Memorandum 2008-39

Nonsubstantive Reorganization of Deadly Weapon Statutes:
Title 4. Firearms (Divisions 4-5)

In its nonsubstantive study of the statutes relating to deadly weapons, the Commission is in the process of preparing a tentative recommendation, which will be broadly circulated for comment. The plan is to reorganize the material in Title 2 of Part 4 of the Penal Code (Penal Code §§ 12000-12809) in a user-friendly manner in a new Part 6 of the Penal Code, without making any substantive changes. For an outline of new Part 6, see Memorandum 2008-38.

Attached is a draft of Divisions 4 and 5 of “Title 4. Firearms” of new Part 6. Commissioners and interested persons should review the draft and determine whether any revisions are needed before it is incorporated into a tentative recommendation.

Two general issues relating to the draft are discussed below: (1) the use of singular versus plural form, and (2) conforming of statutory cross-references. Staff Notes (☞ Staff Note) in the attached draft raise other matters for Commissioners and interested persons to consider. The staff does not plan to discuss each of these matters at the upcoming meeting. Rather, persons should review the draft, identify any issues of concern, and then raise those issues for discussion at the meeting or express their concerns in writing, preferably before the meeting (but afterwards is also acceptable).

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

SINGULAR VERSUS PLURAL FORM

In preparing the attached draft, the staff tried to use the Commission’s usual style of drafting statutory provisions in the singular form instead of in the plural form. For example, we would say “subdivision (a) does not apply to any peace officer of another state or the federal government ...” instead of “subdivision (a) does not apply to peace officers of other states and the federal government ....”
The singular form is more crisp and clear. There is no difference in meaning, because “the singular number includes the plural, and the plural the singular ....” Penal Code § 7. The nonsubstantive nature of the reform would be underscored by the Commission’s Comment (“Section X continues former Section Y without substantive change”), the narrative portion of the Commission’s report, and an uncodified provision in the proposed legislation. See Memorandum 2007-5, pp. 10-11; Minutes (Jan. 2007), p. 7.

However, many of the provisions currently in Title 2 of Part 4 of the Penal Code are drafted in the plural form. Converting them to the singular form without any risk of a change in meaning is not always easy, particularly if the current phrasing is unclear.

The staff has therefore left some provisions in the plural form in the attached draft (see, e.g., proposed Sections 25625, 26025, 26030). We expect to have to do this with other provisions as this study progresses. This is perhaps an overabundance of caution, but it may be necessary to help provide assurance that the Commission’s proposal is strictly nonsubstantive. We invite comment on this matter.

If the Commission’s proposal is enacted, it might be appropriate to revisit the plural form provisions and assess whether they should be redrafted in singular form. Unless the Commission otherwise directs, the staff will add this issue to the Commission’s list of “Minor Clean-up Issues for Possible Future Legislative Attention.” See Memorandum 2008-41.

**CONFORMING OF STATUTORY CROSS-REFERENCES**

Title 2 of Part 4 of the Penal Code contains many provisions that cross-refer to other statutes. As material is reorganized in new Part 6 of the Penal Code, each such cross-reference must be conformed to the new numbering scheme.

Often, an existing cross-reference can simply be replaced by a cross-reference to a new provision containing the exact same material as the previously cross-referenced provision. For example, the second sentence of existing Section 12052 says: “Upon receipt of the fingerprints and the fee as prescribed in Section 12054, the department shall promptly furnish the forwarding licensing authority a report ....” (Emphasis added.) The substance of existing Section 12054 would be recodified as proposed Section 26190. See Attachment pp. 51-52. Consequently, the existing cross-reference to Section 12054 can be replaced with a cross-
reference to proposed Section 26190. The provision that continues the second sentence of existing Section 12052 (proposed Section 26185) would thus say: “Upon receipt of the fingerprints and the fee as prescribed in Section 26190, the department shall promptly furnish the forwarding licensing authority a report ....” See Attachment p. 50 (emphasis added).

In some instances, however, that approach does not make sense. For example, existing Section 12027.1(a)(1)(A)(ii) says:

Any peace officer listed in Section 830.1 or 830.2 or subdivision (c) of Section 830.5 who retired prior to January 1, 1981, is authorized to carry a concealed and loaded firearm if the agency issued the officer an identification certificate and the certificate has not been stamped as specified in paragraph (2) of subdivision (a) of Section 12027.

(Emphasis added.) The cross-referenced provision (Section 12027(a)(2)) says:

A retired peace officer, except an officer listed in Section 830.1 or 830.2, subdivision (a) of Section 830.33, or subdivision (c) of Section 830.5 who retired prior to January 1, 1981, shall petition the issuing agency for the renewal of his or her privilege to carry a concealed firearm every five years. An honorably retired peace officer listed in Section 830.1 or 830.2, subdivision (a) of Section 830.33, or subdivision (c) of Section 830.5 who retired prior to January 1, 1981, shall not be required to obtain an endorsement from the issuing agency to carry a concealed firearm. The agency from which a peace officer is honorably retired may, upon initial retirement of that peace officer, or at any time subsequent thereto, deny or revoke for good cause the retired officer’s privilege to carry a concealed firearm. A peace officer who is listed in Section 830.1 or 830.2, subdivision (a) of Section 830.33, or subdivision (c) of Section 830.5 who retired prior to January 1, 1981, shall have his or her privilege to carry a concealed firearm denied or revoked by having the agency from which the officer retired stamp on the officer’s identification certificate “No CCW privilege.”

(Emphasis added.) The substance of that provision would be recodified as proposed Sections 25465, 25455(d), and 25470.

Suppose the existing cross-reference was replaced by a cross-reference to all three of these sections. Then the provision continuing Section 12027.1(a)(1)(A)(ii) would read:

Any peace officer listed in Section 830.1 or 830.2 or subdivision (c) of Section 830.5 who retired prior to January 1, 1981, is authorized to carry a concealed and loaded firearm if the agency issued the officer an identification certificate and the certificate has
not been stamped as specified in Sections 25465, 25470, and subdivision (d) of Section 25455.

(Emphasis added.) A reader would need to refer to all three sections to determine the meaning of the provision. But the only section that deals with stamping of an identification certificate is Section 25470.

It would thus be more user-friendly to refer only to that section in the provision continuing Section 12027.1(a)(1)(A)(ii). The staff took that approach in the attached draft. Proposed Section 26300(a) would say:

Any peace officer listed in Section 830.1 or 830.2 or subdivision (c) of Section 830.5 who retired prior to January 1, 1981, is authorized to carry a concealed and loaded firearm if the agency issued the officer an identification certificate and the certificate has not been stamped as specified in Section 25470.

See Attachment p. 58 (emphasis added).

We exercised similar judgment in conforming other cross-references. For example, proposed Section 26150 relates to issuance of a handgun license by a sheriff. It would continue the substance of Section 12050(a)(1)(A), which is the main provision on issuance of a handgun license by a sheriff. It would also continue the substance of Section 12050(a)(1)(D), which states a requirement that is cross-referenced in Section 12050(a)(1)(A). In preparing the attached draft, the staff has replaced cross-references to Section 12050(a)(1)(A) with cross-references to proposed Section 26150, even though proposed Section 26150 includes more material than is now in Section 12050(a)(1)(A). See Attachment pp. 47 (proposed § 26160), 48 (proposed § 26170), 53-54 (proposed § 26210), 56 (proposed § 26220), 57 (proposed § 26225). That makes more sense than trying to refer only to the part of proposed Section 26150 that continues existing Section 12050(a)(1)(A), which would be difficult to describe.

In making such judgment calls, the staff carefully examined the substance of the provisions in question and determined that there would be no substantive change. The Commission’s Comments would state as much, and would be official legislative history, to be used by the courts in interpreting the proposed legislation. See 2007-2008 Annual Report, 37 Cal. L. Revision Comm’n Reports 1, 17-23 (2007) & sources cited therein.

In addition, the narrative portion of the Commission’s report would be official legislative history and would emphasize the nonsubstantive nature of the proposed legislation. See id. The staff suggests that the report describe the
process of conforming cross-references and expressly state that all cross-references in the proposed legislation are to be construed consistent with the nonsubstantive intent of the reform.

As previously discussed, the proposed legislation would also include an uncodified provision stating that the legislation is not intended to make any substantive change in the law. The staff further recommends that the uncodified provision specifically indicate that all cross-references in the proposed legislation are to be interpreted consistent with the nonsubstantive intent of the reform.

For example, the uncodified provision could be worded as follows:

SEC. __. Nothing in this act is intended to substantively change the law relating to deadly weapons. This act is intended to be entirely nonsubstantive in effect. Every provision of this act, including, without limitation, every cross-reference in every provision of this act, shall be interpreted consistent with the nonsubstantive intent of the act.

We encourage comment on this possible language, on the matter of conforming cross-references, and on any other aspect of this study.

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 2008-38.

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

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

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

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

SELECTED PROVISIONS FROM DRAFTS PREVIOUSLY CONSIDERED

☞ Staff Note. The material shown below has previously been considered by the Commission. It is reproduced here so that it can easily be referenced in reviewing the new material presented later in this document.

PART 6. CONTROL OF DEADLY WEAPONS

TITLE 1. PRELIMINARY PROVISIONS

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DIVISION 2. DEFINITIONS

....

§ 16520. “Firearm”

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

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

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

(d) As used in [Sections 12070, 12071, and paragraph (8) of subdivision (a), and
subdivisions (b), (c), (d), and (f) of Section 12072], “firearm” does not include an
unloaded antique firearm.

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

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

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

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

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

Subdivision (d) continues former Section 12001(e) without substantive change. See Section
16710 (“antique firearm”).

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

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

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

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

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

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

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

See Sections 16520 (“firearm”), 17170 (“short-barreled rifle”), 17180 (“short-barreled
 shotgun”). See also Section 16640 (“handgun” means “any pistol, revolver, or firearm capable of
being concealed upon the person”).
§ 16600. “Great bodily injury”
16600. As used in [Section 12035], “great bodily injury” means a significant or substantial physical injury.

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

§ 16640. “Handgun”
16640. (a) As used in this part, “handgun” means any pistol, revolver, or firearm capable of being concealed upon the person.
(b) Nothing shall prevent a device defined as a “handgun” from also being found to be a short-barreled rifle or a short-barreled shotgun.

Comment. Subdivision (a) of Section 16640 continues former Section 12001(a)(2) without substantive change. See Sections 16520 (“firearm”), 16530 (“firearm capable of being concealed upon the person,” “pistol,” and “revolver”). With respect to a “handgun,” subdivision (b) continues former Section 12001(f) without substantive change. See also Section 16530(b), which continues former Section 12001(f) with respect to a “firearm capable of being concealed upon the person,” “pistol,” and “revolver.” See Sections 16520 (“firearm”), 16530 (“firearm capable of being concealed upon the person,” “pistol,” and “revolver”), 17170 (“short-barreled rifle”), 17180 (“short-barreled shotgun”).

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

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

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

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

Comment. Subdivision (a) of Section 16750 continues former Section 12025(g) without
substantive change.
Subdivision (b) continues former Section 12031(a)(3) without substantive change.
See Section 16520 (“firearm”).

§ 16840. “Loaded” and “loaded firearm”
16840. (a) As used in [Section 12023], a firearm shall be deemed to be “loaded”
whenever both the firearm and the unexpended ammunition capable of being
discharged from the firearm are in the immediate possession of the same person.
(b) As used in [Sections 12025(b)(6)(A), 12031, and 12035],
(1) A firearm shall be deemed to be “loaded” when there is an unexpended
cartridge or shell, consisting of a case that holds a charge of powder and a bullet or
shot, in, or attached in any manner to, the firearm, including, but not limited to, in
the firing chamber, magazine, or clip thereof attached to the firearm.
(2) Notwithstanding paragraph (1), a muzzle-loader firearm shall be deemed to
be loaded when it is capped or primed and has a powder charge and ball or shot in
the barrel or cylinder.
Comment. Subdivision (a) of Section 16840 continues former Section 12001(j) without
substantive change.
Subdivision (b) continues former Sections 12031(g) and 12035(a)(2) without substantive
change.
See Section 16520 (“firearm”).

§ 16850. “Locked container”
16850. As used in [Sections 12020(b)(17)(E), 12026.1, 12026.2, 12035, 12036,
and 12094(b)(4)(E)], “locked container” means a secure container that is fully
enclosed and locked by a padlock, keylock, combination lock, or similar locking
device. The term “locked container” does not include the utility or glove
compartment of a motor vehicle.
Comment. Section 16850 continues former Sections 12026.2(d), 12035(a)(5), and 12036(a)(4) without substantive change. Section 16850 also continues the combined effect of subdivision (c) and the last clause of paragraph (a)(1) of former Section 12026.1 without substantive change.

See Section 16520 (“firearm”).

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

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

See Section 16520 (“firearm”).

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

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

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

Comment. Section 17030 continues former Section 12031(f) without substantive change.
NEW MATERIAL FOR REVIEW AND PROVISIONAL APPROVAL

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

TITLE 4. FIREARMS

DIVISION 4. STORAGE OF FIREARMS

CHAPTER 1. PRELIMINARY PROVISIONS

§ 25000. “Child”

25000. As used in this division, “child” means a person under 18 years of age.

Comment. Section 25000 continues former Sections 12035(a)(3) and 12036(a)(2) without substantive change.

☞ Staff Note. Section 12035(a)(3) defines “child” for purposes of that section as “a person under 18 years of age.” Section 12036(a)(2) gives the same definition for purposes of that section. The term is used differently elsewhere.

To help ensure that the applicable definition of this commonplace word is not overlooked, the Commission decided to place the definition in close proximity to the substance of Sections 12035 and 12036, which relates to storage of firearms. See Memorandum 2008-23, p. 2; Minutes (June 2008), pp. 6-9. Proposed Section 25000 would implement that decision. The Commission and other interested persons should assess whether this treatment of the definition of “child” for the firearm storage restrictions is satisfactory.

CHAPTER 2. CRIMINAL STORAGE OF FIREARM

§ 25100. Criminal storage of firearm

25100. (a) Except as provided in Section 25105, a person commits the crime of “criminal storage of a firearm of the first degree” if all of the following conditions are satisfied:

(1) The person keeps any loaded firearm within any premises that are under the person’s custody or control.

(2) The person knows or reasonably should know that a child is likely to gain access to the firearm without the permission of the child’s parent or legal guardian.

(3) The child obtains access to the firearm and thereby causes death or great bodily injury to the child or any other person.

(b) Except as provided in Section 25105, a person commits the crime of “criminal storage of a firearm of the second degree” if all of the following conditions are satisfied:
(1) The person keeps any loaded firearm within any premises that are under the person’s custody or control.

(2) The person knows or reasonably should know that a child is likely to gain access to the firearm without the permission of the child’s parent or legal guardian.

(3) The child obtains access to the firearm and thereby causes injury, other than great bodily injury, to the child or any other person, or carries the firearm either to a public place or in violation of Section 417.

Comment. Subdivision (a) of Section 25100 continues former Section 12035(b)(1) without substantive change.

Subdivision (b) continues former Section 12035(b)(2) without substantive change.

For a provision requiring a firearms dealer to post a notice with warnings about firearm storage, see [Section 12071(b)(7)].

See Sections 16520 ("firearm"), 16600 ("great bodily injury"), 16840 ("loaded" and "loaded firearm"), 25000 ("child").

§ 25105. Exceptions
25105. Section 25100 does not apply whenever any of the following occurs:
(a) The child obtains the firearm as a result of an illegal entry to any premises by any person.
(b) The firearm is kept in a locked container or in a location that a reasonable person would believe to be secure.
(c) The firearm is carried on the person or within close enough proximity thereto that the individual can readily retrieve and use the firearm as if carried on the person.
(d) The firearm is locked with a locking device, as defined in Section 16860, which has rendered the firearm inoperable.
(e) The person is a peace officer or a member of the armed forces or the National Guard and the child obtains the firearm during, or incidental to, the performance of the person’s duties.
(f) The child obtains, or obtains and discharges, the firearm in a lawful act of self-defense or defense of another person.
(g) The person who keeps a loaded firearm on any premise that is under the person’s custody or control has no reasonable expectation, based on objective facts and circumstances, that a child is likely to be present on the premises.

Comment. Section 25105 continues former Section 12035(c) without substantive change.

See Sections 16520 ("firearm"), 16840 ("loaded" and "loaded firearm"), 16850 ("locked container"), 25000 ("child").

☞ Staff Notes.
(1) Section 12035(a)(1) defines “locking device” for purposes of that section. The definition refers to a device that can be used to render a firearm inoperable. Section 12036(a)(1) gives the same definition for purposes of that section. Proposed Section 16850 would continue Sections 12035(a)(1) and 12036(a)(1).

The term “locking device” is also used without definition elsewhere, sometimes in a similar context and sometimes in a different context. At some point in the future (not in this nonsubstantive reorganization), it might be appropriate to extend proposed Section 16860’s
definition of “locking device” to other provisions that refer to a device that can be used to render
a firearm inoperable. See Memorandum 2008-17, Attachment p. 32.

To help ensure that the applicable definition of this fairly common phrase is not overlooked,
the Commission decided to cross-reference that definition in (1) the provision that would
continue the pertinent substantive part of existing Section 12035 and (2) the provision that would
continue the pertinent substantive part of existing Section 12036. The idea was to draw attention
to the definition of “locking device,” yet leave the definition in a location that would be
appropriate even if the definition were extended more broadly in the future.

Section 25105(d) would implement the first prong of that decision. The Commission and other
interested persons should assess whether the chosen approach is satisfactory.

(2) Section 12035(c)(6) creates an exception when “[t]he child obtains, or obtains and
discharges, the firearm in a lawful act of self-defense or defense of another person, or persons.”
(Emphasis added.) Proposed Section 25105(f) would continue this provision, but we have omitted
the italicized language. It is not necessary to say “person, or persons,” because the singular
includes the plural. See Section 7.

§ 25110. Punishment

25110. (a) Criminal storage of a firearm in the first degree is punishable by
imprisonment in the state prison for 16 months, or two or three years, by a fine not
exceeding ten thousand dollars ($10,000), or by both that imprisonment and fine;
or by imprisonment in a county jail not exceeding one year, by a fine not
exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(b) Criminal storage of a firearm in the second degree is punishable by
imprisonment in a county jail not exceeding one year, by a fine not exceeding one
thousand dollars ($1,000), or by both that imprisonment and fine.

Comment. Section 25110 continues former Section 12035(d) without substantive change.
See Section 25100 (criminal storage of firearm).

§ 25115. Prosecution of parent or guardian

25115. If a person who allegedly violated Section 25100 is the parent or
guardian of a child who is injured or who dies as the result of an accidental
shooting, the district attorney shall consider, among other factors, the impact of
the injury or death on the person alleged to have violated Section 25100 when
deciding whether to prosecute the alleged violation. It is the Legislature’s intent
that a parent or guardian of a child who is injured or who dies as the result of an
accidental shooting shall be prosecuted only in those instances in which the parent
or guardian behaved in a grossly negligent manner or where similarly egregious
circumstances exist. This section shall not otherwise restrict, in any manner, the
factors that a district attorney may consider when deciding whether to prosecute an
alleged violation of Section 25100.

Comment. Section 25115 continues former Section 12035(f) without substantive change.
See Section 25000 (“child”).

§ 25120. Timing of prosecution of parent or guardian

25120. (a) If a person who allegedly violated Section 25100 is the parent or
guardian of a child who was injured or who died as the result of an accidental
shooting, no arrest of the person for the alleged violation of Section 25100 shall occur until at least seven days after the date upon which the accidental shooting occurred.

(b) In addition to the limitation stated in subdivision (a), before arresting a person for a violation of Section 25100, a law enforcement officer shall consider the health status of a child who suffered great bodily injury as the result of an accidental shooting, if the person to be arrested is the parent or guardian of the injured child. The intent of this section is to encourage law enforcement officials to delay the arrest of a parent or guardian of a seriously injured child while the child remains on life-support equipment or is in a similarly critical medical condition.

Comment. Section 25120 continues former Section 12035(f) without substantive change. See Sections 16600 (“great bodily injury”), 25000 (“child”).

§ 25125. Impact of attending firearm safety training course

25125. (a) The fact that a person who allegedly violated Section 25100 attended a firearm safety training course prior to the purchase of the firearm that was obtained by a child in violation of Section 25100 shall be considered a mitigating factor by a district attorney when deciding whether to prosecute the alleged violation.

(b) In any action or trial commenced under Section 25100, the fact that the person who allegedly violated Section 25100 attended a firearm safety training course prior to the purchase of the firearm that was obtained by a child in violation of Section 25100 is admissible.

Comment. Section 25125 continues former Section 12035(g) without substantive change. See Sections 16520 (“firearm”), 25000 (“child”).

§ 25130. Posting of required notice

25130. Every person licensed under [Section 12071] shall post within the licensed premises the notice required by [paragraph (7) of subdivision (b) of that section], disclosing the duty imposed by this article upon any person who keeps a loaded firearm.

Comment. Section 25130 continues former Section 12035(h) without substantive change. See Sections 16520 (“firearm”), 16840 (“loaded” and “loaded firearm”).

☞ Staff Note. This provision might be unnecessary and redundant with the requirement now stated in Section 12071(b)(7). We invite comment on this point. Unless the Commission otherwise directs, we will add this issue to the Commission’s list of “Minor Clean-up Issues for Possible Future Legislative Attention.” See Memorandum 2008-41.
CHAPTER 3. STORAGE OF FIREARM WHERE CHILD OBTAINS ACCESS AND CARRIES FIREARM OFF-PREMISES

§ 25200. Storage of firearm where child obtains access and carries firearm off-premises

25200. (a) If all of the following conditions are satisfied, a person shall be punished by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine:

(1) The person keeps a pistol, revolver, or other firearm capable of being concealed upon the person, loaded or unloaded, within any premises that are under the person’s custody or control.

(2) The person knows or reasonably should know that a child is likely to gain access to that firearm without the permission of the child’s parent or legal guardian.

(3) The child obtains access to that firearm and thereafter carries that firearm off-premises.

(b) If all of the following conditions are satisfied, a person shall be punished by imprisonment in a county jail not exceeding one year, by a fine not exceeding five thousand dollars ($5,000), or by both that imprisonment and fine:

(1) The person keeps any firearm within any premises that are under the person’s custody or control.

(2) The person knows or reasonably should know that a child is likely to gain access to the firearm without the permission of the child’s parent or legal guardian.

(3) The child obtains access to the firearm and thereafter carries that firearm off-premises to any public or private preschool, elementary school, middle school, high school, or to any school-sponsored event, activity, or performance, whether occurring on school grounds or elsewhere.

(c) A pistol, revolver, or other firearm capable of being concealed upon the person that a child gains access to and carries off-premises in violation of this section shall be deemed “used in the commission of any misdemeanor as provided in this code or any felony” for the purpose of [subdivision (b) of Section 12028] regarding the authority to confiscate firearms and other deadly weapons as a nuisance.

(d) As used in this section, “off-premises” means premises other than the premises where the firearm was stored.

Comment. Subdivision (a) of Section 25200 continues former Section 12036(b) without substantive change.

Subdivision (b) continues former Section 12036(c) without substantive change.

Subdivision (c) continues former Section 12036(d) without substantive change.

Subdivision (d) continues former Section 12036(a)(3) without substantive change.

For circumstances in which this section does not apply, see Section 25205. For a provision requiring a firearms dealer to post a notice with warnings about firearm storage, see [Section 12071(b)(7)].

See Sections 16520 ("firearm"), 16530 ("firearm capable of being concealed upon the person," "pistol," and "revolver"), 25000 ("child").
Staff Note. Section 12036(a)(3) defines “off-premises” for purposes of that section. The term is also used without definition elsewhere in Title 2 of Part 4 of the Penal Code.

To help ensure that the applicable definition of this commonplace word is not overlooked, the Commission decided to place the definition in close proximity to the substance of Section 12036. See Memorandum 2008-23, p. 2; Minutes (June 2008), pp. 6-9. Proposed Section 25200(d) would implement that decision. The Commission and other interested persons should assess whether this treatment of the definition of “off-premises” is satisfactory.

§ 25205. Exceptions

25205. Section 25200 does not apply if any of the following are true:

(a) The child obtains the firearm as a result of an illegal entry into any premises by any person.
(b) The firearm is kept in a locked container or in a location that a reasonable person would believe to be secure.
(c) The firearm is locked with a locking device, as defined in Section 16860, which has rendered the firearm inoperable.
(d) The firearm is carried on the person within close enough range that the individual can readily retrieve and use the firearm as if carried on the person.
(e) The person is a peace officer or a member of the Armed Forces or National Guard and the child obtains the firearm during, or incidental to, the performance of the person’s duties.
(f) The child obtains, or obtains and discharges, the firearm in a lawful act of self-defense or defense of another person.
(g) The person who keeps a firearm has no reasonable expectation, based on objective facts and circumstances, that a child is likely to be present on the premises.

Comment. Section 25205 continues former Section 12036(e) without substantive change. See Sections 16520 (“firearm”), 16850 (“locked container”), 25000 (“child”).

Staff Notes.

(1) Section 12035(a)(1) defines “locking device” for purposes of that section. The definition refers to a device that can be used to render a firearm inoperable. Section 12036(a)(1) gives the same definition for purposes of that section. Proposed Section 16850 would continue Sections 12035(a)(1) and 12036(a)(1).

The term “locking device” is also used without definition elsewhere, sometimes in a similar context and sometimes in a different context. At some point in the future (not in this nonsubstantive reorganization), it might be appropriate to extend proposed Section 16860’s definition of “locking device” to other provisions that refer to a device that can be used to render a firearm inoperable. See Memorandum 2008-17, Attachment p. 32.

To help ensure that the applicable definition of this fairly common phrase is not overlooked, the Commission decided to cross-reference that definition in (1) the provision that would continue the pertinent substantive part of existing Section 12035 and (2) the provision that would continue the pertinent substantive part of existing Section 12036. The idea was to draw attention to the definition of “locking device,” yet leave the definition in a location that would be appropriate even if the definition were extended more broadly in the future.

Section 25205(c) would implement the second prong of that decision. The Commission and other interested persons should assess whether the chosen approach is satisfactory.
Section 12036(e)(6) creates an exception when “[t]he child obtains, or obtains and discharges, the firearm in a lawful act of self-defense or defense of another person, or persons.” (Emphasis added.) Proposed Section 25205(f) would continue this provision, but we have omitted the italicized language. It is not necessary to say “person, or persons,” because the singular includes the plural. See Section 7.

§ 25210. Prosecution of parent or guardian

25210. If a person who allegedly violated Section 25200 is the parent or guardian of a child who is injured or who dies as the result of an accidental shooting, the district attorney shall consider, among other factors, the impact of the injury or death on the person alleged to have violated Section 25200 when deciding whether to prosecute the alleged violation. It is the Legislature’s intent that a parent or guardian of a child who is injured or who dies as the result of an accidental shooting shall be prosecuted only in those instances in which the parent or guardian behaved in a grossly negligent manner or where similarly egregious circumstances exist. This section shall not otherwise restrict, in any manner, the factors that a district attorney may consider when deciding whether to prosecute alleged violations of Section 25200.

Comment. Section 25210 continues former Section 12036(f) without substantive change. See Section 25000 (“child”).

§ 25215. Timing of prosecution of parent or guardian

25215. (a) If a person who allegedly violated Section 25200 is the parent or guardian of a child who was injured or who died as the result of an accidental shooting, no arrest of the person for the alleged violation of Section 25200 shall occur until at least seven days after the date upon which the accidental shooting occurred.

(b) In addition to the limitation contained in subdivision (a), before arresting a person for a violation of Section 25200, a law enforcement officer shall consider the health status of a child who suffers great bodily injury as the result of an accidental shooting, if the person to be arrested is the parent or guardian of the injured child. The intent of this section is to encourage law enforcement officials to delay the arrest of a parent or guardian of a seriously injured child while the child remains on life-support equipment or is in a similarly critical medical condition.

Comment. Section 25215 continues former Section 12036(g) without substantive change. See Sections 16600 (“great bodily injury”), 25000 (“child”).

§ 25220. Impact of attending firearm safety training course

25220. (a) The fact that the person who allegedly violated Section 25200 attended a firearm safety training course prior to the purchase of the firearm that is obtained by a child in violation of Section 25200 shall be considered a mitigating factor by a district attorney when deciding whether to prosecute the alleged violation.
(b) In any action or trial commenced under Section 25200, the fact that the person who allegedly violated Section 25200 attended a firearm safety training course prior to the purchase of the firearm that was obtained by a child in violation of Section 25200 is admissible.

Comment. Section 25220 continues former Section 12036(h) without substantive change. See Sections 16520 (“firearm”), 25000 (“child”).

§ 25225. Posting of required notice

25225. Every person licensed under [Section 12071] shall post within the licensed premises the notice required by [paragraph (7) of subdivision (b) of that section], disclosing the duty imposed by this article upon any person who keeps any firearm.

Comment. Section 25225 continues former Section 12036(i) without substantive change. See Section 16520 (“firearm”).

☞ Staff Note. This provision might be unnecessary and redundant with the requirement now stated in Section 12071(b)(7). We invite comment on this point. Unless the Commission otherwise directs, we will add this issue to the Commission’s list of “Minor Clean-up Issues for Possible Future Legislative Attention.” See Memorandum 2008-41.

DIVISION 5. CARRYING FIREARMS

CHAPTER 1. MISCELLANEOUS RULES RELATING TO CARRYING FIREARMS

§ 25300. Carrying firearm in public while masked to hide identity

25300. (a) A person commits criminal possession of a firearm when the person carries a firearm in a public place or on any public street while masked so as to hide the person’s identity.

(b) Criminal possession of a firearm is punishable by imprisonment in the state prison or by imprisonment in a county jail not to exceed one year.

(c) Subdivision (a) does not apply to any of the following:

(1) A peace officer in performance of the officer’s duties.

(2) A full-time paid peace officer of another state or the federal government who is carrying out official duties while in this state.

(3) Any person summoned by any of the officers enumerated in paragraph (1) or (2) to assist in making an arrest or preserving the peace while that person is actually engaged in assisting that officer.

(4) The possession of an unloaded firearm or a firearm loaded with blank ammunition by an authorized participant in, or while rehearsing for, a motion picture, television, video production, entertainment event, entertainment activity, or lawfully organized and conducted activity when the participant lawfully uses the firearm as part of that production, event, or activity.
(5) The possession of a firearm by a licensed hunter while actually engaged in lawful hunting, or while going directly to or returning directly from the hunting expedition.

Comment. Section 25300 continues former Section 12040 without substantive change. See Section 16520 (“firearm”).

CHAPTER 2. CARRYING A CONCEALED FIREARM

Article 1. Crime of Carrying a Concealed Firearm

§ 25400. Crime of carrying concealed firearm
25400. (a) A person is guilty of carrying a concealed firearm when the person does any of the following:
   (1) Carries concealed within any vehicle that is under the person’s control or direction any pistol, revolver, or other firearm capable of being concealed upon the person.
   (2) Carries concealed upon the person any pistol, revolver, or other firearm capable of being concealed upon the person.
   (3) Causes to be carried concealed within any vehicle in which the person is an occupant any pistol, revolver, or other firearm capable of being concealed upon the person.
   (b) A firearm carried openly in a belt holster is not concealed within the meaning of this section.
   (c) Carrying a concealed firearm in violation of this section is punishable as follows:
      (1) If the person previously has been convicted of any felony, or of any crime made punishable by [this chapter], as a felony.
      (2) If the firearm is stolen and the person knew or had reasonable cause to believe that it was stolen, as a felony.
      (3) If the person is an active participant in a criminal street gang, as defined in subdivision (a) of Section 186.22, under the Street Terrorism Enforcement and Prevention Act (Chapter 11 (commencing with Section 186.20) of Title 7 of Part 1), as a felony.
      (4) If the person is not in lawful possession of the firearm or the person is within a class of persons prohibited from possessing or acquiring a firearm pursuant to [Section 12021 or 12021.1 of this code] or [Section 8100 or 8103 of the Welfare and Institutions Code], as a felony.
      (5) If the person has been convicted of a crime against a person or property, or of a narcotics or dangerous drug violation, by imprisonment in the state prison, or by imprisonment in a county jail not to exceed one year, by a fine not to exceed one thousand dollars ($1,000), or by both that imprisonment and fine.
(6) If both of the following conditions are met, by imprisonment in the state prison, or by imprisonment in a county jail not to exceed one year, by a fine not to exceed one thousand dollars ($1,000), or by both that fine and imprisonment:

(A) The pistol, revolver, or other firearm capable of being concealed upon the person is loaded, or both it and the unexpended ammunition capable of being discharged from it are in the immediate possession of the person or readily accessible to that person.

(B) The person is not listed with the Department of Justice pursuant to paragraph (1) of subdivision (c) of Section 11106 as the registered owner of that pistol, revolver, or other firearm capable of being concealed upon the person.

(7) In all cases other than those specified in paragraphs (1) to (6), inclusive, by imprisonment in a county jail not to exceed one year, by a fine not to exceed one thousand dollars ($1,000), or by both that imprisonment and fine.

(d)(1) Every person convicted under this section who previously has been convicted of a misdemeanor offense enumerated in [Section 12001.6] shall be punished by imprisonment in a county jail for at least three months and not exceeding six months, or, if granted probation, or if the execution or imposition of sentence is suspended, it shall be a condition thereof that the person be imprisoned in a county jail for at least three months.

(2) Every person convicted under this section who has previously been convicted of any felony, or of any crime made punishable by [this chapter], if probation is granted, or if the execution or imposition of sentence is suspended, it shall be a condition thereof that the person be imprisoned in a county jail for not less than three months.

(e) The court shall apply the three-month minimum sentence as specified in subdivision (d), except in unusual cases where the interests of justice would best be served by granting probation or suspending the imposition or execution of sentence without the minimum imprisonment required in subdivision (d) or by granting probation or suspending the imposition or execution of sentence with conditions other than those set forth in subdivision (d), in which case, the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(f) A peace officer may arrest a person for a violation of paragraph (6) of subdivision (c) if the peace officer has probable cause to believe that the person is not listed with the Department of Justice pursuant to paragraph (1) of subdivision (c) of Section 11106 as the registered owner of the pistol, revolver, or other firearm capable of being concealed upon the person, and one or more of the conditions in subparagraph (A) of paragraph (6) of subdivision (c) is met.

Comment. Subdivision (a) of Section 25400 continues former Section 12025(a) without substantive change.

Subdivision (b) continues former Section 12025(f) without substantive change.

Subdivision (c) continues former Section 12025(b) without substantive change.

Subdivision (d) continues former Section 12025(d) without substantive change.

Subdivision (e) continues former Section 12025(e) without substantive change.
Subdivision (f) continues former Section 12025(c) without substantive change.

Former Section 12025(g) is continued in Section 16750 (“lawful possession of the firearm”).

Former Section 12025(h) was repealed by its own terms on January 1, 2005, so it is not continued. See 1999 Cal. Stat. ch. 571, § 2.

See Sections 16520 (“firearm”), 16530 (“firearm capable of being concealed upon the person,” “pistol,” and “revolver”), 16750 (“lawful possession of the firearm”), 16840 (“loaded” and “loaded firearm”).

☞ Staff Notes.

(1) Subdivision (h) of existing Section 12025 provides:

(h)(1) The district attorney of each county shall submit annually a report on or before June 30, to the Attorney General consisting of profiles by race, age, gender, and ethnicity of any person charged with a felony or a misdemeanor under this section and any other offense charged in the same complaint, indictment, or information.

(2) The Attorney General shall submit annually, a report on or before December 31, to the Legislature compiling all of the reports submitted pursuant to paragraph (1).

(3) This subdivision shall remain operative until January 1, 2005, and as of that date shall be repealed.

(Emphasis added.) Because this provision only remained operative until January 1, 2005, and was to be repealed by its own terms as of that date, the staff did not continue it in proposed Section 25400, but did refer to it in the Comment. We solicit comment on whether that treatment of subdivision (h) is appropriate.

(2) Existing Section 12025 is a long section (over two pages in the attachment to Memorandum 2007-59). In redrafting the section, the staff considered the possibility of dividing its substance into several different sections. We decided, however, that the potential benefits of that approach did not outweigh the potential detriments. Aside from eliminating subdivision (h) and placing subdivision (g)’s definition of “lawful possession of the firearm” with other definitions, we kept the entire substance intact in drafting proposed Section 25400. We solicit comment on that drafting decision.

(3) Existing Section 12025(b)(3) specifies the punishment for a violation of the section “[w]here the person is an active participant in a criminal street gang, as defined in subdivision (a) of Section 186.22 ....” The definition of a “criminal street gang” is located in subdivision (f) of Section 186.22, not subdivision (a). But subdivision (a) provides guidance on what level of involvement in a criminal street gang is punishable:

(a) Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in a county jail for a period not to exceed one year, or by imprisonment in the state prison for 16 months, or two or three years.

The staff has assumed that the Legislature intended to cross-refer to subdivision (a), not subdivision (f). Proposed Section 25400 would thus continue the existing cross-reference.

(4) Existing Section 12025(b)(6)(A) refers to a pistol, revolver, or other firearm capable of being concealed upon the person that is “loaded as defined in subdivision (g) of Section 12031.” (Emphasis added.) Unlike existing Section 12025(b)(6)(A), proposed Section 25400(c)(6)(A) would not cross-refer to the provision defining “loaded.”

Similarly, existing Section 12025(b)(4) refers to a person who “not in lawful possession of the firearm, as defined in this section ....” Unlike existing Section 12025(b)(4), proposed Section 25400(c)(4) would not cross-refer to the definition of “lawful possession of the firearm.”

Instead, the Comment would cross-refer to the definitions of “loaded” and “lawful possession of the firearm.” The Comment would also state that “[s]ubdivision (c) continues former Section
12025(b) without substantive change.” The definition of “loaded” is drafted to encompass proposed Section 25400, as is the definition of “lawful possession of the firearm.”

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 contracting the scope of criminal liability under current provisions.” 2006 Cal. Stat. res. ch. 128. Because courts give great weight to the Commission’s Comments, we think this would be sufficient to preserve the substance of Section 12025(b)(4) & (6)(A). See 2006-2007 Annual Report, 36 Cal. L. Revision Comm’n Reports 1, 18-24 (2006).

Article 2. Peace Officer Exemption

Staff Note. Existing law contains extensive provisions relating to identification certificates for retired peace officers and endorsements on those certificates authorizing officers to (1) carry a concealed firearm, (2) carry a loaded firearm, or (3) carry a concealed and loaded firearm. The current and proposed future locations of those provisions are as follows:

- Existing Section 12027(a) (peace officer exemption to crime of carrying concealed firearm). This material would be recodified as proposed Sections 25450-25475.
- Existing Section 12031(b)(1)-(3) (peace officer exemption to crime of carrying loaded firearm in public). This material would be recodified as proposed Sections 25900-25925.
- Existing Section 12027.1 (retired peace officer carrying concealed and loaded firearm). This material would be recodified as proposed Sections 26300-26325.

There is much repetition among these three separate sets of statutory material, albeit in different contexts. The material could perhaps be reorganized more concisely, without any change in meaning.

To avoid any risk of a substantive change, the staff advises against attempting such reorganization in the context of this nonsubstantive study. Unless the Commission otherwise directs, we will add this issue to the Commission’s list of “Minor Clean-up Issues for Possible Future Legislative Attention.” See Memorandum 2008-41.

§ 25450. Peace officer exemption

25450. As provided in this article, Section 25400 does not apply to, or affect, any of the following:

(a) Any peace officer, listed in Section 830.1 or 830.2, or subdivision (a) of Section 830.3, whether active or honorably retired.
(b) Any other duly appointed peace officer.
(c) Any honorably retired peace officer listed in subdivision (c) of Section 830.5.
(d) Any other honorably retired peace officer who during the course and scope of employment as a peace officer was authorized to, and did, carry a firearm.
(e) Any full-time paid peace officer of another state or the federal government who is carrying out official duties while in California.
(f) Any person summoned by any of these officers to assist in making arrests or preserving the peace while the person is actually engaged in assisting that officer.

Comment. Section 25450 continues the first sentence of former Section 12027(a)(1)(A) without substantive change.

For an exemption relating to honorably retired federal officers and agents, see Section 25650.
For guidance on a retired peace officer carrying a loaded firearm, see Sections 25900-25925.

For guidance on a retired peace officer carrying a concealed and loaded firearm, see Sections 26300-26325.

See Sections 16520 (“firearm”), 16690 (“honorably retired”).

§ 25455. Identification certificate for honorably retired peace officer

25455. (a) Any peace officer described in Section 25450 who has been honorably retired shall be issued an identification certificate by the law enforcement agency from which the officer retired.

(b) The issuing agency may charge a fee necessary to cover any reasonable expenses incurred by the agency in issuing certificates pursuant to this article.

(c) Any officer, except an officer listed in Section 830.1 or 830.2, subdivision (a) of Section 830.33, or subdivision (c) of Section 830.5 who retired prior to January 1, 1981, shall have an endorsement on the identification certificate stating that the issuing agency approves the officer’s carrying of a concealed firearm.

(d) An honorably retired peace officer listed in Section 830.1 or 830.2, subdivision (a) of Section 830.33, or subdivision (c) of Section 830.5 who retired prior to January 1, 1981, shall not be required to obtain an endorsement from the issuing agency to carry a concealed firearm.

Comment. Subdivision (a) of Section 25455 continues the second sentence of former Section 12027(a)(1)(A) without substantive change.

Subdivision (b) continues the third sentence of former Section 12027(a)(1)(A) without substantive change.

Subdivision (c) continues former Section 12027(a)(1)(B) without substantive change.

Subdivision (d) continues the second sentence of former Section 12027(a)(2) without substantive change.

For guidance on a retired peace officer carrying a loaded firearm, see Sections 25900-25925.

For guidance on a retired peace officer carrying a concealed and loaded firearm, see Sections 26300-26325.

See Sections 16520 (“firearm”), 16690 (“honorably retired”).

§ 25460. Format of endorsement on identification certificate

25460. (a) Except as provided in subdivision (b), no endorsement or renewal endorsement issued pursuant to Section 25465 shall be effective unless it is in the format set forth in subdivision (c).

(b) Any peace officer listed in subdivision (f) of Section 830.2 or in subdivision (c) of Section 830.5, who retired between January 2, 1981, and on or before December 31, 1988, and who is authorized to carry a concealed firearm pursuant to this article, shall not be required to have an endorsement in the format set forth in subdivision (c) until the time of the issuance, on or after January 1, 1989, of a renewal endorsement pursuant to Section 25465.

(c) A certificate issued pursuant to Section 25455 for any person who is not listed in Section 830.1 or 830.2, subdivision (a) of Section 830.33, or subdivision (c) of Section 830.5, or for any person retiring after January 1, 1981, shall be in the following format: it shall be on a 2x3 inch card, bear the photograph of the retiree, include the retiree’s name, date of birth, the date that the retiree retired,
and the name and address of the agency from which the retiree retired, and have
stamped on it the endorsement “CCW Approved” and the date the endorsement is
to be renewed. A certificate issued pursuant to Section 25455 shall not be valid as
identification for the sale, purchase, or transfer of a firearm.

Comment. Subdivisions (a) and (b) of Section 25460 continue former Section 12027(a)(1)(C)
without substantive change.
Subdivision (c) continues former Section 12027(a)(1)(D) without substantive change.

☞ Staff Note. The substance of proposed Section 25460(b) may be obsolete. The staff solicits
comment on this point. Unless the Commission otherwise directs, we will add this issue to the
Commission’s list of “Minor Clean-up Issues for Possible Future Legislative Attention.” See
Memorandum 2008-41.

§ 25465. Renewal of privilege to carry concealed firearm

25465. Every five years, a retired peace officer, except an officer listed in
Section 830.1 or 830.2, subdivision (a) of Section 830.33, or subdivision (c) of
Section 830.5 who retired prior to January 1, 1981, shall petition the issuing
agency for renewal of the officer’s privilege to carry a concealed firearm.

Comment. Section 25465 continues the first sentence of former Section 12027(a)(2) without
substantive change.

See Section 16520 (“firearm”).

§ 25470. Denial or revocation of privilege to carry concealed firearm

25470. (a) The agency from which a peace officer is honorably retired may,
on initial retirement of that peace officer, or at any time subsequent thereto,
deny or revoke for good cause the retired officer’s privilege to carry a concealed
firearm.

(b) A peace officer who is listed in Section 830.1 or 830.2, subdivision (a) of
Section 830.33, or subdivision (c) of Section 830.5 who retired prior to January 1,
1981, shall have the privilege to carry a concealed firearm denied or revoked by
having the agency from which the officer retired stamp on the officer’s
identification certificate “No CCW privilege.”

Comment. Subdivision (a) of Section 25470 continues the third sentence of former Section
12027(a)(2) without substantive change.

Subdivision (b) continues the fourth sentence of former Section 12027(a)(2) without
substantive change.

See Sections 16360 (“CCW”), 16520 (“firearm”), 16690 (“honorably retired”).

§ 25475. Maintaining privilege to carry concealed firearm

25475. (a) An honorably retired peace officer who is listed in subdivision (c) of
Section 830.5 and authorized to carry a concealed firearm by this article shall meet
the training requirements of Section 832 and shall qualify with the firearm at least
annually.

(b) The individual retired peace officer shall be responsible for maintaining
eligibility to carry a concealed firearm.
(c) The Department of Justice shall provide subsequent arrest notification pursuant to Section 11105.2 regarding honorably retired peace officers listed in subdivision (c) of Section 830.5 to the agency from which the officer has retired.

**Comment.** Section 25475 continues former Section 12027(a)(3) without substantive change.
See Sections 16520 (“firearm”), 16690 (“honorably retired”).

Article 3. Conditional Exemptions

§ 25500. Effect of article
25500. This article does not prohibit or limit the otherwise lawful carrying or transportation of any pistol, revolver, or other firearm capable of being concealed upon the person in accordance with [this chapter].

**Comment.** Section 25500 continues former Section 12026.2(c) without substantive change.
See Section 16530 (“firearm capable of being concealed upon the person,” “pistol,” and “revolver”).

§ 25505. Conditions for exemption to apply
25505. In order for a firearm to be exempted under this article, while being transported to or from a place, the firearm shall be unloaded and kept in a locked container, and the course of travel shall include only those deviations between authorized locations as are reasonably necessary under the circumstances.

**Comment.** Section 25505 continues former Section 12026.2(b) without substantive change.
For another provision on transporting a firearm in a locked container, see Section 25610 (carrying firearm in locked container).
See Sections 16520 (“firearm”), 16850 (“locked container”).

§ 25510. Motion picture, television, video production, or entertainment event
25510. Section 25400 does not apply to, or affect, any of the following:
(a) The possession of a firearm by an authorized participant in a motion picture, television, or video production, or an entertainment event, when the participant lawfully uses the firearm as part of that production or event, or while going directly to, or coming directly from, that production or event.
(b) The transportation of a firearm by an authorized employee or agent of a supplier of firearms when going directly to, or coming directly from, a motion picture, television, or video production, or an entertainment event, for the purpose of providing that firearm to an authorized participant to lawfully use as a part of that production or event.

**Comment.** Subdivision (a) of Section 25510 continues former Section 12026.2(a)(1) without substantive change.
Subdivision (b) continues former Section 12026.2(a)(8) without substantive change.
For conditions on invoking these exemptions, see Section 25505.
See Section 16520 (“firearm”).
§ 25515. Club or organization for lawfully collecting and displaying firearms
25515. Section 25400 does not apply to, or affect, the possession of a firearm in
a locked container by a member of any club or organization, organized for the
purpose of lawfully collecting and lawfully displaying pistols, revolvers, or other
firearms, while the member is at a meeting of the club or organization or while
going directly to, and coming directly from, a meeting of the club or organization.

Comment. Section 25515 continues former Section 12026.2(a)(2) without substantive change.
For conditions on invoking this exemption, see Section 25505. For an exemption relating to
transportation of a curio or relic brought into the state by licensed collector, see Section 25580.
See Sections 16520 (“firearm”), 16530 (“firearm capable of being concealed upon the person,”
“pistol,” and “revolver”), 16850 (“locked container”).

§ 25520. Recognized sporting event or safety or hunter safety class
25520. Section 25400 does not apply to, or affect, the transportation of a firearm
by a participant when going directly to, or coming directly from, a recognized
safety or hunter safety class, or a recognized sporting event involving that firearm.

Comment. Section 25520 continues former Section 12026.2(a)(3) without substantive change.
For conditions on invoking this exemption, see Section 25505. For another exemption relating
to hunting, see Section 25640 (licensed hunters or fishermen).
See Section 16520 (“firearm”).

§ 25525. Transportation of firearm by owner or person in lawful possession to place of
residence, place of business, or other private property of that person
25525. (a) Section 25400 does not apply to, or affect, the transportation of a firearm by
any citizen of the United States or legal resident over the age of 18
years who resides or is temporarily within this state, and who is not within the
excepted classes prescribed by [Section 12021 or 12021.1 of this code] or Section
8100 or 8103 of the Welfare and Institutions Code, directly between any of the
following places:

(1) The person’s place of residence.
(2) The person’s place of business.
(3) Private property owned or lawfully possessed by the person.
(b) Section 25400 does not apply to, or affect, the transportation of a firearm by
a person listed in subdivision (a) when going directly from the place where that
person lawfully received that firearm to that person’s place of residence or place
of business or to private property owned or lawfully possessed by that person.

Comment. Subdivision (a) of Section 25525 continues former Section 12026.2(a)(4) without
substantive change.
Subdivision (b) continues former Section 12026.2(a)(6) without substantive change.
For conditions on invoking these exemptions, see Section 25505. For an exemption relating to
carrying or possession of a firearm at one’s place of residence, place of business, or other private
property, see Section 25605.
See Section 16520 (“firearm”).

☞ Staff Note. Existing Section 12026.2(a)(4) says that Section 12025 does not apply to or affect
the “transportation of a firearm by a person listed in Section 12026 directly between any of the
places mentioned in Section 12026.” (Emphasis added.) Similarly, existing Section 12026.2(a)(6)
says that Section 12025 does not apply to or affect the “transportation of a firearm by a person listed in Section 12026 when going directly from ....” (Emphasis added.) The meaning of these provisions cannot be discerned without referring to Section 12026.

To make the provisions more user-friendly, we have incorporated the relevant substance of Section 12026 into proposed Section 25525. We solicit comment on that approach.

§ 25530. Repair, transfer, sale, or loan of firearm

25530. Section 25400 does not apply to, or affect, the transportation of a firearm by a person when going directly to, or coming directly from, a fixed place of business or private residential property for the purpose of the lawful repair or the lawful transfer, sale, or loan of that firearm.

Comment. Section 25530 continues former Section 12026.2(a)(5) without substantive change.

For conditions on invoking this exemption, see Section 25505.

See Section 16520 (“firearm”).

§ 25535. Gun show, swap meet, or similar event

25535. Section 25400 does not apply to, or affect, any of the following:

(a) The transportation of a firearm by a person when going directly to, or coming directly from, a gun show, swap meet, or similar event to which the public is invited, for the purpose of displaying that firearm in a lawful manner.

(b) The transportation of a firearm by a person when going directly to, or coming directly from, a gun show or event, as defined in Section 478.100 of Title 27 of the Code of Federal Regulations, for the purpose of lawfully transferring, selling, or loaning that firearm in accordance with [subdivision (d) of Section 12072].

Comment. Subdivision (a) of Section 25535 continues former Section 12026.2(a)(7) without substantive change.

Subdivision (b) continues former Section 12026.2(a)(14) without substantive change.

For conditions on invoking these exemptions, see Section 25505.

See Section 16520 (“firearm”).

§ 25540. Target range

25540. Section 25400 does not apply to, or affect, the transportation of a firearm by a person when going directly to, or coming directly from, a target range, which holds a regulatory or business license, for the purposes of practicing shooting at targets with that firearm at that target range.

Comment. Section 25540 continues former Section 12026.2(a)(9) without substantive change.

For conditions on invoking this exemption, see Section 25505. For another exemption relating to practicing at a target range, see Section 25635 (member of club or organization for purpose of practicing at established target ranges).

See Section 16520 (“firearm”).

§ 25545. Transportation to place designated by person authorized to issue license to carry firearm

25545. Section 25400 does not apply to, or affect, the transportation of a firearm by a person when going directly to, or coming directly from, a place designated by
a person authorized to issue licenses pursuant to [Section 12050], when done at the
request of the issuing agency so that the issuing agency can determine whether or
not a license should be issued to that person to carry that firearm.

**Comment.** Section 25545 continues former Section 12026.2(a)(10) without substantive
change.

For conditions on invoking this exemption, see Section 25505. For an exemption relating to a
person with a license to carry a concealed pistol, revolver, or other firearm capable of being
concealed upon the person, see Section 25655.

See Section 16520 (“firearm”).

**§ 25550. Camping**

25550. (a) Section 25400 does not apply to, or affect, the transportation of a
firearm by a person when going directly to, or coming directly from, a lawful
camping activity for the purpose of having that firearm available for lawful
personal protection while at the lawful campsite.

(b) This section shall not be construed to override the statutory authority granted
to the Department of Parks and Recreation or any other state or local
governmental agencies to promulgate rules and regulations governing the
administration of parks and campgrounds.

**Comment.** Section 25550 continues former Section 12026.2(a)(11) without substantive
change.

For conditions on invoking this exemption, see Section 25505.

See Section 16520 (“firearm”).

**§ 25555. Person taking title or possession of firearm by operation of law, or person receiving
firearm by gift, bequest, intestate succession, or other means from immediate family
member**

25555. Section 25400 does not apply to, or affect, the transportation of a firearm
by a person in order to comply with [subdivision (c) or (i) of Section 12078] as it
pertains to that firearm.

**Comment.** Section 25555 continues former Section 12026.2(a)(12) without substantive
change.

For conditions on invoking this exemption, see Section 25505.

See Section 16520 (“firearm”).

☞ **Staff Note.** Existing Section 12026.2(a)(12) says that Section 12025 does not apply to or
affect the “transportation of a firearm by a person in order to comply with subdivision (c) or (i) of
Section 12078 as it pertains to that firearm.” (Emphasis added.) The meaning of this provision
cannot be discerned without referring to Section 12078.

In drafting proposed Section 25555, the staff considered the possibility of making the provision
more user-friendly by incorporating the relevant substance of Section 12078(c) and (i). We opted
against that approach, however, because the relevant substance of Section 12078(c) and (i) is too
complicated to readily incorporate.

Some indication of the nature of Section 12078(c) and (i) would be provided by the leadline for
proposed Section 25555 (“Person taking title or possession of firearm by operation of law, or
person receiving firearm by gift, bequest, intestate succession, or other means from immediate
family member”). Like all leadlines in Commission recommendations, that leadline would not
become law. But it could serve as a model for code publishers in preparing their own leadlines for
the provision.
§ 25560. Transportation of firearm to utilize Section 12078(l)

25560. Section 25400 does not apply to, or affect, the transportation of a firearm by a person in order to utilize [subdivision (l) of Section 12078] as it pertains to that firearm.

Comment. Section 25560 continues former Section 12026.2(a)(13) without substantive change.

For conditions on invoking this exemption, see Section 25505.
See Section 16520 (“firearm”).

☞ Staff Note. Existing Section 12026.2(a)(13) says that Section 12025 does not apply to or affect the “transportation of a firearm by a person in order to utilize subdivision (l) of Section 12078 as it pertains to that firearm.” (Emphasis added.) The meaning of this provision cannot be discerned without referring to existing Section 12078.

In drafting proposed Section 25560, the staff considered the possibility of making the provision more user-friendly by incorporating the relevant substance of existing Section 12078(l). We opted against that approach, however, because it is not entirely clear what substance of existing Section 12078(l) would need to be incorporated.

The staff also considered the possibility of giving some indication of the nature of Section 12078(l) in the headline for proposed Section 25560. But Section 12078(l) provides:

(l) A person who is exempt from subdivision (d) of Section 12072 or is otherwise not required by law to report his or her acquisition, ownership, or disposal of a handgun or who moves out of this state with his or her handgun may submit a report of the same to the Department of Justice in a format prescribed by the department.

Because the provision covers multiple situations and cross-refers to Section 12072(d), which itself cross-refers to Sections 12071 and 12082, it would be difficult to draft a headline that effectively conveys the nature of the provision. We welcome any suggestions on this matter.

§ 25565. Sale, delivery, or transfer of firearm to governmental entity as part of program where entity is buying or receiving weapons from private individuals

25565. Section 25400 does not apply to, or affect, the transportation of a firearm by a person in order to sell, deliver, or transfer the firearm as specified in [paragraph (6) of subdivision (a) of Section 12078] to an authorized representative of a city, city and county, county, or state or federal government that is acquiring the weapon as part of an authorized, voluntary program in which the entity is buying or receiving weapons from private individuals.

Comment. Section 25565 continues former Section 12026.2(a)(15) without substantive change.

For conditions on invoking this exemption, see Section 25505.
See Section 16520 (“firearm”).

☞ Staff Note. Existing Section 12026.2(a)(15) says that Section 12025 does not apply to or affect the “transportation of a firearm by a person in order to utilize paragraph (6) of subdivision (a) of Section 12078 as it pertains to that firearm.” (Emphasis added.) The meaning of this provision cannot be discerned without referring to existing Section 12078.

In drafting proposed Section 25565, the staff attempted to make the provision more user-friendly by incorporating the relevant substance of existing Section 12078(a)(6), which provides:

(6) Subdivision (d) of Section 12072 and subdivision (b) of Section 12801 do not apply to sales, deliveries, or transfers of firearms to authorized representatives of cities, cities and counties, counties, or state or federal governments for those governmental agencies where the
entity is acquiring the weapon as part of an authorized, voluntary program where the entity is buying or receiving weapons from private individuals. Any weapons acquired pursuant to this paragraph shall be disposed of pursuant to the applicable provisions of Section 12028 or 12032.

We solicit comment on that approach.

§ 25570. Transportation of firearm by finder to law enforcement agency

25570. Section 25400 does not apply to, or affect, any of the following:

(a) The transportation of a firearm by a person who finds the firearm, if the person is transporting the firearm in order to comply with Article 1 (commencing with Section 2080) of Chapter 4 of Division 3 of the Civil Code as it pertains to that firearm, and, if the person is transporting the firearm to a law enforcement agency, the person gives prior notice to the law enforcement agency that the person is transporting the firearm to the law enforcement agency.

(b) The transportation of a firearm by a person who finds the firearm and is transporting it to a law enforcement agency for disposition according to law, if the person gives prior notice to the law enforcement agency that the person is transporting the firearm to the law enforcement agency for disposition according to law.

Comment. Subdivision (a) of Section 25570 continues former Section 12026.2(a)(16) without substantive change.

Subdivision (b) continues former Section 12026.2(a)(18) without substantive change.

For conditions on invoking these exemptions, see Section 25505.

See Section 16520 (“firearm”).

§ 25575. Compliance with restrictions relating to importation of handgun by personal handgun importer

25575. Section 25400 does not apply to, or affect, the transportation of a firearm by a person in order to comply with [paragraph (2) of subdivision (f) of Section 12072] as it pertains to that firearm.

Comment. Section 25575 continues former Section 12026.2(a)(17) without substantive change.

For conditions on invoking this exemption, see Section 25505. For an exemption relating to transportation of unloaded handguns by a licensed manufacturer, importer, wholesaler, repairer, or dealer, see Section 25615.

See Section 16520 (“firearm”).

Staff Note. Existing Section 12026.2(a)(17) says that Section 12025 does not apply to or affect the “transportation of a firearm by a person in order to comply with paragraph (2) of subdivision (f) of Section 12072 as it pertains to that firearm.” (Emphasis added.) The meaning of this provision cannot be discerned without referring to existing Section 12072(f)(2).

In drafting proposed Section 25560, the staff considered the possibility of making the provision more user-friendly by incorporating the relevant substance of existing Section 12072(f)(2). We opted against that approach, however, because Section 12072(f)(2) is long and it is not entirely clear which of its substance would need to be incorporated.

Some indication of the nature of Section 12072(f)(2) would be provided by the leadline for proposed Section 25575 (“Compliance with restrictions relating to importation of handgun by personal handgun importer”). Like all leadlines in Commission recommendations, that leadline
would not become law. But it could serve as a model for code publishers in preparing their own leadlines for the provision.

§ 25580. Transportation of curio or relic brought into state by licensed collector

25580. Section 25400 does not apply to, or affect, the transportation of a firearm that is a curio or relic, as defined in Section 478.11 of Title 27 of the Code of Federal Regulations, by a person in order to comply with [paragraph (3) of subdivision (f) of Section 12072] as it pertains to that firearm.

Comment. Section 25580 continues former Section 12026.2(a)(19) without substantive change.

For conditions on invoking this exemption, see Section 25505. For an exemption relating to a club or organization for lawfully collecting and displaying firearms, see Section 25515.

See Section 16520 (“firearm”).

☞ Staff Note. Existing Section 12026.2(a)(19) says that Section 12025 does not apply to or affect the “transportation of a firearm by a person in order to comply with paragraph (3) of subdivision (f) of Section 12072 as it pertains to that firearm.” (Emphasis added.) The meaning of this provision cannot be discerned without referring to existing Section 12072(f)(3).

In drafting proposed Section 25560, the staff considered the possibility of making the provision more user-friendly by incorporating the relevant substance of existing Section 12072(f)(3). Because Section 12072(f)(3) is detailed and complicated, we largely opted against that approach.

We did, however, incorporate language indicating that the exemption only applies to “a firearm that is a curio or relic, as defined in Section 478.11 of Title 27 of the Code of Federal Regulations.” It is clear that Section 12072(f)(3) is limited to this type of firearm. Stating that limitation in proposed Section 25580 would not change the substance of the exemption, but would make readily apparent that the exemption is inapplicable to a firearm other than a curio or relic.

Further indication of the nature of Section 12072(f)(3) would be provided by the leadline for proposed Section 25575 (“Transportation of curio or relic brought into state by licensed collector”). Like all leadlines in Commission recommendations, that leadline would not become law. But it could serve as a model for code publishers in preparing their own leadlines for the provision.

§ 25585. Transportation of firearm to obtain identification number or mark

25585. Section 25400 does not apply to, or affect, the transportation of a firearm by a person for the purpose of obtaining an identification number or mark assigned to that firearm from the Department of Justice pursuant to [Section 12092].

Comment. Section 25585 continues former Section 12026.2(a)(20) without substantive change.

For conditions on invoking this exemption, see Section 25505.

See Section 16520 (“firearm”).

Article 4. Other Exemptions

§ 25600. Carrying concealed firearm when in reasonable belief of grave danger to self

25600. (a) A violation of Section 25400 is justifiable when a person who possesses a firearm reasonably believes that person is in grave danger because of circumstances forming the basis of a current restraining order issued by a court against another person who has been found to pose a threat to the life or safety of
the person who possesses the firearm. This section may not apply when the circumstances involve a mutual restraining order issued pursuant to Division 10 (commencing with Section 6200) of the Family Code absent a factual finding of a specific threat to the person’s life or safety. It is not the intent of the Legislature to limit, restrict, or narrow the application of current statutory or judicial authority to apply this or other justifications to a defendant charged with violating Section 25400 or committing another similar offense.

(b) Upon trial for violating Section 25400, the trier of fact shall determine whether the defendant was acting out of a reasonable belief that the defendant was in grave danger.

Comment. Section 25600 continues former Section 12025.5 without substantive change.

See Section 16520 (“firearm”).

§ 25605. Carrying or possession of firearm at one’s place of residence, place of business, or other private property

25605. (a) Section 25400 shall not apply to or affect any citizens, legal resident over the age of 18 years who resides or is temporarily within this state, and who is not within the excepted classes prescribed by [Section 12021 or 12021.1 of this code] or Section 8100 or 8103 of the Welfare and Institutions Code, who carries, either openly or concealed, anywhere within the citizen’s or legal resident’s place of residence, place of business, or on private property owned or lawfully possessed by the citizen or legal resident, any pistol, revolver, or other firearm capable of being concealed upon the person.

(b) No permit or license to purchase, own, possess, keep, or carry, either openly or concealed, shall be required of any citizen, legal resident over the age of 18 years who resides or is temporarily within this state, and who is not within the excepted classes prescribed by [Section 12021 or 12021.1 of this code] or Section 8100 or 8103 of the Welfare and Institutions Code, to purchase, own, possess, keep, or carry, either openly or concealed, a pistol, revolver, or other firearm capable of being concealed upon the person within the citizen’s or legal resident’s place of residence, place of business, or on private property owned or lawfully possessed by the citizen or legal resident.

(c) Nothing in this section shall be construed as affecting the application of [Section 12031].

Comment. Section 25605 continues former Section 12026 without substantive change.

For an exemption relating to transportation of a firearm by the owner or a person in lawful possession of the firearm to that person’s place of residence, place of business, or other private property, see Section 25525.

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

§ 25610. Carrying firearm in locked container

25610. (a) Section 25400 shall not be construed to prohibit any citizen of the United States over the age of 18 years who resides or is temporarily within this
state, and who is not within the excepted classes prescribed by [Section 12021 or 12021.1 of this code] or Section 8100 or 8103 of the Welfare and Institutions Code, from transporting or carrying any pistol, revolver, or other firearm capable of being concealed upon the person, provided that the following applies to the firearm:

(1) The firearm is within a motor vehicle and it is locked in the vehicle’s trunk or in a locked container in the vehicle.

(2) The firearm is carried by the person directly to or from any motor vehicle for any lawful purpose and, while carrying the firearm, the firearm is contained within a locked container.

(b) The provisions of this section do not prohibit or limit the otherwise lawful carrying or transportation of any pistol, revolver, or other firearm capable of being concealed upon the person in accordance with [this chapter].

Comment. Subdivision (a) of Section 25610 continues former Section 12026.1(a) without substantive change, except for the last phrase of paragraph (a)(1) (“other than the utility or glove compartment”). That phrase and former Section 12026.1(c) are continued in Section 16850 (“locked container”).

Subdivision (b) continues former Section 12026.1(b) without substantive change.

For another provision on transporting a firearm in a locked container, see Section 25505 (conditions for Article 3 exemptions to apply).

See Sections 16520 (“firearm”), 16530 (“firearm capable of being concealed upon the person,” “pistol,” and “revolver”), 16850 (“locked container”).

§ 25615. Transportation of unloaded handguns by licensed manufacturer, importer, wholesaler, repairer, or dealer

25615. Section 25400 does not apply to, or affect, the possession or transportation of unloaded pistols, revolvers, or other firearms capable of being concealed upon the person as merchandise by a person who is engaged in the business of manufacturing, importing, wholesaling, repairing, or dealing in firearms and who is licensed to engage in that business, or the authorized representative or authorized agent of that person, while engaged in the lawful course of the business.

Comment. Section 25615 continues former Section 12027(b) without substantive change.

For an exemption relating to compliance with restrictions on importation of handguns by a personal handgun importer, see Section 25575.

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

§ 25620. Member of military on duty or organization authorized by law to purchase or receive weapons

25620. Section 25400 does not apply to, or affect, any member of the Army, Navy, Air Force, Coast Guard, or Marine Corps of the United States, or the National Guard, when on duty, or any organization that is by law authorized to purchase or receive those weapons from the United States or this state.

Comment. Section 25620 continues former Section 12027(c) without substantive change.
For an exemption relating to parading by a duly authorized military or civil organization, or traveling to a meeting of such an organization, see Section 25625.

☞ **Staff Note.** Existing Section 12027(c) provides:

12027. Section 12025 does not apply to, or affect, any of the following:

....

c) Members of the Army, Navy, Air Force, Coast Guard, or Marine Corps of the United States, or the National Guard, when on duty, or organizations which are by law authorized to purchase or receive *those weapons* from the United States or this state.

(Emphasis added.) The phrase “those weapons” is not clear in the context of this sentence. It would be better to use a more precise phrase instead. Unless the Commission otherwise directs, we will add this issue to the Commission’s list of “Minor Clean-up Issues for Possible Future Legislative Attention.” See Memorandum 2008-41.

§ 25625. **Parading by, or traveling to meeting of, duly authorized military or civil organization**

25625. Section 25400 does not apply to, or affect, the carrying of unloaded pistols, revolvers, or other firearms capable of being concealed upon the person by duly authorized military or civil organizations while parading, or the members thereof when going to and from the places of meeting of their respective organizations.

**Comment.** Section 25625 continues former Section 12027(d) without substantive change.

For an exemption relating to a member of the military on duty or an organization authorized by law to purchase or receive weapons, see Section 25620.

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

§ 25630. **Guard or messenger of common carrier, bank, or financial institution, when involved in shipping, transporting, or delivering money or other thing of value**

25630. Section 25400 does not apply to, or affect, any guard or messenger of any common carrier, bank, or other financial institution, while actually employed in and about the shipment, transportation, or delivery of any money, treasure, bullion, bonds, or other thing of value within this state.

**Comment.** Section 25630 continues former Section 12027(e) without substantive change.

For another exemption relating to common carriers, see Section 25645 (transportation of unloaded firearms by person operating licensed common carrier).

§ 25635. **Member of club or organization for purpose of practicing at established target ranges**

25635. Section 25400 does not apply to, or affect, members of any club or organization organized for the purpose of practicing shooting at targets upon established target ranges, whether public or private, while the members are using pistols, revolvers, or other firearms capable of being concealed upon the person upon the target ranges, or transporting these firearms unloaded when going to and from the ranges.

**Comment.** Section 25635 continues former Section 12027(f) without substantive change.
For another exemption relating to practicing at a target range, see Section 25540 (target range).

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

§ 25640. Licensed hunters or fishermen

25640. Section 25400 does not apply to, or affect, licensed hunters or fishermen carrying pistols, revolvers, or other firearms capable of being concealed upon the person while engaged in hunting or fishing, or transporting those firearms unloaded when going to or returning from the hunting or fishing expedition.

Comment. Section 25640 continues former Section 12027(g) without substantive change.

For another exemption relating to hunting, see Section 25520 (recognized sporting event or safety or hunter safety class).

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

§ 25645. Transportation of unloaded firearms by person operating licensed common carrier

25645. Section 25400 does not apply to, or affect, the transportation of unloaded firearms by a person operating a licensed common carrier or an authorized agent or employee thereof when the firearms are transported in conformance with applicable federal law.

Comment. Section 25645 continues former Section 12027(h) without substantive change.

For another exemption relating to common carriers, see Section 25630 (guard or messenger of common carrier, bank, or financial institution, when involved in shipping, transporting, or delivering money or other thing of value).

See Section 16520 (“firearm”).

§ 25650. Honorably retired federal officer or agent

25650. (a) Upon approval of the sheriff of the county in which the retiree resides, Section 25400 does not apply to, or affect, any honorably retired federal officer or agent of any federal law enforcement agency, including, but not limited to, the Federal Bureau of Investigation, the Secret Service, the United States Customs Service, the Federal Bureau of Alcohol, Tobacco, and Firearms, the Federal Bureau of Narcotics, the Drug Enforcement Administration, the United States Border Patrol, and any officer or agent of the Internal Revenue Service who was authorized to carry weapons while on duty, who was assigned to duty within the state for a period of not less than one year, or who retired from active service in the state.

(b) A retired federal officer or agent shall provide the sheriff with certification from the agency from which the officer or agent retired certifying that person’s service in the state, the nature of that person’s retirement, and indicating the agency’s concurrence that the retired federal officer or agent should be accorded the privilege of carrying a concealed firearm.

(c) Upon that approval, the sheriff shall issue a permit to the retired federal officer or agent indicating that the retiree may carry a concealed firearm in accordance with this section. The permit shall be valid for a period not exceeding
five years, shall be carried by the retiree while carrying a concealed firearm, and
may be revoked for good cause.

(d) The sheriff of the county in which the retired federal officer or agent resides
may require recertification prior to a permit renewal, and may suspend the
privilege for cause. The sheriff may charge a fee necessary to cover any
reasonable expenses incurred by the county.

Comment. Section 25650 continues former Section 12027(i) without substantive change.
For an exemption relating to honorably retired peace officers, see Section 25450 (peace officer
exemption).
For an honorably retired federal officer or agent carrying a loaded firearm, see Section 26020.
See Section 16520 (“firearm”).

§ 25655. Person licensed to carry concealed pistol, revolver, or other firearm capable of
being concealed upon the person

25655. Section 25400 does not apply to, or affect, the carrying of a pistol,
revolver, or other firearm capable of being concealed upon the person by a person
who is authorized to carry that weapon in a concealed manner pursuant to [Article
3 (commencing with Section 12050)].

Comment. Section 25655 continues former Section 12027(j) without substantive change.
For an exemption relating to transportation of a firearm to a place designated by a person who
is authorized to issue licenses to carry firearms, see Section 25545.
See Section 16530 (“firearm capable of being concealed upon the person,” “pistol,” and
“revolver”).

Article 5. Concealed Carrying of Firearm as a Nuisance

§ 25700. Unlawful carrying of handgun as nuisance

25700. (a) The unlawful carrying of any handgun in violation of Section 25400
is a nuisance and is subject to Sections 18000 and 18005.
(b) This section does not apply to any of the following:
(1) Any firearm in the possession of the Department of Fish and Game.
(2) Any firearm that was used in the violation of any provision of the Fish and
Game Code or any regulation adopted pursuant thereto.
(3) Any firearm that is forfeited pursuant to Section 5008.6 of the Public
Resources Code.

Comment. With respect to unlawful carrying of a handgun, subdivision (a) of Section 25700
continues former Section 12028(a) without substantive change.
With respect to unlawful carrying of a handgun, subdivision (b) continues former Section
12028(e) without substantive change.
See Sections 16520 (“firearm”), 16640 (“handgun”).
CHAPTER 3. CARRYING A LOADED FIREARM

Article 1. Armed Criminal Action

§ 25800. Armed criminal action

25800. (a) Every person who carries a loaded firearm with the intent to commit a felony is guilty of armed criminal action.
(b) Armed criminal action is punishable by imprisonment in a county jail not exceeding one year, or in the state prison.

Comment. Section 25800 continues former Section 12023 without substantive change.
The definition of “loaded” for armed criminal action differs from the definition of “loaded” for the crime of carrying a loaded firearm in public. See Section 16840 (“loaded” and “loaded firearm”).
See also Section 16520 (“firearm”).

Article 2. Crime of Carrying a Loaded Firearm in Public

§ 25850. Crime of carrying loaded firearm in public

25850. (a) A person is guilty of carrying a loaded firearm when the person carries a loaded firearm on the person or in a vehicle while in any public place or on any public street in an incorporated city or in any public place or on any public street in a prohibited area of unincorporated territory.
(b) In order to determine whether or not a firearm is loaded for the purpose of enforcing this section, peace officers are authorized to examine any firearm carried by anyone on the person or in a vehicle while in any public place or on any public street in an incorporated city or prohibited area of an unincorporated territory. Refusal to allow a peace officer to inspect a firearm pursuant to this section constitutes probable cause for arrest for violation of this section.
(c) Carrying a loaded firearm in violation of this section is punishable, as follows:
(1) Where the person previously has been convicted of any felony, or of any crime made punishable by [this chapter], as a felony.
(2) Where the firearm is stolen and the person knew or had reasonable cause to believe that it was stolen, as a felony.
(3) Where the person is an active participant in a criminal street gang, as defined in subdivision (a) of Section 186.22, under the Street Terrorism Enforcement and Prevention Act (Chapter 11 (commencing with Section 186.20) of Title 7 of Part 1), as a felony.
(4) Where the person is not in lawful possession of the firearm, or is within a class of persons prohibited from possessing or acquiring a firearm pursuant to [Section 12021 or 12021.1 of this code] or Section 8100 or 8103 of the Welfare and Institutions Code, as a felony.
(5) Where the person has been convicted of a crime against a person or property, or of a narcotics or dangerous drug violation, by imprisonment in the state prison, or by imprisonment in a county jail not to exceed one year, by a fine not to exceed one thousand dollars ($1,000), or by both that imprisonment and fine.

(6) Where the person is not listed with the Department of Justice pursuant to Section 11106 as the registered owner of the pistol, revolver, or other firearm capable of being concealed upon the person, by imprisonment in the state prison, or by imprisonment in a county jail not to exceed one year, or by a fine not to exceed one thousand dollars ($1,000), or both that fine and imprisonment.

(7) In all cases other than those specified in paragraphs (1) to (6), inclusive, as a misdemeanor, punishable by imprisonment in a county jail not to exceed one year, by a fine not to exceed one thousand dollars ($1,000), or by both that imprisonment and fine.

(d)(1) Every person convicted under this section who has previously been convicted of an offense enumerated in [Section 12001.6], or of any crime made punishable under [this chapter], shall serve a term of at least three months in a county jail, or, if granted probation or if the execution or imposition of sentence is suspended, it shall be a condition thereof that the person be imprisoned for a period of at least three months.

(2) The court shall apply the three-month minimum sentence except in unusual cases where the interests of justice would best be served by granting probation or suspending the imposition or execution of sentence without the minimum imprisonment required in this section or by granting probation or suspending the imposition or execution of sentence with conditions other than those set forth in this section, in which case, the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(e) A violation of this section that is punished by imprisonment in a county jail not exceeding one year shall not constitute a conviction of a crime punishable by imprisonment for a term exceeding one year for the purposes of determining federal firearms eligibility under Section 922(g)(1) of Title 18 of the United States Code.

(f) Nothing in this section, or in Articles 3 (commencing with Section 25900) or 4 (commencing with Section 26000), shall preclude prosecution under [Sections 12021 and 12021.1 of this code], Section 8100 or 8103 of the Welfare and Institutions Code, or any other law with a greater penalty than this section.

(g) Notwithstanding paragraphs (2) and (3) of subdivision (a) of Section 836, a peace officer may make an arrest without a warrant:

(1) When the person arrested has violated this section, although not in the officer’s presence.

(2) Whenever the officer has reasonable cause to believe that the person to be arrested has violated this section, whether or not this section has, in fact, been violated.
(h) A peace officer may arrest a person for a violation of paragraph (6) of subdivision (c), if the peace officer has probable cause to believe that the person is carrying a loaded pistol, revolver, or other firearm capable of being concealed upon the person in violation of this section and that person is not listed with the Department of Justice pursuant to paragraph (1) of subdivision (c) of Section 11106 as the registered owner of that pistol, revolver, or other firearm capable of being concealed upon the person.

Comment. Subdivision (a) of Section 25850 continues former Section 12031(a)(1) without substantive change.
Subdivision (b) continues former Section 12031(e) without substantive change.
Subdivision (c) continues former Section 12031(a)(2) without substantive change.
Subdivision (d) continues former Section 12031(a)(6) without substantive change.
Subdivision (e) continues former Section 12031(a)(7) without substantive change.
Subdivision (f) continues former Section 12031(a)(4) without substantive change.
Subdivision (g) continues former Section 12031(a)(5)(A) without substantive change.
Subdivision (h) continues former Section 12031(a)(5)(B) without substantive change.

For a provision that required preparation of reports on the race, age, gender, and ethnicity of persons charged with violating the predecessor of this section, see former Section 12031(m) (1999 Cal. Stat. ch. 571, § 3). That provision is not continued, because by its terms it ceased to be operative on January 1, 2005.

The definition of “loaded” for the crime of carrying a loaded firearm in public differs from the definition of “loaded” for armed criminal action. See Section 16840 (“loaded” and “loaded firearm”).

See also Sections 16520 (“firearm”), 16530 (“firearm capable of being concealed upon the person,” “pistol,” and “revolver”), 16750 (“lawful possession of the firearm”), 17030 (“prohibited area”).

Staff Notes.

(1) Subdivision (m) of existing Section 12025 provides:

(m)(1) The district attorney of each county shall submit annually a report on or before June 30, to the Attorney General consisting of profiles by race, age, gender, and ethnicity of any person charged with a felony or a misdemeanor under this section and any other offense charged in the same complaint, indictment, or information.

(2) The Attorney General shall submit annually, a report on or before December 31, to the Legislature compiling all of the reports submitted pursuant to paragraph (1).

(3) This subdivision shall remain operative only until January 1, 2005.

(Emphasis added.) Because this provision only remained operative until January 1, 2005, the staff did not continue it in proposed Section 25850, but did refer to it in the Comment. We solicit comment on whether that treatment of subdivision (m) is appropriate.

(2) Existing Section 12031 is a very long section (over six pages in the attachment to Memorandum 2007-59). Proposed Section 25850 would continue all of Section 12031(a), except the definition of “lawful possession of the firearm,” which would be placed with other definitions (see proposed Section 16750). Proposed Section 25850 would also continue Section 12031(e), which concerns a police officer’s authority to determine whether a firearm is “loaded” in violation of the section.

The remainder of Section 12031 consists of:

• Exemptions relating to peace officers and retired peace officers (Section 12031(b)(1)-(3)). This material would be placed in “Article 3. Peace Office Exemption to the Crime of Carrying a Loaded Firearm in Public.”
• Various other exemptions (Section 12031(b)(4)-(8), (c), (d), (h)-(l)). This material would be placed in “Article 4. Other Exemptions to the Crime of Carrying a Loaded Firearm in Public.”

• A definition of “prohibited area” (Section 12031(f)) and a provision on when a firearm is deemed loaded (Section 12031(g)), which would be placed with other definitions (see proposed Sections 16840, 17030).

• Section 12031(m), which is inoperative as discussed above and would not be continued.

The staff solicits comment on this drafting approach.

(3) Existing Section 12031(a)(2)(C) specifies the punishment for a violation of the section “[w]here the person is an active participant in a criminal street gang, as defined in subdivision (a) of Section 186.22 ....” The definition of a “criminal street gang” is located in subdivision (f) of Section 186.22, not subdivision (a). But subdivision (a) provides guidance on what level of involvement in a criminal street gang is punishable:

(a) Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in a county jail for a period not to exceed one year, or by imprisonment in the state prison for 16 months, or two or three years.

The staff has assumed that the Legislature intended to cross-refer to subdivision (a), not subdivision (f). Proposed Section 25850 would thus continue the existing cross-reference.

(4) Existing Section 12031(a)(2)(D) refers to a person who “is not in lawful possession of the firearm, as defined in this section.” (Emphasis added.) Unlike existing Section 12031(a)(2)(D), proposed Section 25850(c)(4) would not cross-refer to the provision defining “lawful possession of the firearm.”

Instead, the Comment would cross-refer to the definition of “lawful possession of the firearm.” The Comment would also state that “[s]ubdivision (c) continues former Section 12031(a)(2) without substantive change.” The definition of “lawful possession of the firearm” is drafted to encompass the provisions that would continue existing Section 12031, including proposed Section 25850.

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 contracting the scope of criminal liability under current provisions.” 2006 Cal. Stat. res. ch. 128. Because courts give great weight to the Commission’s Comments, we think this would be sufficient to preserve the substance of Section 12031(a)(2)(D). See 2006-2007 Annual Report, 36 Cal. L. Revision Comm’n Reports 1, 18-24 (2006).

Article 3. Peace Office Exemption to the Crime of Carrying a Loaded Firearm in Public

Staff Note. Existing law contains extensive provisions relating to identification certificates for retired peace officers and endorsements on those certificates authorizing officers to (1) carry a concealed firearm, (2) carry a loaded firearm, or (3) carry a concealed and loaded firearm. The current and proposed future locations of those provisions are as follows:

• Existing Section 12027(a) (peace officer exemption to crime of carrying concealed firearm). This material would be recodified as proposed Sections 25450-25475.

• Existing Section 12031(b)(1)-(3) (peace officer exemption to crime of carrying loaded firearm in public). This material would be recodified as proposed Sections 25900-25925.

• Existing Section 12027.1 (retired peace officer carrying concealed and loaded firearm). This material would be recodified as proposed Sections 26300-26325.
There is much repetition among these three separate sets of statutory material, albeit in different contexts. The material could perhaps be reorganized more concisely, without any change in meaning.

To avoid any risk of a substantive change, the staff advises against attempting such reorganization in the context of this nonsubstantive study. Unless the Commission otherwise directs, we will add this issue to the Commission’s list of “Minor Clean-up Issues for Possible Future Legislative Attention.” See Memorandum 2008-41.

§ 25900. Peace officer exemption

25900. As provided in this article, Section 25850 does not apply to any of the following:
(a) Any peace officer, listed in Section 830.1 or 830.2, or subdivision (a) of Section 830.33, whether active or honorably retired.
(b) Any other duly appointed peace officer.
(c) Any honorably retired peace officer listed in subdivision (c) of Section 830.5.
(d) Any other honorably retired peace officer who during the course and scope of employment as a peace officer was authorized to, and did, carry a firearm.
(e) Any full-time paid peace officer of another state or the federal government who is carrying out official duties while in California.
(f) Any person summoned by any of these officers to assist in making arrests or preserving the peace while the person is actually engaged in assisting that officer.

Comment. Section 25900 continues the first sentence of the first paragraph of former Section 12031(b)(1) without substantive change.

For an exemption relating to honorably retired federal officers and agents, see Section 16020.

For guidance on a retired peace officer carrying a concealed firearm, see Sections 25450-25475. For guidance on a retired peace officer carrying a concealed and loaded firearm, see Sections 26300-26325.

See Sections 16520 (“firearm”), 16690 (“honorably retired”).

§ 25905. Identification certificate for honorably retired peace officer

25905. (a) Any peace officer described in Section 25900 who has been honorably retired shall be issued an identification certificate by the law enforcement agency from which the officer has retired.
(b) The issuing agency may charge a fee necessary to cover any reasonable expenses incurred by the agency in issuing certificates pursuant to this article.
(c) Any officer, except an officer listed in Section 830.1 or 830.2, subdivision (a) of Section 830.33, or subdivision (c) of Section 830.5 who retired prior to January 1, 1981, shall have an endorsement on the identification certificate stating that the issuing agency approves the officer’s carrying of a loaded firearm.
(d) An honorably retired peace officer listed in Section 830.1 or 830.2, subdivision (a) of Section 830.33, or subdivision (c) of Section 830.5 who retired prior to January 1, 1981, shall not be required to obtain an endorsement from the issuing agency to carry a loaded firearm.

Comment. Subdivision (a) of Section 25905 continues the second sentence of the first paragraph of former Section 12031(b)(1) without substantive change.
Subdivision (b) continues the third sentence of the first paragraph of former Section 12031(b)(1) without substantive change.

Subdivision (c) continues the second paragraph of former Section 12031(b)(1) without substantive change.

Subdivision (d) continues the second sentence of former Section 12031(b)(2) without substantive change.

For guidance on a retired peace officer carrying a concealed firearm, see Sections 25450-25475. For guidance on a retired peace officer carrying a concealed and loaded firearm, see Sections 26300-26325.

See Sections 16520 (“firearm”), 16690 (“honorably retired”), 16840 (“loaded” and “loaded firearm”).

☞ Staff Note. The third sentence of the first paragraph of existing Section 12031(b)(1) says that “The issuing agency may charge a fee necessary to cover any reasonable expenses incurred by the agency in issuing certificates pursuant to this paragraph and paragraph (3). (Emphasis added.)

The cross-reference to paragraph (3) appears to be incorrect. That paragraph does not concern issuance of certificates. Rather, it provides:

(3) An honorably retired peace officer who is listed in subdivision (c) of Section 830.5 and authorized to carry loaded firearms by this subdivision shall meet the training requirements of Section 832 and shall qualify with the firearm at least annually. The individual retired peace officer shall be responsible for maintaining his or her eligibility to carry a loaded firearm. The Department of Justice shall provide subsequent arrest notification pursuant to Section 11105.2 regarding honorably retired peace officers listed in subdivision (c) of Section 830.5 to the agency from which the officer has retired.

The staff suspects that the Legislature intended to refer to paragraph (2), which relates to renewal, denial, and revocation of the privilege to carry a loaded firearm, instead of paragraph (3).

The staff has corrected the cross-reference in drafting proposed Section 25905. Instead of referring to “expenses incurred by the agency in issuing certificates pursuant to this paragraph and paragraph (3),” proposed Section 25905 would refer to “expenses incurred by the agency in issuing certificates pursuant to this article.”

This approach seems more reasonable than perpetuating an obviously incorrect reference. Although this is a strictly nonsubstantive study, some degree of commonsense is appropriate in interpreting existing law. We would exercise such commonsense here and note the situation in the preliminary part of the Commission’s report.

We encourage comment on this point.

§ 25910. Format of endorsement on identification certificate

25910. (a) Except as provided in subdivision (b), no endorsement or renewal endorsement issued pursuant to Section 25915 shall be effective unless it is in the format set forth in subdivision (c) of Section 25460.

(b) Any peace officer listed in subdivision (f) of Section 830.2 or in subdivision (c) of Section 830.5, who is retired between January 2, 1981, and on or before December 31, 1988, and who is authorized to carry a loaded firearm pursuant to this article, shall not be required to have an endorsement in the format set forth in subdivision (c) of Section 25460 until the time of the issuance, on or after January 1, 1989, of a renewal endorsement pursuant to 25915.

Comment. Section 25910 continues the third paragraph of former Section 12031(b)(1) without substantive change.

See Sections 16520 (“firearm”), 16840 (“loaded” and “loaded firearm”).
Staff Note. The substance of proposed Section 25910(b) may be obsolete. The staff solicits comment on this point. Unless the Commission otherwise directs, we will add this issue to the Commission’s list of “Minor Clean-up Issues for Possible Future Legislative Attention.” See Memorandum 2008-41.

§ 25915. Renewal of privilege to carry loaded firearm

25915. Every five years, a retired peace officer, except an officer listed in Section 830.1 or 830.2, subdivision (a) of Section 830.33, or subdivision (c) of Section 830.5 who retired prior to January 1, 1981, shall petition the issuing agency for renewal of the privilege to carry a loaded firearm.

Comment. Section 25915 continues the first sentence of former Section 12031(b)(2) without substantive change. See Sections 16520 ("firearm"), 16840 ("loaded" and "loaded firearm").

§ 25920. Denial or revocation of privilege to carry loaded firearm

25920. (a) The agency from which a peace officer is honorably retired may, upon initial retirement of the peace officer, or at any time subsequent thereto, deny or revoke for good cause the retired officer’s privilege to carry a loaded firearm.

(b) A peace officer who is listed in Section 830.1 or 830.2, subdivision (a) of Section 830.33, or subdivision (c) of Section 830.5 who is retired prior to January 1, 1981, shall have the privilege to carry a loaded firearm denied or revoked by having the agency from which the officer retired stamp on the officer’s identification certificate “No CCW privilege.”

Comment. Section 25920 continues the third sentence of former Section 12031(b)(2) without substantive change. See Sections 16360 ("CCW"), 16520 ("firearm"), 16690 ("honorably retired"), 16840 ("loaded" and "loaded firearm").

§ 25925. Maintaining privilege to carry loaded firearm

25925. (a) An honorably retired peace officer who is listed in subdivision (c) of Section 830.5 and authorized to carry a loaded firearm by this article shall meet the training requirements of Section 832 and shall qualify with the firearm at least annually.

(b) The individual retired peace officer shall be responsible for eligibility to carry a loaded firearm.

(c) The Department of Justice shall provide subsequent arrest notification pursuant to Section 11105.2 regarding honorably retired peace officers listed in subdivision (c) of Section 830.5 to the agency from which the officer has retired.

Comment. Section 25925 continues former Section 12031(b)(3) without substantive change. See Sections 16520 ("firearm"), 16690 ("honorably retired"), 16840 ("loaded" and "loaded firearm").
Article 4. Other Exemptions to the Crime of
Carrying a Loaded Firearm in Public

§ 26000. Members of military on duty
26000. Section 25850 does not apply to members of the military forces of this
state or of the United States engaged in the performance of their duties.
Comment. Section 26000 continues former Section 12031(b)(4) without substantive change.

§ 26005. Target range or shooting club
26005. Section 25850 does not apply to either of the following:
(a) Persons who are using target ranges for the purpose of practice shooting with
a firearm.
(b) Members of shooting clubs while hunting on the premises of those clubs.
Comment. Section 26005 continues former Section 12031(b)(5) without substantive change.
See Section 16520 (“firearm”).

§ 26010. Person licensed to carry concealed pistol, revolver, or other firearm capable of
being concealed upon the person
26010. Section 25850 does not apply to the carrying of any pistol, revolver, or
other firearm capable of being concealed upon the person by any person who is
authorized to carry that weapon pursuant to Chapter 4 (commencing with Section
26150) of Division 5.
Comment. Section 26010 continues former Section 12031(b)(6) without substantive change.
See Section 16530 (“firearm capable of being concealed upon the person,” “pistol,” and
“revolver.”

§ 26015. Armored vehicle guard
26015. Section 25850 does not apply to any armored vehicle guard, as defined
in Section 7521 of the Business and Professions Code, if either of the following
conditions is satisfied:
(a) The guard was hired prior to January 1, 1977, and is acting within the course
and scope of employment.
(b) The guard was hired on or after January 1, 1977, has received a firearms
qualification card from the Department of Consumer Affairs, and is acting within
the course and scope of employment.
Comment. Section 26015 continues former Section 12031(b)(7) without substantive change.

§ 26020. Honorably retired federal officer or agent
26020. (a) Upon approval of the sheriff of the county in which the retiree
resides, Section 25850 does not apply to any honorably retired federal officer or
agent of any federal law enforcement agency, including, but not limited to, the
Federal Bureau of Investigation, the Secret Service, the United States Customs
Service, the Federal Bureau of Alcohol, Tobacco, and Firearms, the Federal
Bureau of Narcotics, the Drug Enforcement Administration, the United States Border Patrol, and any officer or agent of the Internal Revenue Service who was authorized to carry weapons while on duty, who was assigned to duty within the state for a period of not less than one year, or who retired from active service in the state.

(b) A retired federal officer or agent shall provide the sheriff with certification from the agency from which the officer or agent retired certifying that person’s service in the state, the nature of that person’s retirement, and indicating the agency’s concurrence that the retired federal officer or agent should be accorded the privilege of carrying a loaded firearm.

(c) Upon approval, the sheriff shall issue a permit to the retired federal officer or agent indicating that the retiree may carry a loaded firearm in accordance with this section. The permit shall be valid for a period not exceeding five years, shall be carried by the retiree while carrying a loaded firearm, and may be revoked for good cause.

(d) The sheriff of the county in which the retired federal officer or agent resides may require recertification prior to a permit renewal, and may suspend the privilege for cause. The sheriff may charge a fee necessary to cover any reasonable expenses incurred by the county.

Comment. Section 26020 continues former Section 12031(b)(8) without substantive change.

For an exemption relating to honorably retired peace officers, see Section 25900 (peace officer exemption).

For an honorably retired federal officer or agent carrying a concealed firearm, see Section 25650.

See Sections 16520 (“firearm”), 16840 (“loaded” and “loaded firearm”).

§ 26025. Patrol special police officers, animal control officers, zookeepers, humane officers, and harbor police officers

26025. Section 25850 does not apply to any of the following who have completed a regular course in firearms training approved by the Commission on Peace Officer Standards and Training:

(a) Patrol special police officers appointed by the police commission of any city, county, or city and county under the express terms of its charter who also, under the express terms of the charter, satisfy all of the following requirements:

(1) They are subject to suspension or dismissal after a hearing on charges duly filed with the commission after a fair and impartial trial.

(2) They are not less than 18 years of age or more than 40 years of age.

(3) They possess physical qualifications prescribed by the commission.

(4) They are designated by the police commission as the owners of a certain beat or territory as may be fixed from time to time by the police commission.

(b) Animal control officers or zookeepers, regularly compensated in that capacity by a governmental agency, when carrying weapons while acting in the course and scope of their employment and when designated by a local ordinance.
or, if the governmental agency is not authorized to act by ordinance, by a resolution, either individually or by class, to carry the weapons.

(c) Persons who are authorized to carry the weapons pursuant to Section 14502 of the Corporations Code, while actually engaged in the performance of their duties pursuant to that section.

(c) Harbor police officers designated pursuant to Section 663.5 of the Harbors and Navigation Code.

Comment. Section 26025 continues former Section 12031(c) without substantive change.

§ 26030. Guards, messengers, private investigators, private patrol operators, and alarm company operators

26030. (a) Section 25850 does not apply to any of the following who have been issued a certificate pursuant to subdivision (d):

(1) Guards or messengers of common carriers, banks, and other financial institutions, while actually employed in and about the shipment, transportation, or delivery of any money, treasure, bullion, bonds, or other thing of value within this state.

(2) Guards of contract carriers operating armored vehicles pursuant to California Highway Patrol and Public Utilities Commission authority, if they were hired prior to January 1, 1977.

(3) Guards of contract carriers operating armored vehicles pursuant to California Highway Patrol and Public Utilities Commission authority, if they were hired on or after January 1, 1977, and they have completed a course in the carrying and use of firearms that meets the standards prescribed by the Department of Consumer Affairs.

(4) Private investigators licensed pursuant to Chapter 11.3 (commencing with Section 7512) of Division 3 of the Business and Professions Code, while acting within the course and scope of their employment.

(5) Uniformed employees of private investigators licensed pursuant to Chapter 11.3 (commencing with Section 7512) of Division 3 of the Business and Professions Code, while acting within the course and scope of their employment.

(6) Private patrol operators licensed pursuant to Chapter 11.5 (commencing with Section 7580) of Division 3 of the Business and Professions Code, while acting within the course and scope of their employment.

(7) Uniformed employees of private patrol operators licensed pursuant to Chapter 11.5 (commencing with Section 7580) of Division 3 of the Business and Professions Code, while acting within the course and scope of their employment.

(8) Alarm company operators licensed pursuant to Chapter 11.6 (commencing with Section 7590) of Division 3 of the Business and Professions Code, while acting within the course and scope of their employment.

(9) Uniformed security guards or night watch persons employed by any public agency, while acting within the scope and course of their employment.
(10) Uniformed security guards, regularly employed and compensated in that capacity by persons engaged in any lawful business, and uniformed alarm agents employed by an alarm company operator, while actually engaged in protecting and preserving the property of their employers, or on duty or en route to or from their residences or their places of employment, and security guards and alarm agents en route to or from their residences or employer-required range training.

(b) Nothing in paragraph (10) of subdivision (a) shall be construed to prohibit cities and counties from enacting ordinances requiring alarm agents to register their names.

(c) A certificate under this section shall not be required of any person who is a peace officer, who has completed all training required by law for the exercise of the person’s power as a peace officer, and who is employed while not on duty as a peace officer.

(d) The Department of Consumer Affairs may issue a certificate to any person referred to in this section, upon notification by the school where the course was completed, that the person has successfully completed a course in the carrying and use of firearms and a course of training in the exercise of the powers of arrest, which meet the standards prescribed by the department pursuant to Section 7583.5 of the Business and Professions Code.

Comment. The introductory clause of subdivision (a) of Section 26030 continues the first sentence of the introductory paragraph of former Section 12031(d) without substantive change.

Subdivision (a)(1) continues former Section 12031(d)(1) without substantive change.

Subdivision (a)(2)-(3) continues former Section 12031(d)(2) without substantive change.

With respect to licensed private investigators, subdivision (a)(4) continues former Section 12031(d)(3) without substantive change.

With respect to uniformed employees of licensed private investigators, subdivision (a)(5) continues former Section 12031(d)(6) without substantive change.

With respect to licensed private patrol operators, subdivision (a)(6) continues former Section 12031(d)(3) without substantive change.

With respect to uniformed employees of licensed private patrol operators, subdivision (a)(7) continues former Section 12031(d)(6) without substantive change.

With respect to licensed alarm company operators, subdivision (a)(8) continues former Section 12031(d)(3) without substantive change.

Subdivision (a)(9) continues former Section 12031(d)(4) without substantive change.

Subdivision (a)(10) continues the first sentence of former Section 12031(d)(5) without substantive change.

Subdivision (b) continues the second sentence of former Section 12031(d)(5) without substantive change.

Subdivision (c) continues the second sentence of the introductory paragraph of former Section 12031(d) without substantive change.

Subdivision (d) continues former Section 12033 without substantive change.

§ Staff Note. Existing Section 12031(d)(3) refers to “[p]rivate investigators and private patrol operators who are licensed pursuant to Chapter 11.5 (commencing with Section 7512) of ... Division 3 of the Business and Professions Code ....” (Emphasis added.) Similarly, existing Section 12031(d)(6) refers to “[u]niformed employees of private patrol operators and private investigators licensed pursuant to Chapter 11.5 (commencing with Section 7512) of Division 3 of the Business and Professions Code ....” (Emphasis added.)
Those cross-references are incorrect. Private investigators are now licensed pursuant to Chapter 11.3 (commencing with Section 7512) of Division 3 of the Business and Professions Code. Private patrol operators are licensed pursuant to Chapter 11.5 (commencing with Section 7580) of Division 3 of the Business and Professions Code.

The staff has corrected the cross-references in drafting proposed Section 26030 (see paragraphs (a)(4)-(a)(7)). This approach seems more reasonable than perpetuating obviously incorrect references. Although this is a strictly nonsubstantive study, some degree of commonsense is appropriate in interpreting existing law. We would exercise such commonsense here and note the situation in the preliminary part of the Commission’s report.

We encourage comment on this point.

§ 26035. Loaded firearm at one’s place of business or own private property

26035. Nothing in Section 25850 shall prevent any person engaged in any lawful business, including a nonprofit organization, or any officer, employee, or agent authorized by that person for lawful purposes connected with that business, from having a loaded firearm within the person’s place of business, or any person in lawful possession of private property from having a loaded firearm on that property.

Comment. Section 26035 continues former Section 12031(h) without substantive change.

See Sections 16520 (“firearm”), 16840 (“loaded” and “loaded firearm”).

§ 26040. Hunting

26040. Nothing in Section 25850 shall prevent any person from carrying a loaded firearm in an area within an incorporated city while engaged in hunting, provided that the hunting at that place and time is not prohibited by the city council.

Comment. Section 26040 continues former Section 12031(i) without substantive change.

See Sections 16520 (“firearm”), 16840 (“loaded” and “loaded firearm”).

§ 26045. Reasonable belief of immediate, grave danger to person or property

26045. (a) Nothing in Section 25850 is intended to preclude the carrying of any loaded firearm, under circumstances where it would otherwise be lawful, by a person who reasonably believes that any person or the property of any person is in immediate, grave danger and that the carrying of the weapon is necessary for the preservation of that person or property.

(b) A violation of Section 25850 is justifiable when a person who possesses a firearm reasonably believes that person is in grave danger because of circumstances forming the basis of a current restraining order issued by a court against another person who has been found to pose a threat to the life or safety of the person who possesses the firearm. This paragraph may not apply when the circumstances involve a mutual restraining order issued pursuant to Division 10 (commencing with Section 6200) of the Family Code absent a factual finding of a specific threat to the person’s life or safety. It is not the intent of the Legislature to limit, restrict, or narrow the application of current statutory or judicial authority to apply this or other justifications to a defendant charged with violating [Section
or committing another similar offense. Upon trial for violating Section 25850, the trier of fact shall determine whether the defendant was acting out of a reasonable belief that the defendant was in grave danger.

(c) As used in this section, “immediate” means the brief interval before and after the local law enforcement agency, when reasonably possible, has been notified of the danger and before the arrival of its assistance.

Comment. Subdivision (a) of Section 26045 continues the first sentence of former Section 12031(j)(1) without substantive change.

Subdivision (b) continues former Section 12031(j)(2) without substantive change.

Subdivision (c) continues the second sentence of former Section 12031(j)(1) without substantive change.

See Sections 16520 (“firearm”), 16840 (“loaded” and “loaded firearm”).

☞ Staff Notes.

(1) The first sentence of existing Section 12031(j)(1) says: “Nothing in Section 25850 is intended to preclude the carrying of any loaded firearm, under circumstances where it would otherwise be lawful, by a person who reasonably believes that the person or property of himself or herself or of another is in immediate, grave danger ....” (Emphasis added.) In drafting statutes, the Law Revision Commission generally tries to avoid using awkward phrases like “his or her,” “he or she,” and “himself or herself.”

In drafting proposed Section 26045 the staff has revised the sentence in question to read: “Nothing in Section 25850 is intended to preclude the carrying of any loaded firearm, under circumstances where it would otherwise be lawful, by a person who reasonably believes that any person or the property of any person is in immediate, grave danger ....” (Emphasis added.) We do not think this changes the meaning of the sentence.

We encourage input on this point.

(2) The second sentence of existing Section 12031(j)(1) defines “immediate” for purposes of that subdivision as “the brief interval before and after the local law enforcement agency, when reasonably possible, has been notified of the danger and before the arrival of its assistance.” The term is also used without definition elsewhere.

To help ensure that the applicable definition of this commonplace word is not overlooked, the Commission decided to place the definition in close proximity to the substance of Section 12031(j). See Memorandum 2008-23, p. 3; Minutes (June 2008), pp. 6-9. Proposed Section 26045 would implement that decision. The Commission and other interested persons should assess whether this treatment of the definition of “immediate” is satisfactory.

(3) Existing Section 12031(j)(2) provides:

A violation of this section is justifiable when a person who possesses a firearm reasonably believes that he or she is in grave danger because of circumstances forming the basis of a current restraining order issued by a court against another person or persons who has or have been found to pose a threat to his or her life or safety. This paragraph may not apply when the circumstances involve a mutual restraining order issued pursuant to Division 10 (commencing with Section 6200) of the Family Code absent a factual finding of a specific threat to the person’s life or safety. It is not the intent of the Legislature to limit, restrict, or narrow the application of current statutory or judicial authority to apply this or other justifications to defendants charged with violating Section 12025 or of committing other similar offenses. Upon trial for violating this section, the trier of fact shall determine whether the defendant was acting out of a reasonable belief that he or she was in grave danger.
(Emphasis added.) The staff suspects that the italicized cross-reference to Section 12025 is incorrect and should be replaced with a cross-reference to Section 12031.

In coming to this conclusion, we noted that existing Section 12025.5 is almost identical to Section 12031(j)(2), but is an exemption to Section 12025 rather than Section 12031. It is easy to imagine that someone used a cut-and-paste function in drafting Section 12031(j)(2) and forgot to replace “Section 12025” with “Section 12031.”

We solicit comment on whether proposed Section 26045(b) should refer to the provision that continues the elements of the crime stated in existing Section 12025 (proposed Section 25400) or the provision that continues the elements of the crime stated in existing Section 12031 (proposed Section 25850). Absent input on this point, we will not correct the cross-reference (i.e., proposed Section 26045(b) will refer to proposed Section 25400), but we will add this issue to the Commission’s list of “Minor Clean-up Issues for Possible Future Legislative Attention.” See Memorandum 2008-41.

§ 26050. Making lawful arrest

26050. Nothing in Section 25850 is intended to preclude the carrying of a loaded firearm by any person while engaged in the act of making or attempting to make a lawful arrest.

Comment. Section 26050 continues former Section 12031(k) without substantive change. See Sections 16520 (“firearm”), 16840 (“loaded” and “loaded firearm”).

§ 26055. Place of residence, including campsite

26055. Nothing in Section 25850 shall prevent any person from having a loaded weapon, if it is otherwise lawful, at the person’s place of residence, including any temporary residence or campsite.

Comment. Section 26055 continues former Section 12031(l) without substantive change. See Section 16840 (“loaded” and “loaded firearm”).

§ 26060. Rocket or other emergency or distress signaling device

26060. Nothing in Section 25850 shall prevent any person from storing aboard any vessel or aircraft any loaded or unloaded rocket, rocket propelled projectile launcher, or similar device designed primarily for emergency or distress signaling purposes, or from possessing that type of a device while in a permitted hunting area or traveling to or from a permitted hunting area and carrying a valid California permit or license to hunt.

Comment. Section 26060 continues former Section 12031.1 without substantive change.

Article 5. Loaded Firearm in Motor Vehicle

§ 26100. Loaded firearm in motor vehicle

26100. (a) It is a misdemeanor for a driver of any motor vehicle or the owner of any motor vehicle, whether or not the owner of the vehicle is occupying the vehicle, knowingly to permit any other person to carry into or bring into the vehicle a firearm in violation of Section 25850 of this code or Section 2006 of the Fish and Game Code.
(b) Any driver or owner of any vehicle, whether or not the owner of the vehicle is occupying the vehicle, who knowingly permits any other person to discharge any firearm from the vehicle is punishable by imprisonment in the county jail for not more than one year or in state prison for 16 months or two or three years.

(c) Any person who willfully and maliciously discharges a firearm from a motor vehicle at another person other than an occupant of a motor vehicle is guilty of a felony punishable by imprisonment in state prison for three, five, or seven years.

(d) Except as provided in Section 3002 of the Fish and Game Code, any person who willfully and maliciously discharges a firearm from a motor vehicle is guilty of a public offense punishable by imprisonment in the county jail for not more than one year or in the state prison.

Comment. Section 26100 continues former Section 12034 without substantive change.

See Section 16520 ("firearm").

CHAPTER 4. LICENSE TO CARRY PISTOL, REVOLVER, OR OTHER FIREARM CAPABLE OF BEING CONCEALED UPON PERSON

§ 26150. Issuance of license by sheriff
26150. (a) When a person applies for a license to carry a pistol, revolver, or other firearm capable of being concealed upon the person, the sheriff of a county may issue a license to that person upon proof of all of the following:

(1) The applicant is of good moral character.

(2) Good cause exists for issuance of the license.

(3) The applicant is a resident of the county or a city within the county, or the applicant’s principal place of employment or business is in the county or a city within the county and the applicant spends a substantial period of time in that place of employment or business.

(4) The applicant has completed a course of training as described in Section 26165.

(b) The sheriff may issue a license under subdivision (a) in either of the following formats:

(1) A license to carry concealed a pistol, revolver, or other firearm capable of being concealed upon the person.

(2) Where the population of the county is less than 200,000 persons according to the most recent federal decennial census, a license to carry loaded and exposed in that county a pistol, revolver, or other firearm capable of being concealed upon the person.

Comment. Section 26150 continues former Section 12050(a)(1)(A) & (D) without substantive change.

See Sections 16520 (“firearm”), 16530 (“firearm capable of being concealed upon the person,” “pistol,” and “revolver”), 17020 (“principal place of employment or business”).
§ 26155. Issuance of license by head of municipal police department

26155. (a) When a person applies for a license to carry a pistol, revolver, or other firearm capable of being concealed upon the person, the chief or other head of a municipal police department of any city or city and county may issue a license to that person upon proof of all of the following:

1. The applicant is of good moral character.
2. Good cause exists for issuance of the license.
3. The applicant is a resident of that city.
4. The applicant has completed a course of training as described in Section 26165.

(b) The chief or other head of a municipal police department may issue a license under subdivision (a) in either of the following formats:

1. A license to carry concealed a pistol, revolver, or other firearm capable of being concealed upon the person.
2. Where the population of the county in which the city is located is less than 200,000 persons according to the most recent federal decennial census, a license to carry loaded and exposed in that county a pistol, revolver, or other firearm capable of being concealed upon the person.

(c) Nothing in this chapter shall preclude the chief or other head of a municipal police department of any city from entering an agreement with the sheriff of the county in which the city is located for the sheriff to process all applications for licenses, renewals of licenses, and amendments to licenses, pursuant to this chapter.

Comment. Subdivisions (a) and (b) of Section 26155 continue former Section 12050(a)(1)(B) without substantive change.

Subdivision (c) continues former Section 12050(g) without substantive change.

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

§ 26160. Written policy

26160. Each licensing authority shall publish and make available a written policy summarizing the provisions of Section 26150 and subdivisions (a) and (b) of Section 26155.

Comment. Section 26160 continues former Section 12050.2 without substantive change.

☞ Staff Note. Existing Section 12050.2 provides:

12050.2. Within three months of the effective date of the act adding this section, each licensing authority shall publish and make available a written policy summarizing the provisions of subparagraphs (A) and (B) of paragraph (1) of subdivision (a) of Section 12050.

(Emphasis added.) The compliance deadline indicated in italics passed long ago. The effective date of the act adding Section 12050.2 to the Penal Code was January 1, 1999, and the deadline was three months later (i.e., April 1, 1999). See 1998 Cal. Stat. ch. 910, § 2; see also Cal. Const. art. IV, § 8(c)(1); Gov’t Code § 9600(a).

Because the compliance deadline has passed and rewording it to reflect recodification of existing Section 12050.2 would be awkward, the staff has not continued it in proposed Section 26160. We solicit comment on whether that would create any problems.
§ 26165. Training course

26165. (a) For new license applicants, the course of training for issuance of a license under Section 26150 or 26155 may be any course acceptable to the licensing authority, shall not exceed 16 hours, and shall include instruction on at least firearm safety and the law regarding the permissible use of a firearm.

(b) Notwithstanding subdivision (a), the licensing authority may require a community college course certified by the Commission on Peace Officer Standards and Training, up to a maximum of 24 hours, but only if required uniformly of all license applicants without exception.

(c) For license renewal applicants, the course of training may be any course acceptable to the licensing authority, shall be no less than four hours, and shall include instruction on at least firearm safety and the law regarding the permissible use of a firearm. No course of training shall be required for any person certified by the licensing authority as a trainer for purposes of this section, in order for that person to renew a license issued pursuant to this article.

Comment. Section 26165 continues former Section 12050(a)(1)(E) without substantive change.

See Section 16520 (“firearm”).

§ 26170. Issuance of license to person deputized or appointed as peace officer

26170. (a) Upon proof of all of the following, the sheriff of a county, or the chief or other head of a municipal police department of any city or city and county, may issue to an applicant a license to carry concealed a pistol, revolver, or other firearm capable of being concealed upon the person:

(1) The applicant is of good moral character.

(2) Good cause exists for issuance of the license.

(3) The applicant has been deputized or appointed as a peace officer pursuant to subdivision (a) or (b) of Section 830.6 by that sheriff or that chief of police or other head of a municipal police department.

(b) Direct or indirect fees for the issuance of a license pursuant to this section may be waived.

(c) The fact that an applicant for a license to carry a pistol, revolver, or other firearm capable of being concealed upon the person has been deputized or appointed as a peace officer pursuant to subdivision (a) or (b) of Section 830.6 shall be considered only for the purpose of issuing a license pursuant to this section, and shall not be considered for the purpose of issuing a license pursuant to Section 26150 or 26155.

Comment. Section 26170 continues former Section 12050(a)(1)(C) without substantive change.

See Sections 16520 (“firearm”), 16530 (“firearm capable of being concealed upon the person,” “pistol,” and “revolver”).
§ 26175. License application

26175. (a)(1) Applications for licenses, applications for amendments to licenses, amendments to licenses, and licenses under this article shall be uniform throughout the state, upon forms to be prescribed by the Attorney General.

(2) The Attorney General shall convene a committee composed of one representative of the California State Sheriffs’ Association, one representative of the California Police Chiefs’ Association, and one representative of the Department of Justice to review, and as deemed appropriate, revise the standard application form for licenses. The committee shall meet for this purpose if two of the committee’s members deem that necessary.

(b) The application shall include a section summarizing the statutory provisions of state law that result in the automatic denial of a license.

(c) The standard application form for licenses described in subdivision (a) shall require information from the applicant including, but not limited to, the name, occupation, residence and business address of the applicant, the applicant’s age, height, weight, color of eyes and hair, and reason for desiring a license to carry the weapon.

(d) Applications for licenses shall be filed in writing, and signed by the applicant.

(e) Applications for amendments to licenses shall be filed in writing and signed by the applicant, and shall state what type of amendment is sought pursuant to Section 26215 and the reason for desiring the amendment.

(f) The forms shall contain a provision whereby the applicant attests to the truth of statements contained in the application.

(g) An applicant shall not be required to complete any additional application or form for a license, or to provide any information other than that necessary to complete the standard application form described in subdivision (a), except to clarify or interpret information provided by the applicant on the standard application form.

(h) The standard application form described in subdivision (a) is deemed to be a local form expressly exempt from the requirements of the Administrative Procedures Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(i) Any license issued upon the application shall set forth the licensee’s name, occupation, residence and business address, the licensee’s age, height, weight, color of eyes and hair, and the reason for desiring a license to carry the weapon, and shall, in addition, contain a description of the weapon or weapons authorized to be carried, giving the name of the manufacturer, the serial number, and the caliber. The license issued to the licensee may be laminated.

Comment. Subdivision (a) of Section 26175 continues the first, second, and third sentences of former Section 12051(a)(3)(A) without substantive change.

Subdivision (b) continues the fourth sentence of former Section 12051(a)(3)(A) without substantive change.
Subdivision (c) continues the first sentence of former Section 12051(a)(1) without substantive change.

Subdivision (d) continues the second sentence of former Section 12051(a)(1) without substantive change.

Subdivision (e) continues former Section 12051(a)(2) without substantive change.

Subdivision (f) continues former Section 12051(a)(3)(B) without substantive change.

Subdivision (g) continues former Section 12051(a)(3)(C) without substantive change.

Subdivision (h) continues former Section 12051(a)(3)(D) without substantive change.

Subdivision (i) continues the third and fourth sentences of former Section 12051(a)(1) without substantive change.

§ 26180. False statement on application form

26180. (a) Any person who files an application required by Section 26175 knowing that any statement contained therein is false is guilty of a misdemeanor.

(b) Any person who knowingly makes a false statement on the application regarding any of the following is guilty of a felony:

1. The denial or revocation of a license, or the denial of an amendment to a license, issued pursuant to this article.
2. A criminal conviction.
3. A finding of not guilty by reason of insanity.
4. The use of a controlled substance.
5. A dishonorable discharge from military service.
6. A commitment to a mental institution.
7. A renunciation of United States citizenship.

Comment. Subdivision (a) of Section 26180 continues former Section 12051(b) without substantive change. Subdivision (b) continues former Section 12051(c) without substantive change.

§ 26185. Fingerprinting and Department of Justice report

26185. (a)(1) The fingerprints of each applicant shall be taken and two copies on forms prescribed by the Department of Justice shall be forwarded to the department.

2. Upon receipt of the fingerprints and the fee as prescribed in Section 26190, the department shall promptly furnish the forwarding licensing authority a report of all data and information pertaining to any applicant of which there is a record in its office, including information as to whether the person is prohibited under Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing, receiving, owning, or purchasing a firearm.

3. No license shall be issued by any licensing authority until after receipt of the report from the department.

(b) Notwithstanding subdivision (a), if the license applicant has previously applied to the same licensing authority for a license to carry firearms pursuant to this article and the applicant’s fingerprints and fee have been previously forwarded to the Department of Justice, as provided by this section, the licensing authority shall note the previous identification numbers and other data that would provide
positive identification in the files of the Department of Justice on the copy of any
subsequent license submitted to the department in conformance with Section
26225 and no additional application form or fingerprints shall be required.

(c) If the license applicant has a license issued pursuant to this article and the
applicant’s fingerprints have been previously forwarded to the Department of
Justice, as provided in this section, the licensing authority shall note the previous
identification numbers and other data that would provide positive identification in
the files of the Department of Justice on the copy of any subsequent license
submitted to the department in conformance with Section 26225 and no additional
fingerprints shall be required.

Comment. Section 26185 continues former Section 12052 without substantive change.

§ 26190. Application fees

26190. (a)(1) Each applicant for a new license or for the renewal of a license
shall pay at the time of filing the application a fee determined by the Department
of Justice. The fee shall not exceed the application processing costs of the
Department of Justice for the direct costs of furnishing the report required by
Section 26185.

(2) After the department establishes fees sufficient to reimburse the department
for processing costs, fees charged shall increase at a rate not to exceed the
legislatively approved annual cost-of-living adjustments for the department’s
budget.

(3) The officer receiving the application and the fee shall transmit the fee, with
the fingerprints if required, to the Department of Justice.

(b)(1) The licensing authority of any city, city and county, or county may charge
an additional fee in an amount equal to the actual costs for processing the
application for a new license, excluding fingerprint and training costs, but in no
case to exceed one hundred dollars ($100), and shall transmit the additional fee, if
any, to the city, city and county, or county treasury.

(2) The first 20 percent of this additional local fee may be collected upon filing
of the initial application. The balance of the fee shall be collected only upon
issuance of the license.

(c) The licensing authority may charge an additional fee, not to exceed twenty-
five dollars ($25), for processing the application for a license renewal, and shall
transmit an additional fee, if any, to the city, city and county, or county treasury.

(d) These local fees may be increased at a rate not to exceed any increase in the
California Consumer Price Index as compiled and reported by the California
Department of Industrial Relations.

(e)(1) In the case of an amended license pursuant to Section 26215, the licensing
authority of any city, city and county, or county may charge a fee, not to exceed
ten dollars ($10), for processing the amended license.
(2) This fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the California Department of Industrial Relations.

(3) The licensing authority shall transmit the fee to the city, city and county, or county treasury.

(f)(1) If psychological testing on the initial application is required by the licensing authority, the license applicant shall be referred to a licensed psychologist used by the licensing authority for the psychological testing of its own employees. The applicant may be charged for the actual cost of the testing in an amount not to exceed one hundred fifty dollars ($150).

(2) Additional psychological testing of an applicant seeking license renewal shall be required only if there is compelling evidence to indicate that a test is necessary. The cost to the applicant for this additional testing shall not exceed one hundred fifty dollars ($150).

(g) Except as authorized pursuant to this section, no requirement, charge, assessment, fee, or condition that requires the payment of any additional funds by the applicant may be imposed by any licensing authority as a condition of the application for a license.

Comment. Subdivision (a) of Section 26190 continues the first, second, and third sentences of the first paragraph of former Section 12054(a) without substantive change.

Subdivision (b) continues the fourth, fifth, and sixth sentences of the first paragraph of former Section 12054(a) without substantive change.

Subdivision (c) continues the first sentence of the second paragraph of former Section 12054(a) without substantive change.

Subdivision (d) continues the second sentence of the second paragraph of former Section 12054(a) without substantive change.

Subdivision (e) continues former Section 12054(b) without substantive change.

Subdivision (f) continues former Section 12054(c) without substantive change.

Subdivision (g) continues former Section 12054(d) without substantive change.

§ 26195. No license for person in prohibited class

26195. (a) A license under this article shall not be issued if the Department of Justice determines that the person is within a prohibited class described in [Section 12021 or 12021.1 of this code] or Section 8100 or 8103 of the Welfare and Institutions Code.

(b)(1) A license under this article shall be revoked by the local licensing authority if at any time either the local licensing authority is notified by the Department of Justice that a licensee is within a prohibited class described in [Section 12021 or 12021.1 of this code] or Section 8100 or 8103 of the Welfare and Institutions Code, or the local licensing authority determines that the person is within a prohibited class described in [Section 12021 or 12021.1 of this code] or Section 8100 or 8103 of the Welfare and Institutions Code.

(2) If at any time the Department of Justice determines that a licensee is within a prohibited class described in [Section 12021 or 12021.1 of this code] or Section
8100 or 8103 of the Welfare and Institutions Code, the department shall immediately notify the local licensing authority of the determination.

(3) If the local licensing authority revokes the license, the Department of Justice shall be notified of the revocation pursuant to Section 26225. The licensee shall also be immediately notified of the revocation in writing.

Comment. Subdivision (a) of Section 26195 continues former Section 12050(d) without substantive change.

Subdivision (b) continues former Section 12050(e) without substantive change.

§ 26200. Restrictions or conditions on license

26200. (a) A license issued pursuant to this article may include any reasonable restrictions or conditions that the issuing authority deems warranted, including restrictions as to the time, place, manner, and circumstances under which the licensee may carry a pistol, revolver, or other firearm capable of being concealed upon the person.

(b) Any restrictions imposed pursuant to subdivision (a) shall be indicated on any license issued.

Comment. Subdivision (a) of Section 26200 continues former Section 12050(b) without substantive change.

Subdivision (b) continues former Section 12050(c) without substantive change.

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

§ 26205. Notification of applicant

26205. The licensing authority shall give written notice to the applicant indicating if the license under this article is approved or denied. The licensing authority shall give this notice within 90 days of the initial application for a new license or a license renewal, or 30 days after receipt of the applicant’s criminal background check from the Department of Justice, whichever is later.

Comment. Section 26205 continues former Section 12052.5 without substantive change.

§ 26210. Change of licensee’s address

26210. (a) When a licensee under this article has a change of address, the license shall be amended to reflect the new address and a new license shall be issued pursuant to subdivision (b) of Section 26215.

(b) The licensee shall notify the licensing authority in writing within 10 days of any change in the licensee’s place of residence.

(c) If the license is one to carry concealed a pistol, revolver, or other firearm capable of being concealed upon the person, then it may not be revoked solely because the licensee changes his or her place of residence to another county if the licensee has not breached any conditions or restrictions set forth in the license or has not fallen into a prohibited class described in [Section 12021 or 12021.1 of this code] or Section 8100 or 8103 of the Welfare and Institutions Code. However, any license issued pursuant to Section 26150 or 26155 shall expire 90 days after
the licensee moves from the county of issuance if the licensee’s place of residence was the basis for issuance of the license.

(d) If the license is one to carry loaded and exposed a pistol, revolver, or other firearm capable of being concealed upon the person, the license shall be revoked immediately upon a change of the licensee’s place of residence to another county.

**Comment.** Subdivision (a) of Section 26210 continues former Section 12050(f)(2) without substantive change.

Subdivision (b) continues former Section 12050(f)(4)(A) without substantive change.

Subdivision (c) continues former Section 12050(f)(4)(B) without substantive change.

Subdivision (d) continues former Section 12050(f)(4)(C) without substantive change.

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

☞ **Staff Note.** Existing Section 12050(f)(4)(B) provides:

> (B) If the license is one to carry concealed a pistol, revolver, or other firearm capable of being concealed upon the person, then it may not be revoked solely because the licensee changes his or her place of residence to another county if the licensee has not breached any conditions or restrictions set forth in the license or has not fallen into a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code. However, any license issued pursuant to subparagraph (A) or (B) of paragraph (1) of subdivision (a) shall expire 90 days after the licensee moves from the county of issuance if the licensee’s place of residence was the basis for issuance of the license.

The wording of this provision is somewhat awkward. Instead of stating all of the conditions at the beginning of the first sentence, one condition is stated at the beginning of the sentence (“If the license is one to carry concealed ...”) and other conditions are stated at the end (“if the licensee has not breached any ...”).

The staff considered revising the sentence to improve its structure. We noticed, however, a possible error in the sentence.

Specifically, the sentence says that a license to carry a handgun may not be revoked solely due to a change in county of residence “if the licensee has not breached any conditions or restrictions set forth in the license or has not fallen into a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.” (Emphasis added.) The use of “or” suggests that the two requirements are alternatives: It is enough to satisfy one or the other; it is not necessary to fulfill both.

We suspect, however, that the actual intent is otherwise. In other words, to avoid having a license to carry a concealed handgun revoked due to a change in county of residence, *both* of the following must be true: (1) the licensee must not have breached any conditions or restrictions set forth in the license, and (2) the licensee must not have fallen into a prohibited class.

If that is the actual intent, proposed Section 26210 should perhaps be revised as follows:

26210. (a) When a licensee under this article has a change of address, the license shall be amended to reflect the new address and a new license shall be issued pursuant to [paragraph (3)].

(b) The licensee shall notify the licensing authority in writing within 10 days of any change in the licensee’s place of residence.

(c) If the license is one to carry concealed a pistol, revolver, or other firearm capable of being concealed upon the person, then it may not be revoked solely because the licensee changes his or her place of residence to another county if the licensee has not breached any conditions or restrictions set forth in the license or has not fallen into a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code. However, any license issued pursuant to Section 26150 or 26155 shall
expire 90 days after the licensee moves from the county of issuance if the licensee’s place of residence was the basis for issuance of the license.

(d) If the license is one to carry loaded and exposed a pistol, revolver, or other firearm capable of being concealed upon the person, the license shall be revoked immediately upon a change of the licensee’s place of residence to another county.

(c) If both of the following conditions are satisfied, a license to carry a concealed handgun may not be revoked solely because the licensee’s place of residence has changed to another county:

(1) The licensee has not breached any of the conditions or restrictions set forth in the license.

(2) The licensee has not fallen into a prohibited class described in [Section 12021 or 12021.1 of this code] or Section 8100 or 8103 of the Welfare and Institutions Code.

(d) Notwithstanding subdivision (c), if a licensee’s place of residence was the basis for issuance of a license, any license issued pursuant to Section 26150 or 26155 shall expire 90 days after the licensee moves from the county of issuance.

(e) A license to carry a loaded and exposed handgun shall be revoked immediately upon a change of the licensee’s place of residence to another county.

Because this a strictly nonsubstantive study, the staff did not take this approach. Unless the Commission otherwise directs, we will add this issue to the Commission’s list of “Minor Clean-up Issues for Possible Future Legislative Attention.” See Memorandum 2008-41.

§ 26215. Amendment of license

26215. (a) A person issued a license pursuant to this article may apply to the licensing authority for an amendment to the license to do one or more of the following:

(1) Add or delete authority to carry a particular pistol, revolver, or other firearm capable of being concealed upon the person.

(2) Authorize the licensee to carry concealed a pistol, revolver, or other firearm capable of being concealed upon the person.

(3) If the population of the county is less than 200,000 persons according to the most recent federal decennial census, authorize the licensee to carry loaded and exposed in that county a pistol, revolver, or other firearm capable of being concealed upon the person.

(4) Change any restrictions or conditions on the license, including restrictions as to the time, place, manner, and circumstances under which the person may carry a pistol, revolver, or other firearm capable of being concealed upon the person.

(b) If the licensing authority amends the license, a new license shall be issued to the licensee reflecting the amendments.

(c) An amendment to the license does not extend the original expiration date of the license and the license shall be subject to renewal at the same time as if the license had not been amended.

(d) An application to amend a license does not constitute an application for renewal of the license.

Comment. Subdivision (a) of Section 26215 continues former Section 12050(f)(1) without substantive change.

Subdivision (b) continues former Section 12050(f)(3) without substantive change.

Subdivision (c) continues former Section 12050(f)(5) without substantive change.
Subdivision (d) continues former Section 12050(f)(6) without substantive change.

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

§ 26220. Duration of license

26220. (a) Except as otherwise provided in this section and in subdivision (c) of Section 26210, a license issued pursuant to Section 26150 or 26155 is valid for any period of time not to exceed two years from the date of the license.

(b) If the licensee’s place of employment or business was the basis for issuance of a license pursuant to Section 26150, the license is valid for any period of time not to exceed 90 days from the date of the license. The license shall be valid only in the county in which the license was originally issued. The licensee shall give a copy of this license to the licensing authority of the city, county, or city and county in which the licensee resides. The licensing authority that originally issued the license shall inform the licensee verbally and in writing in at least 16-point type of this obligation to give a copy of the license to the licensing authority of the city, county, or city and county of residence. Any application to renew or extend the validity of, or reissue, the license may be granted only upon the concurrence of the licensing authority that originally issued the license and the licensing authority of the city, county, or city and county in which the licensee resides.

(c) A license issued pursuant to Section 26150 or 26155 is valid for any period of time not to exceed three years from the date of the license if the license is issued to any of the following individuals:

(1) A judge of a California court of record.

(2) A full-time court commissioner of a California court of record.

(3) A judge of a federal court.

(4) A magistrate of a federal court.

(d) A license issued pursuant to Section 26150 or 26155 is valid for any period of time not to exceed four years from the date of the license if the license is issued to a custodial officer who is an employee of the sheriff as provided in Section 831.5, except that the license shall be invalid upon the conclusion of the person’s employment pursuant to Section 831.5 if the four-year period has not otherwise expired or any other condition imposed pursuant to this article does not limit the validity of the license to a shorter time period.

(e) A license issued pursuant to Section 26170 to a peace officer appointed pursuant to Section 830.6 is valid for any period of time not to exceed four years from the date of the license, except that the license shall be invalid upon the conclusion of the person’s appointment pursuant to Section 830.6 if the four-year period has not otherwise expired or any other condition imposed pursuant to this article does not limit the validity of the license to a shorter time period.

Comment. Subdivision (a) of Section 26220 continues former Section 12050(a)(2)(A)(i) without substantive change.

Subdivision (b) continues former Section 12050(a)(2)(A)(ii) without substantive change.

Subdivision (c) continues former Section 12050(a)(2)(C) without substantive change.
Subdivision (d) continues former Section 12050(a)(2)(D) without substantive change.
Subdivision (e) continues former Section 12050(a)(2)(B) without substantive change.

§ 26225. Duties of licensing authority and Attorney General

26225. (a) A record of the following shall be maintained in the office of the licensing authority:

(1) The denial of a license.
(2) The denial of an amendment to a license.
(3) The issuance of a license.
(4) The amendment of a license.
(5) The revocation of a license.

(b) Copies of each of the following shall be filed immediately by the issuing officer or authority with the Department of Justice:

(1) The denial of a license.
(2) The denial of an amendment to a license.
(3) The issuance of a license.
(4) The amendment of a license.
(5) The revocation of a license.

(c) (1) Commencing on or before January 1, 2000, and annually thereafter, each licensing authority shall submit to the Attorney General the total number of licenses issued to peace officers pursuant to Section 26170, and to judges pursuant to Section 26150 or 26155.

(2) The Attorney General shall collect and record the information submitted pursuant to this subdivision by county and licensing authority.

Comment. Section 26225 continues former Section 12053 without substantive change.

CHAPTER 5. RETIRED PEACE OFFICER CARRYING CONCEALED AND LOADED FIREARM

Staff Note. Existing law contains extensive provisions relating to identification certificates for retired peace officers and endorsements on those certificates authorizing officers to (1) carry a concealed firearm, (2) carry a loaded firearm, or (3) carry a concealed and loaded firearm. The current and proposed future locations of those provisions are as follows:

• Existing Section 12027(a) (peace officer exemption to crime of carrying concealed firearm). This material would be recodified as proposed Sections 25450-25475.
• Existing Section 12031(b)(1)-(3) (peace officer exemption to crime of carrying loaded firearm in public). This material would be recodified as proposed Sections 25900-25925.
• Existing Section 12027.1 (retired peace officer carrying concealed and loaded firearm). This material would be recodified as proposed Sections 26300-26325.

There is much repetition among these three separate sets of statutory material, albeit in different contexts. The material could perhaps be reorganized more concisely, without any change in meaning.

To avoid any risk of a substantive change, the staff advises against attempting such reorganization in the context of this nonsubstantive study. Unless the Commission otherwise directs, we will add this issue to the Commission’s list of “Minor Clean-up Issues for Possible Future Legislative Attention.” See Memorandum 2008-41.
§ 26300. Requirements for retired peace officer to carry concealed and loaded firearm

26300. (a) Any peace officer listed in Section 830.1 or 830.2 or subdivision (c) of Section 830.5 who retired prior to January 1, 1981, is authorized to carry a concealed and loaded firearm if the agency issued the officer an identification certificate and the certificate has not been stamped as specified in Section 25470.

(b) Any peace officer employed by an agency and listed in Section 830.1 or 830.2 or subdivision (c) of Section 830.5 who retired after January 1, 1981, shall have an endorsement on the officer’s identification certificate stating that the issuing agency approves the officer’s carrying of a concealed and loaded firearm.

(c) Any peace officer not listed in subdivision (a) or (b) who was authorized to, and did, carry a firearm during the course and scope of employment as a peace officer shall have an endorsement on the officer’s identification certificate stating that the issuing agency approves the officer’s carrying of a concealed and loaded firearm.

Comment. Subdivision (a) of Section 26300 continues former Section 12027.1(a)(1)(A)(ii) without substantive change.

Subdivision (b) continues former Section 12027.1(a)(1)(A)(i) without substantive change.

Subdivision (c) continues former Section 12027.1(a)(1)(A)(iii) without substantive change.

Section 26300 and the other provisions in this article provide guidance on a retired peace officer carrying a concealed and loaded firearm. For guidance on a retired peace officer carrying a concealed firearm, see Sections 25450-25475. For guidance on a retired peace officer carrying a loaded firearm, see Sections 25900-25925.

See Section 16520 (“firearm”).

§ 26305. Grounds for revocation or denial of privilege to carry concealed and loaded firearm

26305. (a) No peace officer who is retired after January 1, 1989, because of a psychological disability shall be issued an endorsement to carry a concealed and loaded firearm pursuant to this article.

(b) A retired peace officer may have the privilege to carry a concealed and loaded firearm revoked or denied by violating any departmental rule, or state or federal law that, if violated by an officer on active duty, would result in that officer’s arrest, suspension, or removal from the agency.

(c) An identification certificate authorizing the officer to carry a concealed and loaded firearm or an endorsement may be revoked or denied by the issuing agency only upon a showing of good cause. Good cause shall be determined at a hearing, as specified in Section 26320.

Comment. Subdivision (a) of Section 26305 continues former Section 12027.1(e) without substantive change.

Subdivision (b) continues former Section 12027.1(a)(2) without substantive change.

Subdivision (c) continues former Section 12027.1(a)(1)(B) & (b)(1) without substantive change.

See Section 16520 (“firearm”).
§ 26310. Procedure for denial of privilege to carry concealed and loaded firearm

26310. (a) An identification certificate authorizing the officer to carry a concealed and loaded firearm or an endorsement may be denied prior to a hearing.

(b) If a hearing is not conducted prior to the denial of an endorsement, a retired peace officer, within 15 days of the denial, shall have the right to request a hearing. A retired peace officer who fails to request a hearing pursuant to this section shall forfeit the right to a hearing.

Comment. Section 26310 continues former Section 12027.1(b)(3) without substantive change.

See Section 16520 (“firearm”).

§ 26315. Procedure for revocation of privilege to carry concealed and loaded firearm

26315. (a) An identification certificate authorizing the officer to carry a concealed and loaded firearm or an endorsement may be revoked only after a hearing, as specified in Section 26320.

(b) Any retired peace officer whose identification certificate authorizing the officer to carry a concealed and loaded firearm or an endorsement is to be revoked shall receive notice of the hearing. Notice of the hearing shall be served either personally on the retiree or sent by first-class mail, postage prepaid, return receipt requested to the retiree’s last known place of residence.

(c) Upon the date the agency receives the signed registered receipt or upon the date the notice is served personally on the retiree, the retiree shall have 15 days to respond to the notification. A retired peace officer who fails to respond to the notice of the hearing shall forfeit the right to respond.

Comment. Section 26315 continues former Section 12027.1(b)(2) without substantive change.

See Section 16520 (“firearm”).

§ 26320. Hearing

26320. (a) Any hearing conducted under this article shall be held before a three-member hearing board. One member of the board shall be selected by the agency and one member shall be selected by the retired peace officer or his or her employee organization. The third member shall be selected jointly by the agency and the retired peace officer or his or her employee organization.

(b) Any decision by the board shall be binding on the agency and the retired peace officer.

Comment. Section 26320 continues former Section 12027.1(d) without substantive change.

§ 26325. Procedure when privilege to carry concealed and loaded firearm is revoked

26325. (a) A retired peace officer, when notified of the revocation of the privilege to carry a concealed and loaded firearm, after the hearing, or upon forfeiting the right to a hearing, shall immediately surrender to the issuing agency the officer’s identification certificate.

(b) The issuing agency shall reissue a new identification certificate without an endorsement.
(c) Notwithstanding subdivision (b), if the peace officer retired prior to January 1, 1981, and was at the time of retirement a peace officer listed in Section 830.1 or 830.2 or subdivision (c) of Section 830.5, the issuing agency shall stamp on the identification certificate “No CCW privilege.”

Comment. Section 26325 continues former Section 12027.1(c) without substantive change. See Sections 16360 (“CCW”), 16520 (“firearm”).