating an incident shall report to the
State Department of Health Services any information obtained that reasonably supports the
conclusion that:

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

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

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

§ 23690. Fee

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

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

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

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

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

Comment. Section 23690 continues former Section 12088.9 without substantive change.
See Sections 16440 (“dealer”), 16520 (“firearm”).

DIVISION 3. DISGUISED OR MISLEADING APPEARANCE

CHAPTER 1. MISCELLANEOUS PROVISIONS

§ 23800. Bright orange or bright green firearm

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

Comment. Section 23800 continues former Section 12020.3 without substantive change.
See Section 16520 (“firearm”).
☞ Staff Note. Existing Section 12020.3 (proposed Section 23800) establishes the odd crime of having a bright orange or bright green gun. The provision does not address other bright-colored guns, such as a bright purple or bright pink gun.

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

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

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

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

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

CHAPTER 2. OBLITERATION OF IDENTIFICATION MARKS

§ 23900. Obliteration of firearm identification marks prohibited

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

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

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

§ 23905. Presumption

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

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

See Section 16530 (“firearm capable of being concealed upon the person,” “pistol,” and “revolver”).
Staff Note. The case cited in the Comment, In re Christopher K., held Section 12091 unconstitutional.

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

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

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

Proposed Section 23905 implements that guidance regarding Section 12091.

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

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

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

See Section 16520 (“firearm”).

§ 23915. Additional number or identifying indicium

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

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

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

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

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

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

23920. Subject to Section 23925, any person who, with knowledge of any change, alteration, removal, or obliteration described in this section, buys, receives, disposes of, sells, offers for sale, or has in possession any pistol, revolver, or other firearm that has had the name of the maker or model, or the
manufacturer’s number or other mark of identification, including any
distinguishing number or mark assigned by the Department of Justice, changed,
altered, removed, or obliterated, is guilty of a misdemeanor.

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

§ 23925. Exemptions

23925. Section 23920 does not apply to any of the following:
(a) The acquisition or possession of a firearm described in Section 23920 by any
member of the military forces of this state or of the United States, while on duty
and acting within the scope and course of employment.
(b) The acquisition or possession of a firearm described in Section 23920 by any
peace officer described in Chapter 4.5 (commencing with Section 830) of Title 3
of Part 2, while on duty and acting within the scope and course of employment.
(c) The acquisition or possession of a firearm described in Section 23920 by any
employee of a forensic laboratory, while on duty and acting within the scope and
course of employment.
(d) The possession and disposition of a firearm described in Section 23920 by a
person who meets all of the following:
   (1) The person is not prohibited from possessing firearms or ammunition
   pursuant to [Section 12021 or 12021.1 or paragraph (1) of subdivision (b) of
   Section 12316 of this code], or Section 8100 or 8103 of the Welfare and
   Institutions Code.
   (2) The person possessed the firearm no longer than was necessary to deliver it
to a law enforcement agency for that agency’s disposition according to law.
   (3) If the person is transporting the firearm, the person is transporting it to a law
   enforcement agency in order to deliver it to the agency for the agency’s
disposition according to law.
   (4) If the person is transporting the firearm to a law enforcement agency, the
   person has given prior notice to the agency that the person is transporting the
   firearm to that agency for the agency’s disposition according to law.
   (5) The firearm is transported in a locked container.

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

**Staff Note.** Existing Section 12094(b)(4)(E) refers to “a locked contain-
der as defined in
subdivision (d) of Section 12026.2.” In proposed Section 23925, we have (1) replaced that
reference with “a locked container,” and (2) included a reference to the definition of “locked
container” in the Comment, which also states that “Section 23925 continues former Section
12094(b) without substantive change.”
We chose this approach because it would further the Legislature’s directive to “[a]void
unnecessary use of cross-references” while “[n]either expand[ing] nor contract[ing] the scope of
weight to the Commission’s comments, we think this would be sufficient to preserve the

CHAPTER 3. BB DEVICES AND IMITATION FIREARMS

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

Article 1. BB Devices

§ 24010. Sale of BB device to minor

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

Comment. Section 24010 continues former Section 12551 without substantive change.

See Section 16250 (“BB device”).

§ 24020. Furnishing BB device to minor without parental permission

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

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

(1) A loan.

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

Comment. Section 24020 continues former Section 12552 without substantive change.

See Section 16250 (“BB device”).

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

Article 2. Imitation Firearms

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

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

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

(c) This section does not apply to lawful use in theatrical productions, including motion pictures, television, and stage productions.
Comment. Section 24110 continues former Section 12553(a) without substantive change.
See Sections 16520 ("firearm"), 16700 ("imitation firearm").

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

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

Comment. Section 24115 continues former Section 12553(b) without substantive change.
See Section 16700 ("imitation firearm").

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

However, existing Section 12550 defines "imitation firearm" as used "in this article." The article referenced includes Section 12553.

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

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

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

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

§ 24120. Advisory requirement for imitation firearm

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

(b) Any manufacturer, importer, or distributor that fails to comply with this advisory for any imitation firearm manufactured after July 1, 2005, shall be liable for a civil fine for each action brought by a city attorney or district attorney of not more than one thousand dollars ($1,000) for the first action, five thousand dollars
($5,000) for the second action, and ten thousand dollars ($10,000) for the third
action and each subsequent action.

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

§ 24125. Unlawful commercial activities relating to imitation firearms

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

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

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

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

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

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

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

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

Staff Note. Existing Section 12555(c) provides special rules for interpretation of the term
“imitation firearm” as used in that section. Proposed Section 16700(b) would continue those
special rules; proposed Section 16700(a) would continue the generally applicable definition of

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

We invite comment on this approach.

§ 24130. Display of imitation firearm in public place

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

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

(1) A street.

(2) A sidewalk.

(3) A bridge.

(4) An alley.

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

**Comment.** Subdivision (a) of Section 24130 continues former Section 12556(a) without substantive change.
For circumstances in which this section is inapplicable, see Section 24135 (exemptions). For consequences of violating this section, see Section 24140 (punishment).
Subdivision (b) continues former Section 12556(e) without substantive change.
See Section 16700 (“imitation firearm”).

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

§ 24135. Exemptions

24135. Section 24130 does not apply in any of the following circumstances:
(a) The imitation firearm is packaged or concealed so that it is not subject to public viewing.
(b) The imitation firearm is displayed or exposed in the course of commerce, including a commercial film or video production, or for service, repair, or restoration of the imitation firearm.
(c) The imitation firearm is used in a theatrical production, a motion picture, video, television, or stage production.
(d) The imitation firearm is used in conjunction with a certified or regulated sporting event or competition.
(e) The imitation firearm is used in conjunction with lawful hunting, or a lawful pest control activity.
(f) The imitation firearm is used or possessed at a certified or regulated public or private shooting range.
(g) The imitation firearm is used at a fair, exhibition, exposition, or other similar activity for which a permit has been obtained from a local or state government.
(h) The imitation firearm is used in a military, civil defense, or civic activity, including a flag ceremony, color guard, parade, award presentation, historical reenactment, or memorial.
(i) The imitation firearm is used for a public display authorized by a public or private school or a display that is part of a museum collection.
(j) The imitation firearm is used in a parade, ceremony, or other similar activity for which a permit has been obtained from a local or state government.
(k) The imitation firearm is displayed on a wall plaque or in a presentation case.

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

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

Comment. Section 24135 continues former Section 12556(d) without substantive change. See Section 16700 (“imitation firearm”).

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

§ 24140. Punishment

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

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

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

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

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

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

CHAPTER 4. CAMOUFLAGING FIREARM CONTAINER

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

24310. 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 camouflaging firearm container is punishable by imprisonment in a county jail not exceeding one year or in the state prison.

Comment. With respect to a camouflaging firearm container, Section 24310 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 16320 (“camouflaging firearm container”). See also Sections 17800 (distinct and separate offense), 24390 (camouflaging firearm container constituting nuisance).
**Staff Note.** Existing Section 12020 is an extremely long provision that generally prohibits the manufacture, import, sale, gift, loan, or possession of a long list of weapons and associated equipment. To improve organizational clarity and readability, the Commission decided to divide up the substance of Section 12020 according to the type of weapon or equipment covered. Minutes (April 2007), p. 10; see also Memorandum 2007-15, pp. 7-9. Consistent with that decision, proposed Section 24310 would continue the portion of existing Section 12020(a)(1) relating to a camouflaging firearm container.

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 camouflaging firearm container.

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 4. Camouflaging Firearm Container,” we have left room for future insertion of exemptions in case the Legislature undertakes the cleanup project discussed in that Staff Note.

§ 24390. Camouflaging firearm container constituting nuisance

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

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

See Section 16320 (“camouflaging firearm container”).

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

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

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

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 camouflaging firearm container. See Memorandum 2007-19, pp. 9-10.

Thus, proposed Section 24390 would continue the first part of the first sentence of existing Section 12029, as it pertains to a camouflaging firearm container. The generally applicable language in existing Section 12029 would be continued in proposed Section 18010 (reproduced in Memorandum 2008-24, in “Selected Provisions From Drafts Previously Considered”). To assist persons using the code, proposed Section 24390 would cross-refer to proposed Section 18010.
CHAPTER 5. CANE GUN

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

24410. 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 cane gun is punishable by imprisonment in a county jail not exceeding one year or in the state prison.

Comment. With respect to a cane gun, Section 24410 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 16330 (“cane gun”). See also Sections 17800 (distinct and separate offense), 24490 (cane gun constituting 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 24410 would continue the portion of existing Section 12020(a)(1) relating to a cane gun.

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 cane gun.

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 5. Cane Gun,” we have left room for future insertion of exemptions in case the Legislature undertakes the cleanup project discussed in that Staff Note.

§ 24490. Cane gun constituting nuisance

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

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

See Section 16330 (“cane gun”).

☞ 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 cane gun. See Memorandum 2007-19, pp. 9-10.

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

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

CHAPTER 7. UNDETECTABLE FIREARM

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

24610. 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 undetectable firearm is punishable by imprisonment in a county jail not exceeding one year or in the state prison.

Comment. With respect to an undetectable firearm, Section 24610 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 17280 (“undetectable firearm”). See also Sections 17800 (distinct and separate offense), 24690 (undetectable firearm constituting 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 24610 would continue the portion of existing Section 12020(a)(1) relating to an undetectable 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 an undetectable 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 7. Undetectable Firearm,” we have left room for future insertion of exemptions in case the Legislature undertakes the cleanup project discussed in that Staff Note.

§ 24680. Firearm detection equipment

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

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

See Sections 16520 (“firearm”), 17280 (“undetectable firearm”).
§ 24690. Undetectable firearm constituting nuisance

24690. Except as provided in Chapter 1 (commencing with Section 17700) of Division 2 of Title 2, an undetectable firearm is a nuisance and is subject to Section 18010.

Comment. With respect to an undetectable firearm, Section 24690 continues the first part of the first sentence of former Section 12029 without substantive change.

See Section 17280 (“undetectable 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 an undetectable firearm. See Memorandum 2007-19, pp. 9-10.

Thus, proposed Section 24690 would continue the first part of the first sentence of existing Section 12029, as it pertains to an undetectable firearm. The generally applicable language in existing Section 12029 would be continued in proposed Section 18010 (reproduced in Memorandum 2008-24, in “Selected Provisions From Drafts Previously Considered”). To assist persons using the code, proposed Section 24690 would cross-refer to proposed Section 18010.

CHAPTER 8. WALLET GUN

§ 24710. Prohibition on manufacture, import, sale, gift, loan, or possession of wallet gun

24710. 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 wallet gun is punishable by imprisonment in a county jail not exceeding one year or in the state prison.

Comment. With respect to a wallet gun, Section 24710 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 17330 (“wallet gun”). See also Sections 17800 (distinct and separate offense), 24790 (wallet gun constituting 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 24710 would continue the portion of existing Section 12020(a)(1) relating to a wallet gun.

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 wallet gun.

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 8. Wallet Gun,” we have left room for future insertion of exemptions in case the Legislature undertakes the cleanup project discussed in that Staff Note.
§ 24790. Wallet gun constituting nuisance

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

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

See Section 17330 (“wallet gun”).

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 wallet gun. See Memorandum 2007-19, pp. 9-10.

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