

## Memorandum 2008-41

**Nonsubstantive Reorganization of Deadly Weapon Statutes:  
List of Minor Clean-up Issues for Possible Future Legislative Attention**

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At the direction of the Legislature, the Commission is studying the statutes relating to control of deadly weapons. The goal of the study is to reorganize the statutes in a manner that makes them more readily comprehensible.

In conducting this strictly nonsubstantive study, the Commission is maintaining a list of "Minor Clean-up Issues for Possible Future Legislative Attention." The Commission plans to include the list in its report to the Governor and the Legislature.

A new version of the list is attached for review. It has been updated to reflect points covered in June. See Memorandum 2008-27; Minutes (June 2008), pp. 6-9; see also Memorandum 2008-26, Attachment pp. 7-8, 12-13, 14, 18. It also includes some possible new additions, which are discussed in the memoranda for the August meeting. These possible new additions are shown at the end of the list, under "Proposed Additions."

The attached list is intended to consist of minor, relatively noncontroversial, clean-up issues, not issues involving substantial controversy. If any of the issues listed below appears likely to involve substantial controversy, please notify the Commission.

Respectfully submitted,

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Chief Deputy Counsel

MINOR CLEAN-UP ISSUES FOR POSSIBLE FUTURE  
LEGISLATIVE ATTENTION (8/13/08)

**Staff Note.** In conducting this strictly nonsubstantive study, the Commission is maintaining a list of “Minor Clean-up Issues for Possible Future Legislative Attention.” The Commission plans to include the list in its report to the Governor and the Legislature.

This updated version of the list incorporates points covered in June. See Memorandum 2008-27; Minutes (June 2008), pp. 6-9; see also Memorandum 2008-26, Attachment pp. 7-8, 12-13, 14, 18. It also includes some possible new additions, at the end under “Proposed Additions.”

The list is intended to consist of minor, relatively noncontroversial, clean-up issues, not issues involving substantial controversy. If any of the issues listed below appears likely to involve substantial controversy, please notify the Commission.

- (1) Consider whether to expand the following definitions to the entirety of new Part 6 of the Penal Code:
  - “Application to purchase.” See Memorandum 2007-20, Attachment p. 1.
  - “Assault weapon.” See Memorandum 2007-33, Attachment pp. 7-8.
  - “Capacity to accept more than 10 rounds.” See Memorandum 2007-33, Attachment p. 15.
  - “Deadly weapon.” See First Supplement to Memorandum 2007-20, p. 1 & Attachment p. 1.
  - “Destructive device.” See Memorandum 2007-33, Attachment p. 22.
  - “Explosive.” See Memorandum 2007-33, Attachment p. 26.
  - “Firearm safety device.” See Memorandum 2007-33, Attachment p. 26.
  - “Licensed premises.” See Memorandum 2008-17, Attachment pp. 29-30.
  - “Locked container.” See Memorandum 2008-17, Attachment pp. 31-32.
  - “Rifle.” See Memorandum 2008-17, Attachment pp. 42-43.
  - “Semiautomatic pistol.” See Memorandum 2008-17, Attachment p. 47.
  - “Short-barreled rifle.” See Memorandum 2007-33, Attachment pp. 44-45.
  - “Short-barreled shotgun.” See Memorandum 2007-33, Attachment p. 44.
  - “Shotgun.” See Memorandum 2008-17, Attachment pp. 49-50.

- “Silencer.” See Memorandum 2008-17, Attachment p. 50.
- (2) Consider whether it is really necessary to have multiple definitions of the term “antique firearm.” See Memorandum 2007-21, Attachment pp. 4-5.
  - (3) Consider whether a single definition of “honorably retired” could be applied to the entirety of new Part 6 of the Penal Code. See Memorandum 2007-33, Attachment p. 36.
  - (4) Consider whether a single definition of “person” could be applied to the entirety of new Part 6 of the Penal Code. See Memorandum 2008-17, Attachment pp. 37-38.
  - (5) Consider whether a single definition of “lawful possession of the firearm” could be applied to the entirety of new Part 6 of the Penal Code. See Memorandum 2008-17, Attachment p. 26.
  - (6) Consider whether to conform the definitions of “operation of law” and “A person taking title or possession of firearms by operation of law,” and whether to extend a single definition to the entirety of new Part 6 of the Penal Code. See Memorandum 2007-33, Attachment pp. 41-42; Memorandum 2008-17, Attachment pp. 36-37.
  - (7) Consider whether the definition of “loaded” given in Penal Code Sections 12031(g) and 12035(a)(2) should be extended more broadly. See Memorandum 2008-17, Attachment p. 31.
  - (8) Consider whether the definition of “magazine” given in Penal Code Section 12276.1(d)(1) should be extended more broadly. See Memorandum 2008-17, Attachment p. 34.
  - (9) Consider whether the definition of “locking device” for firearm should be extended more broadly, particularly to the provision that would continue Penal Code Section 12071(b)(7). See Memorandum 2008-17, Attachment p. 32; Memorandum 2008-23, p. 5.
  - (10) Penal Code Section 12316(a) defines “bona fide evidence of majority and identity.” Penal Code Section 12071(c)(1) defines “clear evidence of his or her identity and age.” The two definitions are different. Consider whether it is necessary to use two distinct terms with differing definitions.
  - (11) Consider whether to revise the definition of “department” to say: “As used in this part, unless otherwise apparent from the context, ‘department’ means the Department of Justice.” See Memorandum 2007-33, Attachment p. 21.
  - (12) Consider whether to provide separate definitions of the terms “pistol” and “revolver.” See Minutes (April 2008), pp. 6-7.
  - (13) Consider whether the definition of “unsafe handgun” should be revised to improve clarity and readability. See Memorandum 2008-17, Attachment pp. 56-57.

- (14) Consider whether the same definition of “furnishes” should be used in the provisions relating to (1) furnishing tear gas or a tear gas weapon to a minor, (2) furnishing a stun gun to a minor, and (3) furnishing a BB device to a minor. See Memorandum 2007-33, Attachment p. 31.
- (15) Read literally, Penal Code Section 12028.5(c) only requires delivery of a firearm, not other deadly weapons. Consider whether this is due to an oversight that should be corrected. See Memorandum 2007-21, Attachment p. 14.
- (16) The second sentence of Penal Code Section 12028.5(g) refers to a “family violence incident,” not a “domestic violence incident.” Consider whether to replace “family violence incident” with “domestic violence incident.” See Memorandum 2007-21, Attachment p. 17.
- (17) Article 8 of Chapter 6 of Title 2 of Part 4 (i.e., Penal Code §§ 12800-12809) is sloppy in referring to instructors. See Memorandum 2007-33, Attachment p. 16. Consider whether to address this problem.
- (18) In Title 2 of Part 4 of the Penal Code, the usage of “dealer,” “licensee,” and similar terms is potentially confusing. See Memorandum 2007-33, Attachment p. 20. Consider whether to address this problem.
- (19) Consider whether to revise the language now found in Penal Code Section 12301(a)(3). See Memorandum 2007-33, Attachment pp. 22-23.
- (20) Consider which exemptions listed in Penal Code Section 12020 apply to which weapons and equipment, and then consider whether to place each of those exemptions in proximity to the provisions governing the weapons or equipment to which it applies. See Memorandum 2007-33, Attachment p. 48.
- (21) Consider, on a case-by-case basis, whether references to “pistol, revolver, or firearm capable of being concealed upon the person” should be replaced with the term “handgun.” See, e.g., Memorandum 2008-17, Attachment pp. 21-22 (proposed §§ 16650, 16660), 24-25 (proposed § 16730), 52-53 (proposed § 17260), 54-57 (proposed § 17300), 60-61 (proposed § 17510).
- (22) In some places, Penal Code Section 12028.5 refers to “the owner or person who possessed the firearm” or to “the owner or person who was in lawful possession.” In other places, the provision refers only to “the owner” or to “the lawful owner.” These references should be reviewed to determine whether they are appropriate as is, or should be revised to achieve greater consistency. See Memorandum 2007-21, Attachment p. 13.
- (23) Consider whether to revise the language now found in Penal Code Section 12001.1(b). See Memorandum 2008-25, Attachment p. 8.

- (24) Consider whether the language now found in Penal Code Section 12020(b)(14) should be recast in singular form, and, if so, how that should be done. See Memorandum 2008-25, Attachment p. 17.
- (25) Consider whether the references to “person, parent, or guardian” now found in Penal Code Section 12403.8(c) should be replaced with “parent, guardian, or other person.” See Memorandum 2008-25, Attachment p. 24.
- (26) Consider whether to revise the definition of “agent.” See Memorandum 2008-27, pp. 1-2.
- (27) Penal Code Section 12088.1 addresses three distinct subjects: (a) the firearm safety device requirement and exemptions from that requirement, (b) the warning requirement for a long-gun safe that does not comply with the standards for gun safes, and (c) the warning requirement of Penal Code Section 12088.3. Consider the possibility of dividing this material into several code sections. See Memorandum 2008-26, Attachment pp. 5-8.
- (28) Consider whether the language now found in Penal Code Section 12088.5 should be reworded as discussed in Memorandum 2008-26, Attachment pp. 12-13.
- (29) Penal Code Section 12020.3 criminalizes possession of a bright orange or bright green gun. Consider whether the scope of this provision should be expanded, as discussed in Memorandum 2008-26, Attachment p. 14.
- (30) It is unclear which definition of “imitation firearm” applies in Penal Code Section 12553(b). See Memorandum 2008-26, Attachment p. 18. Consider how to eliminate this ambiguity.

#### PROPOSED ADDITIONS

- (31) It is unclear whether the definition of “imitation firearm” in Penal Code Section 12550(c) is meant to apply to Penal Code Section 12555 to any extent. See Memorandum 2008-42, pp. 15-19. Consider how to eliminate this ambiguity.
- (32) Consider whether the language now in Penal Code Section 12035(h) is unnecessary and redundant. See Memorandum 2008-39, Attachment p. 9.
- (33) The first clause of Penal Code Section 12027(a)(1)(C) states a general rule. The remainder of Penal Code Section 12027(a)(1)(C) states an exception to that general rule. Consider whether the exception is obsolete. See Memorandum 2008-39, Attachment p. 19.
- (34) The first clause of the third paragraph of Penal Code Section 12031(b)(1) states a general rule. The remainder of that paragraph states an exception to the general rule. Consider

whether the exception is obsolete. See Memorandum 2008-39, Attachment p. 38.

- (35) Penal Code Section 12027(c) refers to “those weapons.” Consider whether to replace that phrase with a more precise phrase. See Memorandum 2008-39, Attachment p. 29.
- (36) Consider whether any of the provisions in new Part 6 of the Penal Code should be redrafted to use the singular form instead of the plural form. See Memorandum 2008-39, pp. 1-2.
  - ☛ If this item is added, Item # 24 should be deleted.
- (37) Consider whether the language now in Penal Code Section 12050(f)(4)(B) should be revised. See Memorandum 2008-39, Attachment pp. 54-55.
- (38) Consider whether to reorganize the provisions relating to identification certificates for retired peace officers and endorsements on those certificates authorizing officers to carry a concealed firearm, carry a loaded firearm, or carry a concealed and loaded firearm. See Memorandum 2008-39, Attachment pp. 17, 35-36, 57.
- (39) Consider whether the cross-reference to Penal Code Section 12025 in Penal Code Section 12031(j)(2) is incorrect and should be fixed. See Memorandum 2008-39, Attachment p. 45.