

Memorandum 2008-42

**Nonsubstantive Reorganization of Deadly Weapon Statutes:
Issues Relating to Drafts Previously Considered**

At the direction of the Legislature (2006 Cal. Stat. res. ch. 128), the Commission is conducting a nonsubstantive study of the statutes relating to deadly weapons. The goal of the study is to reorganize those statutes in a user-friendly manner, without changing their substantive effect. The Commission is in the process of preparing a tentative recommendation, which will be broadly circulated for comment.

In the tentative recommendation, the material now in Title 2 of Part 4 of the Penal Code (Penal Code §§ 12000-12809) will be reorganized in a new Part 6 of the Penal Code. As currently planned, new Part 6 will consist of four titles:

- Title 1. Preliminary Provisions
- Title 2. Weapons Generally
- Title 3. Weapons Other Than Firearms
- Title 4. Firearms and Similar Weapons

The Commission has previously considered complete drafts of Titles 1-3 and a partial draft (Divisions 1-3) of Title 4. This memorandum discusses issues recently raised relating to those drafts.

The staff does not intend to present each of these issues for discussion at the upcoming meeting. Rather, a Commissioner or other person who has concerns about any issue discussed in this memorandum should plan to raise them for discussion at the meeting, or submit them in writing, preferably before the meeting (but afterwards is also acceptable). **Unless the Commission otherwise directs, the staff will proceed as recommended in this memorandum.**

Attached for the Commission's consideration is a redraft of Titles 2-3 and Divisions 1-3 of Title 4, which incorporates (1) revisions recommended in this memorandum and (2) corrections of some typographical errors and other minor

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mistakes. The revisions recommended in this memorandum are minor but affect sufficiently many provisions in Titles 2-3 and Divisions 1-3 of Title 4 to warrant presentation of a whole new draft of that material.

Commissioners and other interested persons should review the attached draft and determine whether any changes are needed before it is incorporated into a tentative recommendation.

BB DEVICES AND IMITATION FIREARMS

At the June meeting, Lindsay Nichols of the Legal Community Against Violence (“LCAV”) questioned whether the provisions relating to BB devices and imitation firearms belong in a division entitled “Disguised or Misleading Appearance” in “Title 4. Firearms and Similar Weapons.” Jason Davis, representing the National Rifle Association (“NRA”), agreed that this placement was problematic. The Commission directed the staff to look into this point and make a recommendation on how to handle it.

The staff has since reexamined the outline of new Part 6 with this point in mind. **We recommend the following changes to address it:**

- “Title 4. Firearms and Similar Weapons” should be relabeled as “Title 4. Firearms.”
- The provisions relating to BB devices and imitation firearms should be moved to “Title 3. Weapons Other Than Firearms.”

We have revised the outline to implement these recommended changes. See Memorandum 2008-38.

We have also implemented the recommended changes in the attached redraft of Titles 2-3 and Divisions 1-3 of Title 4. See in particular proposed Penal Code Sections 19910-19915 (BB devices) and 20150-20180 (imitation firearms) in the attached redraft.

Commissioners and other interested persons should assess whether the recommended approach is satisfactory.

UNDETECTABLE KNIVES

Penal Code Section 12001.1 was just amended by Senate Bill 1033 (G. Runner), 2008 Cal. Stat. ch. 111, § 1. The bill was an urgency measure, so it went into effect immediately upon enactment.

Because the legislation has already taken effect, the staff has revised the corresponding provisions of new Part 6 of the Penal Code to incorporate the new legislation. See proposed Sections 20810 and 20815 in the attached redraft.

Other deadly weapons legislation enacted in 2008 will be incorporated into new Part 6 after the legislative session ends and the Governor has acted (or failed to timely act) on the bills sent to him for approval.

RECENT DECISION BY THE UNITED STATES SUPREME COURT

The United States Supreme Court recently decided *District of Columbia v. Heller*, ___ U.S. ___, 128 S.Ct. 2783 (2008), which involved a constitutional challenge to the District of Columbia's stringent handgun restrictions. In its 5-4 decision, the Court ruled that "the Second Amendment conferred an individual right to keep and bear arms." *Id.* at 2799. The Court further ruled, however, that "[l]ike most rights, the right secured by the Second Amendment is not unlimited." *Id.* at 2816.

The Court gave some guidance on the contours of the right to bear arms. *Id.* at 2816-22. In particular, the Court held that the District of Columbia's "ban on handgun possession in the home violates the Second Amendment, as does its prohibition against rendering any lawful firearm in the home operable for the purpose of immediate self-defense." *Id.* at 2821-22.

It will, however, take years before the courts definitively resolve the constitutionality of any of California's firearm laws. In the meantime, the Commission "should not attempt to guess whether the courts will uphold any particular provision of California law." Memorandum 2008-17, p. 4.

Rather, the Commission should **stick with the approach it previously adopted to judicial decisions interpreting or determining the constitutionality of deadly weapons provisions:**

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

Minutes (April 2008), pp. 5-6; see also Minutes (April 2007), p. 11.

ISSUES RAISED BY THE OFFICE OF LEGISLATIVE COUNSEL

Through an attorney who specializes in the Penal Code, the Office of Legislative Counsel has alerted us to a number of issues. The staff much appreciates receiving this input during the Commission's study, instead of in the legislative process. The issues raised by the Office of Legislative Counsel are discussed below.

Definition of "Assault Weapon"

As currently drafted, the definition of "assault weapon" would consist of three separate code sections, located together in the "Definitions" portion of new Part 6. Proposed Penal Code Section 16200 would provide:

§ 16200. "Assault weapon"

16200. As used in [Sections 12011(a), 12072], 16110, 16780, and 17000 and in [Chapter 2.3 (commencing with Section 12275) of Title 2 of Part 4], "assault weapon" means the following designated semiautomatic firearms:

- (a) All of the following specified rifles:
 - (1) All AK series including, but not limited to, the models identified as follows:
 - (A) Made in China AK, AKM, AKS, AK47, AK47S, 56, 56S, 84S, and 86S.
 - (B) Norinco 56, 56S, 84S, and 86S.
 - (C) Poly Technologies AKS and AK47.
 - (D) MAADI AK47 and ARM.
 - (2) UZI and Galil.
 - (3) Beretta AR-70.
 - (4) CETME Sporter.
 - (5) Colt AR-15 series.
 - (6) Daewoo K-1, K-2, Max 1, Max 2, AR 100, and AR 110C.
 - (7) Fabrique Nationale FAL, LAR, FNC, 308 Match, and Sporter.
 - (8) MAS 223.
 - (9) HK-91, HK-93, HK-94, and HK-PSG-1.
 - (10) The following MAC types:
 - (A) RPB Industries Inc. sM10 and sM11.
 - (B) SWD Incorporated M11.
 - (11) SKS with detachable magazine.
 - (12) SIG AMT, PE-57, SG 550, and SG 551.
 - (13) Springfield Armory BM59 and SAR-48.
 - (14) Sterling MK-6.
 - (15) Steyer AUG.
 - (16) Valmet M62S, M71S, and M78S.
 - (17) Armalite AR-180.
 - (18) Bushmaster Assault Rifle.

- (19) Calico M-900.
- (20) J&R ENG M-68.
- (21) Weaver Arms Nighthawk.
- (b) All of the following specified pistols:
 - (1) UZI.
 - (2) Encom MP-9 and MP-45.
 - (3) The following MAC types:
 - (A) RPB Industries Inc. sM10 and sM11.
 - (B) SWD Incorporated M-11.
 - (C) Advance Armament Inc. M-11.
 - (D) Military Armament Corp. Ingram M-11.
 - (4) Intratec TEC-9.
 - (5) Sites Spectre.
 - (6) Sterling MK-7.
 - (7) Calico M-950.
 - (8) Bushmaster Pistol.
- (c) All of the following specified shotguns:
 - (1) Franchi SPAS 12 and LAW 12.
 - (2) Striker 12.
 - (3) The Streetsweeper type S/S Inc. SS/12.
- (d) Any firearm declared by the court pursuant to [Section 12276.5] to be an assault weapon that is specified as an assault weapon in a list promulgated pursuant to [Section 12276.5].
- (e) This section is declaratory of existing law and a clarification of the law and the Legislature's intent which bans the weapons enumerated in this section, the weapons included in the list promulgated by the Attorney General pursuant to [Section 12276.5], and any other models that are only variations of those weapons with minor differences, regardless of the manufacturer. The Legislature has defined assault weapons as the types, series, and models listed in this section because it was the most effective way to identify and restrict a specific class of semiautomatic weapons.
- (f) As used in this section, "series" includes all other models that are only variations, with minor differences, of those models listed in subdivision (a), regardless of the manufacturer.

Comment. Subdivisions (a)-(d) and the introductory clause of Section 16200 continue former Section 12276(a)-(d) and its introductory clause without substantive change.

Subdivision (e) continues former Section 12276(f) without substantive change.

Subdivision (f) continues former Section 12276(e) without substantive change.

See Sections 16201 (further clarification of "assault weapon"), 16202 (exemptions from definition of "assault weapon").

Proposed Penal Code Section 16201 would provide:

§ 16201. Further clarification of “assault weapon”

16201. (a) Notwithstanding Section 16200, “assault weapon” also means any of the following:

(1) A semiautomatic, centerfire rifle that has the capacity to accept a detachable magazine and any one of the following:

(A) A pistol grip that protrudes conspicuously beneath the action of the weapon.

(B) A thumbhole stock.

(C) A folding or telescoping stock.

(D) A grenade launcher or flare launcher.

(E) A flash suppressor.

(F) A forward pistol grip.

(2) A semiautomatic, centerfire rifle that has a fixed magazine with the capacity to accept more than 10 rounds.

(3) A semiautomatic, centerfire rifle that has an overall length of less than 30 inches.

(4) A semiautomatic pistol that has the capacity to accept a detachable magazine and any one of the following:

(A) A threaded barrel, capable of accepting a flash suppressor, forward handgrip, or silencer.

(B) A second handgrip.

(C) A shroud that is attached to, or partially or completely encircles, the barrel that allows the bearer to fire the weapon without burning the bearer’s hand, except a slide that encloses the barrel.

(D) The capacity to accept a detachable magazine at some location outside of the pistol grip.

(5) A semiautomatic pistol with a fixed magazine that has the capacity to accept more than 10 rounds.

(6) A semiautomatic shotgun that has both of the following:

(A) A folding or telescoping stock.

(B) A pistol grip that protrudes conspicuously beneath the action of the weapon, thumbhole stock, or vertical handgrip.

(7) A semiautomatic shotgun that has the ability to accept a detachable magazine.

(8) Any shotgun with a revolving cylinder.

Comment. Section 16201 continues former Section 12276.1(a) without substantive change.

See Sections 16200 (“assault weapon”), 16202 (exemptions from definition of “assault weapon”), 16890 (“magazine”).

And proposed Penal Code Section 16202 would provide:

§ 16202. Exemptions from definition of “assault weapon”

16202. (a) The Legislature finds a significant public purpose in exempting from the definition of “assault weapon” pistols that are designed expressly for use in Olympic target shooting events. Therefore, those pistols that are sanctioned by the International

Olympic Committee and by USA Shooting, the national governing body for international shooting competition in the United States, and that were used for Olympic target shooting purposes as of January 1, 2001, and that would otherwise fall within the definition of "assault weapon" pursuant to Sections 16200 and 16201 are exempt, as provided in subdivision (b).

(b) "Assault weapon" does not include either of the following:

(1) Any antique firearm.

(2) Any of the following pistols, because they are consistent with the significant public purpose expressed in subdivision (a):

MANUFACTURER	MODEL	CALIBER
BENELLI	MP90	.22LR
BENELLI	MP90	.32 S&W LONG
BENELLI	MP95	.22LR
BENELLI	MP95	.32 S&W LONG
HAMMERLI	280	.22LR
HAMMERLI	280	.32 S&W LONG
HAMMERLI	SP20	.22LR
HAMMERLI	SP20	.32 S&W LONG
PARDINI	GPO	.22 SHORT
PARDINI	GP-SCHUMANN	.22 SHORT
PARDINI	HP	.32 S&W LONG
PARDINI	MP	.32 S&W LONG
PARDINI	SP	.22LR
PARDINI	SPE	.22LR
WALTHER	GSP	.22LR
WALTHER	GSP	.32 S&W LONG
WALTHER	OSP	.22 SHORT
WALTHER	OSP-2000	.22 SHORT

(3) The Department of Justice shall create a program that is consistent with the purposes stated in subdivision (a) to exempt new models of competitive pistols that would otherwise fall within the definition of "assault weapon" pursuant to Sections 16200 and 16201 from being classified as an assault weapon. The exempt competitive pistols may be based on recommendations by USA Shooting consistent with the regulations contained in the USA Shooting Official Rules or may be based on the recommendation or rules of any other organization that the department deems relevant.

Comment. Subdivision (a) of Section 16202 continues former Section 12276.1(b) without substantive change.

Subdivision (b) continues former Section 12276.1(c) without substantive change.

See Sections 16200 (“assault weapon”), 16201 (further clarification of “assault weapon”).

Because these provisions are extensive and contain both definitional and substantive content, the Office of Legislative Counsel suggests that they be relocated with the substantive provisions relating to assault weapons. To alert readers to the location of these provisions, the Office of Legislative Counsel suggests including a guidepost in the “Definitions” portion of new Part 6, along the following lines:

§ 16200. “Assault weapon”

16200. Use of the term “assault weapon” is governed by Sections _____, _____, and _____.

Comment. Section 16200 is new. It is intended to help persons locate the provisions defining “assault weapon.”

LCAV previously voiced similar concerns about the location of the provisions defining “assault weapon.” At the time, the Commission was not persuaded to move the provisions out of the “Definitions” portion of new Part 6. See Minutes (Aug. 2007), p. 8.

Because the same concern has now been expressed by two different sources, and because the Office of Legislative Counsel has suggested using a guidepost to help readers find the definition of “assault weapon,” the staff recommends that **the provisions defining “assault weapon” be moved as suggested, and replaced with a guidepost provision as shown above.**

We have revised the outline of new Part 6 accordingly. See Memorandum 2008-38. The chapter on assault weapons has not yet been drafted, so we have not yet incorporated the provisions defining “assault weapon” into that chapter.

Is the recommended approach acceptable to the Commission?

Definition of “Capacity to Accept More Than 10 Rounds”

For purposes of one of the provisions defining “assault weapon,” proposed Penal Code Section 16350 would define “capacity to accept more than 10 rounds.” The Office of Legislative Counsel expressed concern that this definition might be overlooked.

That concern is understandable, because the staff accidentally neglected to refer to the definition of “capacity to accept more than 10 rounds” in the Comment to the provision that uses that term (proposed Penal Code § 16201, shown above). **The Comment should be revised to correct that oversight:**

Comment. Section 16201 continues former Section 12276.1(a) without substantive change.

See Sections 16200 (“assault weapon”), 16202 (exemptions from definition of “assault weapon”), 16350 (“capacity to accept more than 10 rounds”), 16890 (“magazine”).

Definition of “Drop Safety Requirement for Handguns”

Proposed Penal Code Section 16500 would define “drop safety requirement for handguns” as follows:

§ 16500. “Drop safety requirement for handguns”

16500. As used in this part, the “drop safety requirement for handguns” means that at the conclusion of the firing requirements for handguns described in [Section 12127], the same certified independent testing laboratory shall subject the same three handguns of the make and model for which certification is sought, to the following test:

(a) A primed case (no powder or projectile) shall be inserted into the chamber. For a pistol, the slide shall be released, allowing it to move forward under the impetus of the recoil spring, and an empty magazine shall be inserted. For both a pistol and a revolver, the weapon shall be placed in a drop fixture capable of dropping the pistol from a drop height of 1m + 1cm (39.4 + 0.4 in.) onto the largest side of a slab of solid concrete having minimum dimensions of 7.5 x 15 x 15 cm (3 x 6 x 6 in.). The drop distance shall be measured from the lowermost portion of the weapon to the top surface of the slab. The weapon shall be dropped from a fixture and not from the hand. The weapon shall be dropped in the condition that it would be in if it were dropped from a hand (cocked with no manual safety applied). If the design of a pistol is such that upon leaving the hand a “safety” is automatically applied by the pistol, this feature shall not be defeated. An approved drop fixture is a short piece of string with the weapon attached at one end and the other end held in an air vise until the drop is initiated.

(b) The following six drops shall be performed:

(1) Normal firing position with barrel horizontal.

(2) Upside down with barrel horizontal.

(3) On grip with barrel vertical.

(4) On muzzle with barrel vertical.

(5) On either side with barrel horizontal.

(6) If there is an exposed hammer or striker, on the rearmost point of that device, otherwise on the rearmost point of the weapon.

(c) The primer shall be examined for indentations after each drop. If indentations are present, a fresh primed case shall be used for the next drop.

(d) The handgun shall pass this test if each of the three test guns does not fire the primer.

Comment. Section 16500 continues former Section 12128 without substantive change.

Because this provision is both definitional and substantive in nature, the Office of Legislative Counsel suggests that it be relocated with the substantive provisions relating to unsafe handguns. To alert readers to the location of this provision, the Office of Legislative Counsel suggests including a guidepost in the “Definitions” portion of new Part 6, along the following lines:

§ 16500. “Drop safety requirement for handguns”

16500. Use of the phrase “drop safety requirement for handguns” is governed by Section ____.

Comment. Section 16500 is new. It is intended to help persons locate the definition of “drop safety requirement for handguns.”

LCAV previously voiced similar concerns about the location of the definition of “drop safety requirement for handguns.” At the time, the Commission was not persuaded to move that provision out of the “Definitions” portion of new Part 6. See Minutes (Aug. 2007), p. 8.

Because the same concern has now been expressed by two different sources, and because the Office of Legislative Counsel has suggested using a guidepost to help readers find the definition, the staff recommends that **the definition of “drop safety requirement for handguns” be moved as suggested, and replaced with a guidepost provision as shown above.**

We have revised the outline of new Part 6 accordingly. See Memorandum 2008-38. The article on unsafe handguns has not yet been drafted, so we have not yet incorporated the definition of “drop safety requirement for handguns” into that article.

Is the recommended approach acceptable to the Commission?

Definitions of “Firing Requirement for Handguns” and “Unsafe Handgun”

Like the definition of “drop safety requirement for handguns,” the definitions of “firing requirement for handguns” and “unsafe handgun” are both definitional and substantive in nature. Proposed Penal Code Section 16560 would provide:

§ 16560. “Firing requirement for handguns”

16560. (a) As used in this part, “firing requirement for handguns” means a test in which the manufacturer provides three handguns of the make and model for which certification is sought to an independent testing laboratory certified by the Attorney General pursuant to [Section 12130]. These handguns may not be refined or modified in any way from those that would be made available for retail sale if certification is granted. The magazines of a tested pistol shall be identical to those that would be provided with the pistol to a retail customer.

(b) The test shall be conducted as follows:

(1) The laboratory shall fire 600 rounds from each gun, stopping after each series of 50 rounds has been fired for 5 to 10 minutes to allow the weapon to cool, stopping after each series of 100 rounds has been fired to tighten any loose screws and clean the gun in accordance with the manufacturer’s instructions, and stopping as needed to refill the empty magazine or cylinder to capacity before continuing.

(2) The ammunition used shall be of the type recommended by the handgun manufacturer in the user manual, or if none is recommended, any standard ammunition of the correct caliber in new condition that is commercially available.

(c) A handgun shall pass this test if each of the three test guns meets both of the following:

(1) Fires the first 20 rounds without a malfunction that is not due to ammunition that fails to detonate.

(2) Fires the full 600 rounds with no more than six malfunctions that are not due to ammunition that fails to detonate and without any crack or breakage of an operating part of the handgun that increases the risk of injury to the user.

(d) If a pistol or revolver fails the requirements of either paragraph (1) or (2) of subdivision (c) due to ammunition that fails to detonate, the pistol or revolver shall be retested from the beginning of the “firing requirement for handguns” test. A new model of the pistol or revolver that failed due to ammunition that fails to detonate may be submitted for the test to replace the pistol or revolver that failed.

(e) As used in this section, “malfunction” means a failure to properly feed, fire, or eject a round, or failure of a pistol to accept or eject the magazine, or failure of a pistol’s slide to remain open after the magazine has been expended.

Comment. Section 16560 continues former Section 12127 without substantive change.

See Sections 16530 (“firearm capable of being concealed upon the person,” “pistol,” and “revolver”), 16640 (“handgun”).

Similarly, proposed Penal Code Section 17300 would provide:

§ 17300. "Unsafe handgun"

17300. As used in this part, "unsafe handgun" means any pistol, revolver, or other firearm capable of being concealed upon the person, for which any of the following is true:

(a) For a revolver:

(1) It does not have a safety device that, either automatically in the case of a double-action firing mechanism, or by manual operation in the case of a single-action firing mechanism, causes the hammer to retract to a point where the firing pin does not rest upon the primer of the cartridge.

(2) It does not meet the firing requirement for handguns.

(3) It does not meet the drop safety requirement for handguns.

(b) For a pistol:

(1) It does not have a positive manually operated safety device, as determined by standards relating to imported guns promulgated by the federal Bureau of Alcohol, Tobacco, and Firearms.

(2) It does not meet the firing requirement for handguns.

(3) It does not meet the drop safety requirement for handguns.

(4) Commencing January 1, 2006, for a center fire semiautomatic pistol that is not already listed on the roster pursuant to [Section 12131], it does not have either a chamber load indicator, or a magazine disconnect mechanism.

(5) Commencing January 1, 2007, for all center fire semiautomatic pistols that are not already listed on the roster pursuant to [Section 12131], it does not have both a chamber load indicator and if it has a detachable magazine, a magazine disconnect mechanism.

(6) Commencing January 1, 2006, for all rimfire semiautomatic pistols that are not already listed on the roster pursuant to [Section 12131], it does not have a magazine disconnect mechanism, if it has a detachable magazine.

(7)(A) Commencing January 1, 2010, for all semiautomatic pistols that are not already listed on the roster pursuant to [Section 12131], it is not designed and equipped with a microscopic array of characters that identify the make, model, and serial number of the pistol, etched or otherwise imprinted in two or more places on the interior surface or internal working parts of the pistol, and that are transferred by imprinting on each cartridge case when the firearm is fired, provided that the Department of Justice certifies that the technology used to create the imprint is available to more than one manufacturer unencumbered by any patent restrictions.

(B) As specified in Section _____, the Attorney General may also approve a method of equal or greater reliability and effectiveness in identifying the specific serial number of a firearm from spent cartridge casings discharged by that firearm.

(C) The microscopic array of characters required by this section shall not be considered the name of the maker, model, manufacturer's number, or other mark of identification, including

any distinguishing number or mark assigned by the Department of Justice, within the meaning of [Sections 12090 and 12094].

Comment. Section 17300 continues the introductory clause and subdivisions (a) and (b)(1)-(6) of former Section 12126 without substantive change. Section 17300 also continues the first sentence, part of the second sentence, and the last sentence of former Section 12126(b)(7) without substantive change. The remainder of former Section 12126(b)(7) is continued in Section _____ without substantive change.

See Sections 16380 (“chamber load indicator”), 16500 (“drop safety requirement for handguns”), 16520 (“firearm”), 16530 (“firearm capable of being concealed upon the person,” “pistol,” and “revolver”), 16560 (“firing requirement for handguns”), 16640 (“handgun”), 16900 (“magazine disconnect mechanism”), 17010 (“pistol”), 17080 (“revolver”), 17140 (“semiautomatic pistol”).

The Office of Legislative Counsel did not specifically raise concerns about the placement of these provisions. But they are sufficiently similar to the definition of “drop safety requirement for handguns” that it would be anomalous to treat the provisions differently.

The staff therefore recommends that **the definition of “firing requirement for handguns” be relocated with the substantive provisions relating to unsafe handguns, and replaced with the following guidepost provision:**

§ 16560. “Firing requirement for handguns”

16560. Use of the phrase “firing requirement for handguns” is governed by Section _____.

Comment. Section 16560 is new. It is intended to help persons locate the definition of “firing requirement for handguns.”

Similarly, the staff recommends that **the definition of “unsafe handgun” be relocated with the substantive provisions relating to unsafe handguns, and replaced with the following guidepost provision:**

§ 17300. “Unsafe handgun”

16560. Use of the phrase “unsafe handgun” is governed by Section _____.

Comment. Section 16560 is new. It is intended to help persons locate the definition of “firing requirement for handguns.”

We have revised the outline of new Part 6 accordingly. See Memorandum 2008-38. The article on unsafe handguns has not yet been drafted, so we have not yet incorporated the definitions of “firing requirement for handguns” and “unsafe handgun” into that article.

Is the recommended approach acceptable to the Commission?

Definition of “Dirk” or “Dagger”

Penal Code Section 12020(c)(24) defines “dirk” or “dagger,” as follows:

(24) As used in this section, a “dirk” or “dagger” means a knife or other instrument with or without a handguard that is capable of ready use as a stabbing weapon that may inflict great bodily injury or death. A nonlocking folding knife, *a folding knife that is not prohibited by Section 653k*, or a pocketknife is capable of ready use as a stabbing weapon that may inflict great bodily injury or death only if the blade of the knife is exposed and locked into position.

(Emphasis added.)

That provision would be continued in proposed Penal Code Section 16420, which is drafted as follows:

16470. As used in this part, “dirk” or “dagger” means a knife or other instrument with or without a handguard that is capable of ready use as a stabbing weapon that may inflict great bodily injury or death. A nonlocking folding knife, *a folding knife that is not prohibited by Sections 17235 and 21510*, or a pocketknife is capable of ready use as a stabbing weapon that may inflict great bodily injury or death only if the blade of the knife is exposed and locked into position.

Comment. Section 16420 continues former Section 12020(c)(24) without substantive change.

(Emphasis added.)

As indicated in italics, the new provision would replace the existing reference to “Section 653k” with a reference to “Sections 17235 and 21510.” Proposed Section 17235 is the provision that would continue the definition of “switchblade knife” now found in Section 653k. Proposed Section 21510 is the provision that would continue Section 653k’s prohibitions relating to switchblade knives.

The Office of Legislative Counsel suggests that the cross-reference to proposed Section 17235 (defining “switchblade knife”) is unnecessary and potentially confusing; the cross-reference to proposed Section 21510 (stating prohibitions relating to switchblade knives) is sufficient.

On reflection, the staff agrees. By its terms, proposed Section 17235’s definition of “switchblade knife” would apply to the entirety of new Part 6, including the reference to “switchblade knife” in proposed Section 21510. The Comment to proposed Section 21510 would draw attention to that definition.

There is thus no need to refer to it in proposed Section 16420; the cross-reference to proposed Section 21510 will be enough.

We therefore recommend that proposed Section 16470 be revised as follows:

16470. As used in this part, “dirk” or “dagger” means a knife or other instrument with or without a handguard that is capable of ready use as a stabbing weapon that may inflict great bodily injury or death. A nonlocking folding knife, a folding knife that is not prohibited by ~~Sections 17235 and~~ Section 21510, or a pocketknife is capable of ready use as a stabbing weapon that may inflict great bodily injury or death only if the blade of the knife is exposed and locked into position.

Comment. Section 16420 continues former Section 12020(c)(24) without substantive change.

Unless the Commission otherwise directs, we will incorporate this revision into the next draft of proposed Section 16420.

Definition of “Imitation Firearm”

Penal Code Section 12550 defines “imitation firearm” as follows:

12550. As used in this article, the following definitions apply:

....

(c) “Imitation firearm” means any BB device, toy gun, replica of a firearm, or other device that is so substantially similar in coloration and overall appearance to an existing firearm as to lead a reasonable person to perceive that the device is a firearm.

The article to which this definition applies includes Penal Code Section 12555, which provides further guidance on the meaning of “imitation firearm” for purposes of that section:

12555. (a) Any person who, for commercial purposes, purchases, sells, manufactures, ships, transports, distributes, or receives, by mail order or in any other manner, an imitation firearm except as authorized by this section shall be liable for a civil fine in an action brought by the city attorney or the district attorney of not more than ten thousand dollars (\$10,000) for each violation.

(b) The manufacture, purchase, sale, shipping, transport, distribution, or receipt, by mail or in any other manner, of imitation firearms is authorized if the device is manufactured, purchased, sold, shipped, transported, distributed, or received for any of the following purposes:

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

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

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

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

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

(c) As used in this section, “imitation firearm” does not include any of the following:

(1) A nonfiring collector’s replica that is historically significant, and is offered for sale in conjunction with a wall plaque or presentation case.

(2) A BB device, as defined in subdivision (g) of Section 12001.

(3) A device where the entire exterior surface of the device is white, bright red, bright orange, bright yellow, bright green, bright blue, bright pink, or bright purple, either singly or as the predominant color in combination with other colors in any pattern, as provided by federal regulations governing imitation firearms, or where the entire device is constructed of transparent or translucent materials which permits unmistakable observation of the device’s complete contents, as provided by federal regulations governing imitation firearms.

(Emphasis added.)

These definitions of “imitation firearm” would be continued in proposed Penal Code Section 16700. Subdivision (a) would continue the general definition now in Section 12550(c), and subdivision (b) would continue the special definition now in Section 12555(c):

16700. (a) As used in this part, “imitation firearm” means any BB device, toy gun, replica of a firearm, or other device that is so substantially similar in coloration and overall appearance to an existing firearm as to lead a reasonable person to perceive that the device is a firearm.

(b) As used in [Section 12555], “imitation firearm” does not include any of the following:

(1) A nonfiring collector’s replica that is historically significant, and is offered for sale in conjunction with a wall plaque or presentation case.

(2) A BB device.

(3) A device where the entire exterior surface of the device is white, bright red, bright orange, bright yellow, bright green, bright blue, bright pink, or bright purple, either singly or as the predominant color in combination with other colors in any pattern, as provided by federal regulations governing imitation firearms, or where the entire device is constructed of transparent or translucent materials which permits unmistakable observation of the device’s complete contents, as provided by federal regulations governing imitation firearms.

Comment. Subdivision (a) of Section 16700 continues former Section 12550(c) without substantive change.

Subdivision (b) continues former Section 12555(c) without substantive change.

See Sections 16250 (“BB device”), 16520 (“firearm”).

The remainder of Section 12555 would be continued in proposed Penal Code Section 24125, which would be located in the portion of new Part 6 relating to imitation firearms. To help ensure that persons using new Section 24125 are aware of the applicable definitions of “imitation firearm,” that provision would expressly refer to those definitions, as shown in italics below:

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

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

- (1) Solely for export in interstate or foreign commerce.
- (2) Solely for lawful use in theatrical productions, including motion picture, television, and stage productions.
- (3) For use in a certified or regulated sporting event or competition.
- (4) For use in military or civil defense activities, or ceremonial activities.
- (5) For public displays authorized by public or private schools.

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

Our contact in the Office of Legislative Counsel considers this problematic. He explained that the special definition now in Section 12555(c) is meant to be the only definition applicable to that section. Thus, he believes that proposed Section 24125 should refer only to subdivision (b) of proposed Section 16700 (the provision continuing the special definition), not to both subdivisions (a) and (b).

He might be correct that only one of the definitions is actually meant to apply. However, that is not how the law is currently drafted. Section 12550 defines “imitation firearm” as used “in this article.” There is no exception for Section 12555, nor does Section 12555 state that its special definition overrides the one in Section 12550.

In this nonsubstantive study, the staff is thus reluctant to revise proposed Section 24125 to refer only to the special definition (subdivision (b) of proposed Section 16700). We recommend, however, that the Commission take other steps to address the point raised.

First, the reference in proposed Section 24125 to “subdivisions (a) and (b) of Section 16700” would be unusual, because that provision contains only two subdivisions. Using that phrase would help draw attention to the special definition in subdivision (b), as we intended. But the unusual phrase might also be construed as confirmation that the Legislature intends the general definition in subdivision (a) to apply in this context, subject to the qualifications stated in subdivision (b).

Because the phrase might be given undue significance, we would avoid it and simply refer to “Section 16700,” instead of “subdivisions (a) and (b) of Section 16700.” We would also move the cross-reference from the text of proposed Section 24125 to the Comment, and use the Comment to draw attention to the special definition that applies only for purposes of that statute. **These changes could be implemented as follows:**

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

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

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

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

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

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

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

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

See Section 16700 (“imitation firearm”), which includes special guidance for interpreting that term in the context of this section.

We have taken the above approach in the attached draft, but we have renumbered proposed Section 24125 as proposed Section 20165, due to relocation of the provisions governing imitation firearms.

Finally, we would **add this matter to the Commission's list of "Minor Clean-up Issues for Possible Future Legislative Attention."** See Memorandum 2008-41. It would be useful for the Legislature to clarify whether (1) the general definition of "imitation firearm" is inapplicable in this context, or (2) the general definition applies subject to the limitations stated in the special definition.

Does the Commission agree with the steps recommended above?

Use of "Such" in Statutory Text

As a general practice, the Office of Legislative Counsel avoids use of the word "such" in statutory text. We routinely comply with that practice in drafting material for the Commission.

In drafting some of the deadly weapons provisions, however, we retained existing statutory language that includes the word "such." The Office of Legislative Counsel pointed this out.

In most of these instances, the word "such" could be eliminated without much difficulty, as shown below:

§ 16250. "BB device"

16250. As used in this part, "BB device" means any instrument that expels a projectile, ~~such as~~ for example a BB or a pellet, not exceeding 6mm caliber, through the force of air pressure, gas pressure, or spring action, or any spot marker gun.

§ 16500. "Drop safety requirement for handguns"

16500. As used in this part, the "drop safety requirement for handguns" means that at the conclusion of the firing requirements for handguns described in [Section 12127], the same certified independent testing laboratory shall subject the same three handguns of the make and model for which certification is sought, to the following test:

(a) A primed case (no powder or projectile) shall be inserted into the chamber. For a pistol, the slide shall be released, allowing it to move forward under the impetus of the recoil spring, and an empty magazine shall be inserted. For both a pistol and a revolver, the weapon shall be placed in a drop fixture capable of dropping the pistol from a drop height of 1m + 1cm (39.4 + 0.4 in.) onto the largest side of a slab of solid concrete having minimum dimensions of 7.5 x 15 x 15 cm (3 x 6 x 6 in.). The drop distance shall be measured from the lowermost portion of the weapon to the top

surface of the slab. The weapon shall be dropped from a fixture and not from the hand. The weapon shall be dropped in the condition that it would be in if it were dropped from a hand (cocked with no manual safety applied). If the ~~design of a pistol is such~~ pistol is designed so that upon leaving the hand a "safety" is automatically applied by the pistol, this feature shall not be defeated. An approved drop fixture is a short piece of string with the weapon attached at one end and the other end held in an air vise until the drop is initiated.

....

§ 16780. "Less lethal weapon"

16780. As used in this part,

(a) "Less lethal weapon" means any device that is designed to or that has been converted to expel or propel less lethal ammunition by any action, mechanism, or process for the purpose of incapacitating, immobilizing, or stunning a human being through the infliction of any less than lethal impairment of physical condition, function, or senses, including physical pain or discomfort. It is not necessary that a weapon leave any lasting or permanent incapacitation, discomfort, pain, or other injury or disability in order to qualify as a less lethal weapon.

(b) Less lethal weapon includes the frame or receiver of any weapon described in subdivision (a), but does not include any of the following unless the part or weapon has been converted as described in subdivision (a):

....

(5) When used as designed or intended by the manufacturer, any weapon that is commonly regarded as a toy gun, and that as ~~such a toy gun~~ is incapable of inflicting any impairment of physical condition, function, or senses.

....

§ 16880. "Machinegun"

16880. (a) As used in this part, "machinegun" means any weapon that shoots, is designed to shoot, or can readily be restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger.

(b) The term "machinegun" also includes the frame or receiver of any ~~such~~ weapon described in subdivision (a), any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun, and any combination of parts from which a machinegun can be assembled if those parts are in the possession or under the control of a person.

(c) The term "machinegun" also includes any weapon deemed by the federal Bureau of Alcohol, Tobacco, and Firearms as readily

convertible to a machinegun under Chapter 53 (commencing with Section 5801) of Title 26 of the United States Code.

§ 16940. “Nunchaku”

16940. As used in this part, “nunchaku” means an instrument consisting of two or more sticks, clubs, bars or rods to be used as handles, connected by a rope, cord, wire, or chain, in the design of a weapon used in connection with the practice of a system of ~~self-defense such as~~ self-defense, for example karate.

§ 17210. “Silencer”

17210. As used in [Sections 12500-12520], “silencer” means any device or attachment of any kind designed, used, or intended for use in silencing, diminishing, or muffling the report of a firearm. The term “silencer” also includes any combination of parts, designed or redesigned, and intended for use in assembling a silencer or fabricating a silencer and any part intended only for use in ~~such~~ assembly or fabrication of a silencer.

§ 17240. “Tear gas”

17240. (a) As used in this part, “tear gas” applies to and includes any liquid, gaseous or solid substance intended to produce temporary physical discomfort or permanent injury through being vaporized or otherwise dispersed in the air.

(b) Notwithstanding subdivision (a), “tear gas” does not apply to, and does not include, any substance registered as an economic poison as provided in Chapter 2 (commencing with Section 12751) of Division 7 of the Food and Agricultural Code, provided that ~~such~~ the substance is not intended to be used to produce discomfort or injury to human beings.

§ 18005. Disposal of weapons constituting nuisance

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

(b) If any weapon has been stolen and is thereafter recovered from the thief or the thief’s transferee, or is used in a manner as to constitute a nuisance under [Section 12028(a) or (b)] without the prior knowledge of its lawful owner that it would be so used, it shall not be offered for sale under subdivision (a) but shall be restored to the lawful owner, as soon as its use as evidence has

been served, upon the lawful owner's identification of the weapon and proof of ownership, and after the law enforcement agency has complied with [Section 12021.3].

(c) If, under this section, a weapon is not of the type that can be sold to the public, generally, or is not sold under subdivision (b), the weapon, in the month of July, next succeeding, or sooner, if necessary to conserve local resources, including space and utilization of personnel who maintain files and security of those weapons, shall be destroyed so that it can no longer be used as ~~such~~ a weapon subject to surrender under Section 18000, except upon the certificate of a judge of a court of record, or of the district attorney of the county, that the retention of it is necessary or proper to the ends of justice.

....

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

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

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

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

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

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

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

§ 22840. Tear gas or tear gas weapons in prison, jail, or similar institution

22840. Nothing in this division authorizes the possession of tear gas or a tear gas weapon in an institution described in Section 4574,

or within the grounds belonging or adjacent to any ~~such~~ institution described in Section 4574, except where authorized by the person in charge of the institution.

To conform to Legislative Counsel's drafting practice, **the staff recommends that these revisions be made.**

In a few instances, there is a compelling reason to retain the existing use of "such." In particular, proposed Penal Code Section 22910(b) would continue the second paragraph of existing Penal Code Section 12422 verbatim, as shown below (with "such" in boldface):

§ 22910. Obliteration of serial number, name of manufacturer, or other identification mark

22910. (a) Any person who changes, alters, removes or obliterates the name of the manufacturer, the serial number, or any other mark of identification on a tear gas weapon is guilty of a public offense and, upon conviction, shall be punished by imprisonment in the state prison or by a fine of not more than two thousand dollars (\$2,000) or by both.

(b) Possession of any **such** weapon upon which the same shall have been changed, altered, removed, or obliterated, shall be presumptive evidence that **such** possessor has changed, altered, removed, or obliterated the same.

Comment. Subdivision (a) of Section 22910 continues the first paragraph of former Section 12422 without substantive change.

Subdivision (b) continues the second paragraph of former Section 12422 without change. Continuation of this material is not intended to reflect any determination regarding its constitutionality. For a case discussing the constitutionality of a similar provision, see *In re Christopher K.*, 91 Cal. App. 4th 853, 110 Cal. Rptr. 914 (2001).

See Sections 17240 ("tear gas"), 17250 ("tear gas weapon").

The staff deliberately chose that approach because a provision much like the second paragraph of existing Section 12422 was held unconstitutional in *In re Christopher K.*, 91 Cal. App. 4th 853, 110 Cal. Rptr. 914 (2001). If the second paragraph of existing Section 12422 were recodified with grammatical revisions, someone might contend that the revisions reflect a legislative assessment that the provision is constitutional. Verbatim recodification is less likely to prompt such an argument, particularly with a Comment explaining that recodification of the provision "is not intended to reflect any determination regarding its constitutionality." See Memorandum 2008-25, Attachment pp. 26-27. For that reason, **the Commission should stick with the verbatim recodification.**

The word “such” also appears in proposed Penal Code Section 23650(b), as shown in boldface below:

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

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

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

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

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

(4) Include additional provisions as appropriate.

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

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

Section 23650 gives guidance to the Attorney General on preparation of regulations implementing a minimum safety standard for firearm safety devices and gun safes. The process of preparing those regulations has been completed; the statutory provision governing preparation of the regulations is being retained for reference purposes. Because it gives guidance on a process that has been

completed, it should not be modified now to eliminate the word “such.” **The Commission should leave proposed Section 23650(b) as is.**

Drafting of Provisions That Would Continue Penal Code Section 12020(a)

Penal Code Section 12020 is an extremely lengthy provision (almost nine pages in the attachment to Memorandum 2007-59). Subdivision (a) provides:

12020. (a) Any person in this state who does any of the following is punishable by imprisonment in a county jail not exceeding one year or in the state prison:

(1) Manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, lends, or possesses any cane gun or wallet gun, any undetectable firearm, any firearm which is not immediately recognizable as a firearm, any camouflaging firearm container, any ammunition which contains or consists of any flechette dart, any bullet containing or carrying an explosive agent, any ballistic knife, any multiburst trigger activator, any nunchaku, any short-barreled shotgun, any short-barreled rifle, any metal knuckles, any belt buckle knife, any leaded cane, any zip gun, any shuriken, any unconventional pistol, any lipstick case knife, any cane sword, any shobi-zue, any air gauge knife, any writing pen knife, any metal military practice handgrenade or metal replica handgrenade, or any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sap, or sandbag.

(2) Commencing January 1, 2000, manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, or lends, any large-capacity magazine.

(3) Carries concealed upon his or her person any explosive substance, other than fixed ammunition.

(4) Carries concealed upon his or her person any dirk or dagger.

However, a first offense involving any metal military practice handgrenade or metal replica handgrenade shall be punishable only as an infraction unless the offender is an active participant in a criminal street gang as defined in the Street Terrorism and Enforcement and Prevention Act (Chapter 11 (commencing with Section 186.20) of Title 7 of Part 1). A bullet containing or carrying an explosive agent is not a destructive device as that term is used in Section 12301.

Subdivision (b) consists of a long list of circumstances in which subdivision (a) does not apply (i.e., exemptions from the general rule). Subdivision (c) states definitions of terms used in subdivisions (a) and (b).

To improve organizational clarity and readability, the Commission decided to divide up the substance of Section 12020 according to the type of weapon or

equipment covered. If the provision were reorganized that way, a person interested in the rules applicable to a particular type of weapon or equipment would readily be able to find them.

Some of the exemptions stated in subdivision (b) are expressly limited to a particular type of weapon or equipment. It is easy to determine how to treat such an exemption in dividing up Section 12020. It belongs in proximity to each provision that restricts a type of weapon or equipment to which it applies.

Other exemptions stated in subdivision (b) are broad, making it difficult to tell precisely which weapons or equipment the exemption is meant to cover. To avoid any risk of a substantive change, the Commission decided not to try to determine which items are covered by each of these exemptions. Instead, it placed these broad exemptions in “Chapter 1. Exemptions” of “Division 2. Generally Prohibited Weapons” of “Title 2. Weapons Generally.” The Commission recognized that this placement is not ideal and included this matter on its list of “Minor Clean-up Projects for Possible Future Legislative Attention.”

To assist persons using the code, the broad exemptions would be referenced in the text and Comment of each provision that restricts a type of weapon or equipment now listed in Section 12020(a). For example, proposed Penal Code Section 24710 would provide:

24710. Subject to Chapter 1 (commencing with Section 17700) of Division 2 of Title 2, any person in this state who manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, lends, or possesses any wallet gun is punishable by imprisonment in a county jail not exceeding one year or in the state prison.

Comment. With respect to a wallet gun, Section 24710 continues former Section 12020(a)(1) without substantive change.

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

See Section 17330 (“wallet gun”). See also Sections 17800 (distinct and separate offense), 24790 (wallet gun constituting nuisance).

(Emphasis added.)

In drafting these provisions, the staff considered the alternative of including such a reference in the Comment but not in the text, as follows:

24710. Any person in this state who manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, lends, or possesses any wallet gun is

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

Comment. With respect to a wallet gun, Section 24710 continues former Section 12020(a)(1) without substantive change.

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

See Section 17330 (“wallet gun”). See also Sections 17800 (distinct and separate offense), 24790 (wallet gun constituting nuisance).

That approach would most closely track the language of existing Section 12020(a).

We recommended against the approach, however, because it might lead people to overlook the broad exemptions, particularly if they use a code that does not reproduce the Commission’s Comments. The Commission concurred in this assessment.

The Office of Legislative Counsel has not questioned the Commission’s decision to refer to the broad exemptions in the statutory text as well as in the Comment. Our contact in that office has suggested, however, that the broad exemptions be rephrased. Specifically, he urges the Commission to replace “Subject to” with “Except as provided in,” like so:

24710. ~~Subject to~~ Except as provided in Chapter 1 (commencing with Section 17700) of Division 2 of Title 2, any person in this state who manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, lends, or possesses any wallet gun is punishable by imprisonment in a county jail not exceeding one year or in the state prison.

He says this would be more consistent with the way Penal Code provisions are typically drafted.

The staff deliberately avoided using the phrase “Except as provided in” We thought it slightly more likely to trigger concerns about a substantive effect than the phrase “Subject to” In either case, however, there is little cause for such concern, because the Commission’s Comments, its report, and an uncodified provision in the proposed legislation would all make clear that the legislation is purely nonsubstantive in nature and should be so interpreted.

In light of the comments from the Office of Legislative Counsel, the staff therefore recommends **replacing “Subject to” with “Except as provided in” in proposed Section 24710 and the other provisions that would continue Section**

12020(a). We have incorporated such changes in the attached draft. See proposed Penal Code §§ 19100, 19200, 20310, 20410, 20510, 20610, 20710, 20910, 21110, 21310, 21810, 22010, 22210, 22410, 24310, 24410, 24510, 24610, 24710. We have also made a similar change in proposed Penal Code Section 23920, which involves a similar drafting issue in a different context.

Are the recommended revisions acceptable to the Commission?

Penal Code Drafting Convention

Penal Code Section 12303.6 provides:

12303.6. *Any* person, firm, or corporation who, within this state, sells, offers for sale, or knowingly transports *any* destructive device, other than fixed ammunition of a caliber greater than .60 caliber, except as provided by this chapter, is guilty of a felony and is punishable by imprisonment in the state prison for two, three or four years.

(Emphasis added.)

The substance of that provision would be continued in Proposed Penal Code Section 18730, which the staff drafted as follows:

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

(Emphasis added.) We took a similar approach in other provisions, substituting “a” for “any” (or sometimes “every”) where use of the longer word appeared unnecessary and inconsistent with the Commission’s usual drafting methodology.

Our contact in the Office of Legislative Counsel questioned this approach, pointing out that Penal Code offenses are typically drafted in the following manner:

Any person who does X with *any* Y is guilty of a felony and is punishable by

Every person who does X with *any* Y is guilty of a felony and is punishable by

He could not explain the reasons for this drafting convention. He noted, however, that in some contexts courts have attached significance to the use of

“any” rather than “a” (e.g., in determining whether certain conduct can be charged as multiple offenses or only as a single offense).

It is true that the Penal Code is replete with provisions drafted in the manner he described. A few offenses are drafted differently; the code is not completely consistent. See, e.g., Penal Code §§ 132.5, 193.8, 205, 270, 308.3, 311.3, 452, 597g, 653t, 12651. But the overwhelming majority of provisions that define an offense comply with the above-described drafting convention.

The staff therefore recommends that **the Commission adhere to this drafting convention in recodifying provisions that follow it.** For example, proposed Penal Code Section 18730 should be revised as follows:

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

We made this revision in the attached draft. We also made similar revisions in other provisions. See proposed Penal Code §§ 17700, 17735, 17740, 18710-18755, 18800, 19000, 19400, 20010, 20110, 21510, 21710, 22840, 22910, 24010-24115, 24125. In addition, we replaced “a” with “any” in a number of provisions that we drafted in the singular (the Commission’s usual approach) instead of tracking the plural formulation in existing law. See proposed Penal Code §§ 17715-17730, 19290, 20015, 20390, 20490, 20590, 20690, 20790, 20815, 20820, 20990, 21190, 22090, 22290, 22295, 22490, 22610, 22810, 23635, 24390, 24490, 24590, 24690, 24790. We plan to make such revisions in two of the definitions as well (proposed Penal Code §§ 16770, 17280), which will be redrafted later in this study.

Is this approach acceptable to the Commission? Is anyone aware of any further problem along these lines that requires attention? As always, the Commission staff would be grateful for input from knowledgeable sources, on this point or on any other aspect of the Commission’s ongoing study.

Respectfully submitted,

Barbara Gaal
Chief Deputy Counsel

Contents

PROPOSED LEGISLATION	1
TITLE 2. WEAPONS GENERALLY	1
DIVISION 1. MISCELLANEOUS RULES RELATING TO WEAPONS GENERALLY	1
§ 17500. Bearing deadly weapon with intent to assault	1
§ 17505. Advertising sale of prohibited weapon or device	1
§ 17510. Picketing with deadly weapon	1
§ 17515. Officer carrying equipment authorized for enforcement of law or ordinance	2
DIVISION 2. GENERALLY PROHIBITED WEAPONS	2
CHAPTER 1. EXEMPTIONS	2
§ 17700. Exemption for antique firearm	2
§ 17705. Exemption for firearm or ammunition constituting curio or relic	2
§ 17710. Exemption for “any other weapon” in possession of person permitted to possess it under federal Gun Control Act of 1968	3
§ 17715. Exemption for historical society, museum, or institutional collection	3
§ 17720. Exemption for motion picture, television, video production, or entertainment event	3
§ 17725. Exemption for person who sells to historical society, museum, or institutional collection, or for purposes of entertainment event	4
§ 17730. Exemption for law enforcement or person who sells to law enforcement	4
§ 17735. Exemption for transportation of non-firearm to law enforcement for disposition according to law	4
§ 17740. Exemption for transportation of firearm to law enforcement for disposition according to law	5
§ 17745. Exemption for possession by forensic laboratory	5
CHAPTER 2. MISCELLANEOUS PROVISIONS	5
§ 17800. Distinct and separate offense	5
DIVISION 3. SURRENDER, DISPOSAL, AND ENJOINING OF WEAPONS CONSTITUTING A NUISANCE	6
§ 18000. Surrender of specified weapons constituting nuisance	6
§ 18005. Disposal of weapons constituting nuisance	6
§ 18010. Treatment of other weapons constituting nuisance	7
DIVISION 4. SEIZURE OF FIREARM OR OTHER DEADLY WEAPON AT SCENE OF DOMESTIC VIOLENCE	7
CHAPTER 1. SEIZURE AND SUBSEQUENT PROCEDURES	7
§ 18250. Seizure of firearm or other deadly weapon at scene of domestic violence	7
§ 18255. Receipt for weapon	8
§ 18260. Delivery of deadly weapon seized by peace officer for community college or school district	9
§ 18265. Holding period	9
§ 18270. Return of stolen weapon	10
§ 18275. Sale or destruction of deadly weapon held longer than one year	10
CHAPTER 2. PROCEDURE WHERE AGENCY BELIEVES RETURN OF WEAPON WOULD CREATE DANGER	11
§ 18400. Petition to determine whether weapon should be returned	11
§ 18405. Notice of petition	11
§ 18410. Hearing on petition	12
§ 18415. Order of default	12
§ 18420. Petition for second hearing	13
CHAPTER 3. LIABILITY	13
§ 18500. No liability for act in good faith under this division	13
DIVISION 5. DESTRUCTIVE DEVICES, EXPLOSIVES, AND SIMILAR WEAPONS	14

CHAPTER 1. DESTRUCTIVE DEVICES AND EXPLOSIVES GENERALLY.....	14
Article 1. Prohibited Acts.....	14
§ 18710. Unlawful possession of destructive device other than fixed ammunition greater than .60 caliber	14
§ 18715. Reckless or malicious possession of destructive device or explosive in public place	14
§ 18720. Possession of materials with intent to create destructive device or explosive	14
§ 18725. Destructive device or explosive on vessel, aircraft, or other vehicle.....	15
§ 18730. Sale or transportation of destructive device other than fixed ammunition greater than .60 caliber	15
§ 18735. Sale, possession, or transport of fixed ammunition greater than .60 caliber	15
§ 18740. Use or attempted use of destructive device or explosive with intent to cause fear or harm	15
§ 18745. Use or attempted use of destructive device or explosive with intent to commit murder	16
§ 18750. Willful and malicious use of destructive device or explosive resulting in bodily injury	16
§ 18755. Willful and malicious use of destructive device or explosive resulting in death, mayhem, or great bodily injury	16
§ 18780. No probation or suspension of sentence	16
Article 2. Exemptions.....	17
§ 18800. Use of destructive device or explosive by law enforcement, military, or firefighter.....	17
Article 3. Permit and Inspection	17
§ 18900. Permit for destructive device	17
§ 18905. Permit fees and renewal process	18
§ 18910. Inspection by Department of Justice	18
Article 4. Destructive Device Constituting Nuisance.....	18
§ 19000. Destructive device constituting nuisance.....	18
CHAPTER 2. EXPLOSIVE SUBSTANCE OTHER THAN FIXED AMMUNITION.....	19
§ 19100. Carrying concealed explosive substance other than fixed ammunition.....	19
§ 19190. Concealed explosive substance constituting nuisance	19
CHAPTER 3. HANDGRENADES	19
§ 19200. Prohibition on manufacture, import, sale, gift, loan, or possession of metal military practice handgrenade or metal replica handgrenade.....	19
§ 19205. Toy or permanently inoperative handgrenade	20
§ 19290. Metal military practice handgrenade or metal replica handgrenade constituting nuisance	20
DIVISION 6. LESS LETHAL WEAPONS	20
§ 19400. Less lethal weapon or ammunition for official use by peace officer or custodial officer	20
TITLE 3. WEAPONS OTHER THAN FIREARMS	21
DIVISION 1. BB DEVICES.....	21
§ 19910. Sale of BB device to minor.....	21
§ 19915. Furnishing BB device to minor without parental permission.....	21
DIVISION 2. BLOWGUNS	21
§ 20010 . Unlawful acts relating to blowguns or blowgun ammunition	21
§ 20015. Use of blowgun or blowgun ammunition by veterinarian or animal control professional.....	21
DIVISION 3. BOOBYTRAP	22
§ 20110. Boobytrap.....	22
DIVISION 4. IMITATION FIREARMS.....	22
§ 20150. Consequences of making imitation firearm or specified device look more like firearm.....	22

§ 20155. Failure to comply with federal law or regulation on marking of toy, look-alike, or imitation firearm	22
§ 20160. Advisory requirement for imitation firearm	22
§ 20165. Unlawful commercial activities relating to imitation firearms.....	23
§ 20170. Display of imitation firearm in public place.....	23
§ 20175. Exemptions	24
§ 20180. Punishment	25
DIVISION 5. KNIVES AND SIMILAR WEAPONS	25
CHAPTER 1. GENERAL PROVISIONS	25
§ 20200. Circumstances in which knife is not deemed “concealed”	25
CHAPTER 2. DISGUISED OR MISLEADING APPEARANCE	25
Article 1. Air Gauge Knife.....	25
§ 20310. Prohibition on manufacture, import, sale, gift, loan, or possession of air gauge knife	25
§ 20390. Air gauge knife constituting nuisance.....	26
Article 2. Belt Buckle Knife	26
§ 20410. Prohibition on manufacture, import, sale, gift, loan, or possession of belt buckle knife	26
§ 20490. Belt buckle knife constituting nuisance	26
Article 3. Cane Sword	26
§ 20510. Prohibition on manufacture, import, sale, gift, loan, or possession of cane sword.....	26
§ 20590. Cane sword constituting nuisance	27
Article 4. Lipstick Case Knife	27
§ 20610. Prohibition on manufacture, import, sale, gift, loan, or possession of lipstick case knife	27
§ 20690. Lipstick case knife constituting nuisance	27
Article 5. Shobi-zue.....	27
§ 20710. Prohibition on manufacture, import, sale, gift, loan, or possession of shobi-zue	27
§ 20790. Shobi-zue constituting nuisance	28
Article 6. Undetectable Knife	28
§ 20810. Restrictions relating to undetectable knife.....	28
§ 20815. Undetectable knife for law enforcement or military entity	28
§ 20820. Undetectable knife for historical society, museum, or institutional collection open to public	29
Article 7. Writing Pen Knife	29
§ 20910. Prohibition on manufacture, import, sale, gift, loan, or possession of writing pen knife	29
§ 20990. Writing pen knife constituting nuisance	29
CHAPTER 3. BALLISTIC KNIFE	30
§ 21110. Prohibition on manufacture, import, sale, gift, loan, or possession of ballistic knife.....	30
§ 21190. Ballistic knife constituting nuisance	30
CHAPTER 4. DIRK OR DAGGER.....	30
§ 21310. Carrying concealed dirk or dagger	30
§ 21390. Concealed dirk or dagger constituting nuisance.....	30
CHAPTER 5. SWITCHBLADE KNIFE.....	31
§ 21510. Restrictions relating to switchblade knife.....	31
§ 21590. Switchblade knife constituting nuisance.....	31
DIVISION 6. KNUCKLES	31
CHAPTER 1. HARD PLASTIC KNUCKLES.....	31
§ 21710. Restrictions relating to hard plastic knuckles	31
CHAPTER 2. METAL KNUCKLES.....	31

§ 21810. Prohibition on manufacture, import, sale, gift, loan, or possession of metal knuckles	31
§ 21890. Metal knuckles constituting nuisance	32
DIVISION 7. NUNCHAKU.....	32
§ 22010. Prohibition on manufacture, import, sale, gift, loan, or possession of nunchaku	32
§ 22015. Nunchaku for school teaching arts of self-defense	32
§ 22090. Nunchaku constituting nuisance.....	33
DIVISION 8. SAPS AND SIMILAR WEAPONS	33
§ 22210. Prohibition on manufacture, import, sale, gift, loan, or possession of leaded cane, blackjack, slungshot, billy, sandclub, sap, or sandbag.....	33
§ 22215. Exemption relating to wooden clubs or batons for special police officers or uniformed security guards	33
§ 22290. Leaded cane, blackjack, slungshot, billy, sandclub, sap, or sandbag constituting nuisance	34
§ 22295. Wooden club or baton for law enforcement purposes	34
DIVISION 9. SHURIKEN	35
§ 22410. Prohibition on manufacture, import, sale, gift, loan, or possession of shuriken	35
§ 22490. Shuriken constituting nuisance.....	35
DIVISION 10. STUN GUN	35
§ 22610. Unlawful acts relating to stun gun.....	35
§ 22615. Serial number and name of manufacturer.....	36
§ 22620. Violation punishable as misdemeanor	36
§ 22625. Instruction booklet for stun gun	36
DIVISION 11. TEAR GAS AND TEAR GAS WEAPONS	37
CHAPTER 1. GENERAL PROVISIONS	37
§ 22810. Lawful and unlawful acts relating to tear gas and tear gas weapons	37
§ 22815. Minor 16-years-old or older.....	38
§ 22820. Peace officer trained in use of tear gas	38
§ 22825. Custodial officer of county	38
§ 22830. Member of military or federal law enforcement officer	39
§ 22835. Private investigator or private patrol operator or employee	39
§ 22840. Tear gas or tear gas weapons in prison, jail, or similar institution.....	39
CHAPTER 2. UNLAWFUL POSSESSION, SALE, OR TRANSPORTATION.....	39
§ 22900. Unlawful sale, possession, or transportation of tear gas or tear gas weapon.....	39
§ 22905. Affixation of serial number and name of manufacturer.....	40
§ 22910. Obliteration of serial number, name of manufacturer, or other identification mark.....	40
CHAPTER 3. PERMITS	40
§ 23000. Permit issued by Department of Justice.....	40
§ 23005. Permit application	40
§ 23010. Permit fees and renewal process	41
§ 23015. Permit for bank or other financial institution	41
§ 23020. Storage of permit.....	42
§ 23025. Revocation or suspension of permit.....	42
TITLE 4. FIREARMS.....	42
DIVISION 1. PRELIMINARY PROVISIONS	42
§ 23500. Dangerous Weapons Control Law	42
§ 23505. Severability	42
§ 23510. Distinct and separate offense despite reference to “any firearm”	42
§ 23515. Violent use of firearm	43
DIVISION 2. FIREARM SAFETY DEVICES, GUN SAFES, AND RELATED WARNINGS	43
§ 23620. Aroner-Scott-Hayden Firearms Safety Act of 1999.....	43
§ 23625. Legislative findings.....	43

§ 23630. Limitations on application	44
§ 23635. Firearm safety device requirement, warning requirement for noncomplying long-gun safe, and warning described in Section 23640	44
§ 23640. Warning label	46
§ 23645. Punishment for violation of Section 23635 or 23640	47
§ 23650. Minimum safety standard for firearm safety devices and gun safes	47
§ 23655. Testing of firearm safety devices	48
§ 23660. Sale, distribution, or manufacture of unlisted or noncomplying firearm safety device	48
§ 23665. Sale or manufacture of noncomplying long-gun safe	49
§ 23670. Punishment for violation of Section 23660 or 23665	49
§ 23675. Effect of compliance	50
§ 23680. Recall, replacement, or correction of nonconforming device	50
§ 23685. Report of incident in which child suffers unintentional or self-inflicted gunshot wound.....	50
§ 23690. Fee	50
DIVISION 3. DISGUISED OR MISLEADING APPEARANCE.....	51
CHAPTER 1. MISCELLANEOUS PROVISIONS	51
§ 23800. Bright orange or bright green firearm	51
CHAPTER 2. OBLITERATION OF IDENTIFICATION MARKS.....	51
§ 23900. Obliteration of firearm identification marks prohibited.....	51
§ 23905. Presumption	51
§ 23910. Assignment of number or mark when firearm lacks one.....	52
§ 23915. Additional number or identifying indicium.....	52
§ 23920. Possession, sale, or purchase of firearm with knowledge of obliteration of identifying number or mark	52
§ 23925. Exemptions	53
CHAPTER 3. CAMOUFLAGING FIREARM CONTAINER.....	53
§ 24310. Prohibition on manufacture, import, sale, gift, loan, or possession of camouflaging firearm container	53
§ 24390. Camouflaging firearm container constituting nuisance	54
CHAPTER 4. CANE GUN	54
§ 24410. Prohibition on manufacture, import, sale, gift, loan, or possession of cane gun.....	54
§ 24490. Cane gun constituting nuisance	54
CHAPTER 5. FIREARM NOT IMMEDIATELY RECOGNIZABLE AS A FIREARM.....	54
§ 24510. Prohibition on manufacture, import, sale, gift, loan, or possession of firearm not immediately recognizable as firearm	54
§ 24590. Firearm not immediately recognizable as such constitutes nuisance.....	55
CHAPTER 6. UNDETECTABLE FIREARM AND FIREARM DETECTION EQUIPMENT	55
§ 24610. Prohibition on manufacture, import, sale, gift, loan, or possession of undetectable firearm.....	55
§ 24680. Firearm detection equipment	55
§ 24690. Undetectable firearm constituting nuisance.....	56
CHAPTER 8. WALLET GUN	56
§ 24710. Prohibition on manufacture, import, sale, gift, loan, or possession of wallet gun.....	56
§ 24790. Wallet gun constituting nuisance	56

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.

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

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

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

TITLE 2. WEAPONS GENERALLY

DIVISION 1. MISCELLANEOUS RULES RELATING TO WEAPONS GENERALLY

§ 17500. Bearing deadly weapon with intent to assault

17500. Every person having upon the person any deadly weapon, with intent to assault another, is guilty of a misdemeanor.

Comment. Section 17500 continues former Section 12024 without substantive change.

§ 17505. Advertising sale of prohibited weapon or device

17505. It shall be unlawful for any person, as defined in [Section 12277], to advertise the sale of any weapon or device, the possession of which is prohibited by [Section 12020, 12220, 12280, 12303, 12320, 12321, 12355, or 12520], in any newspaper, magazine, circular, form letter, or open publication that is published, distributed, or circulated in this state, or on any billboard, card, label, or other advertising medium, or by means of any other advertising device.

Comment. Section 17505 continues former Section 12020.5 without substantive change.

§ 17510. Picketing with deadly weapon

17510. (a) Any person who does any of the following acts while engaged in picketing, or other informational activities in a public place relating to a concerted refusal to work, is guilty of a misdemeanor:

(1) Carries concealed upon the person, or within any vehicle which is under the person’s control or direction, any pistol, revolver, or other firearm capable of being concealed upon the person.

(2) Carries a loaded firearm upon the person or within any vehicle that is under the person’s control or direction.

(3) Carries a deadly weapon.

(b) This section shall not be construed to authorize or ratify any picketing or other informational activities not otherwise authorized by law.

1 (c) [Section 12027] shall not be construed to authorize any conduct described in
2 paragraph (1) of subdivision (a), nor shall [subdivision (b) of Section 12031] be
3 construed to authorize any conduct described in paragraph (2) of subdivision (a).

4 **Comment.** Subdivision (a) of Section 17510 continues former Section 12590(a)(1)-(3) without
5 substantive change.

6 With respect to the acts enumerated in subdivision (a), subdivision (b) continues former
7 Section 12590(b) without substantive change. See also Section 830.95(b), which continues former
8 Section 12590(b) with respect to picketing in the uniform of a peace officer.

9 Subdivision (c) continues former Section 12590(c) without substantive change.

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

12 § 17515. Officer carrying equipment authorized for enforcement of law or ordinance

13 17515. Nothing in [this chapter] prohibits a police officer, special police officer,
14 peace officer, or law enforcement officer from carrying any equipment authorized
15 for the enforcement of law or ordinance in any city or county.

16 **Comment.** With respect to “any equipment authorized for the enforcement of law or ordinance
17 in any city or county,” Section 17515 continues former Section 12002(a) without substantive
18 change. The remainder of former Section 12002(a) is continued in Section 22295(a) without
19 substantive change.

20 DIVISION 2. GENERALLY PROHIBITED WEAPONS

21 CHAPTER 1. EXEMPTIONS

22 § 17700. Exemption for antique firearm

23 17700. The provisions listed in Section 16590 do not apply to any antique
24 firearm.

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

27 See Section 16170 (“antique firearm”).

28 § 17705. Exemption for firearm or ammunition constituting curio or relic

29 17705. (a) The provisions listed in Section 16590 do not apply to any firearm or
30 ammunition that is a curio or relic as defined in Section 478.11 of Title 27 of the
31 Code of Federal Regulations and that is in the possession of a person permitted to
32 possess the items under Chapter 44 (commencing with Section 921) of Title 18 of
33 the United States Code and the regulations issued pursuant thereto.

34 (b) Any person prohibited by [Section 12021, 12021.1, or 12101 of this code] or
35 Section 8100 or 8103 of the Welfare and Institutions Code from possessing
36 firearms or ammunition who obtains title to these items by bequest or intestate
37 succession may retain title for not more than one year, but actual possession of
38 these items at any time is punishable under [Section 12021, 12021.1, or 12101 of
39 this code] or Section 8100 or 8103 of the Welfare and Institutions Code. Within
40 the year, the person shall transfer title to the firearms or ammunition by sale, gift,

1 or other disposition. The exemption provided by subdivision (a) does not apply to
2 any person who violates this subdivision.

3 **Comment.** Section 17705 continues former Section 12020(b)(7) without substantive change.
4 See Section 16520 (“firearm”).

5 **§ 17710. Exemption for “any other weapon” in possession of person permitted to possess it**
6 **under federal Gun Control Act of 1968**

7 17710. (a) The provisions listed in Section 16590 do not apply to “any other
8 weapon” as defined in subsection (e) of Section 5845 of Title 26 of the United
9 States Code, which is in the possession of a person permitted to possess the
10 weapons under the federal Gun Control Act of 1968 (Public Law 90-618), as
11 amended, and the regulations issued pursuant thereto.

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

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

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

23 **§ 17715. Exemption for historical society, museum, or institutional collection**

24 17715. The provisions listed in Section 16590 do not apply to any instrument or
25 device that is possessed by a federal, state, or local historical society, museum, or
26 institutional collection that is open to the public if all of the following conditions
27 are satisfied:

28 (a) The instrument or device is properly housed.

29 (b) The instrument or device is secured from unauthorized handling.

30 (c) If the instrument or device is a firearm, it is unloaded.

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

33 **§ 17720. Exemption for motion picture, television, video production, or entertainment event**

34 17720. The provisions listed in Section 16590 do not apply to any instrument or
35 device, other than a short-barreled rifle or a short-barreled shotgun, which is
36 possessed or used during the course of a motion picture, television, or video
37 production or entertainment event by an authorized participant therein in the
38 course of making that production or event or by an authorized employee or agent
39 of the entity producing that production or event.

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

1 **§ 17725. Exemption for person who sells to historical society, museum, or institutional**
2 **collection, or for purposes of entertainment event**

3 17725. The provisions listed in Section 16590 do not apply to any instrument or
4 device, other than a short-barreled rifle or a short-barreled shotgun, which is sold
5 by, manufactured by, exposed or kept for sale by, possessed by, imported by, or
6 lent by a person who is in the business of selling instruments or devices listed in
7 Section 16590 solely to the entities referred to in Sections 17715 and 17720 when
8 engaging in transactions with those entities.

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

11 **§ 17730. Exemption for law enforcement or person who sells to law enforcement**

12 17730. The provisions listed in Section 16590 do not apply to any of the
13 following:

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

18 (b) The possession of any weapon, device, or ammunition, other than a short-
19 barreled rifle or short-barreled shotgun, by any peace officer of any federal, state,
20 county, city and county, or city agency that is charged with the enforcement of any
21 law, when the officer is on duty and the use is authorized by the agency and is
22 within the course and scope of the officer’s duties.

23 (c) Any weapon, device, or ammunition, other than a short-barreled rifle or a
24 short-barreled shotgun, that is sold by, manufactured by, exposed or kept for sale
25 by, possessed by, imported by, or lent by, any person who is in the business of
26 selling weapons, devices, and ammunition listed in Section 16590 solely to the
27 entities referred to in subdivision (a) when engaging in transactions with those
28 entities.

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

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

32 See Sections 17170 (“short-barreled rifle”), 17180 (“short-barreled shotgun”).

33 **§ 17735. Exemption for transportation of non-firearm to law enforcement for disposition**
34 **according to law**

35 17735. The provisions listed in Section 16590 do not apply to any instrument,
36 ammunition, weapon, or device that is not a firearm and is found and possessed by
37 a person who meets all of the following:

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

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

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

6 **Comment.** Section 17735 continues former Section 12020(b)(16) without substantive change.
7 See Section 16520 ("firearm").

8 **§ 17740. Exemption for transportation of firearm to law enforcement for disposition**
9 **according to law**

10 17740. The provisions listed in Section 16590 do not apply to any firearm, other
11 than a short-barreled rifle or short-barreled shotgun, which is found and possessed
12 by a person who meets all of the following:

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

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

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

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

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

26 **Comment.** Section 17740 continues former Section 12020(b)(17) without substantive change.
27 See Sections 16520 ("firearm"), 16850 ("locked container"), 17170 ("short-barreled rifle"),
28 17180 ("short-barreled shotgun").

29 **§ 17745. Exemption for possession by forensic laboratory**

30 17745. The provisions listed in Section 16590 do not apply to the possession of
31 any weapon, device, or ammunition by a forensic laboratory or by any authorized
32 agent or employee thereof in the course and scope of the person's authorized
33 activities.

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

35 **CHAPTER 2. MISCELLANEOUS PROVISIONS**

36 **§ 17800. Distinct and separate offense**

37 17800. For purposes of the provisions listed in Section 16590, a violation as to
38 each firearm, weapon, or device enumerated in any of those provisions shall
39 constitute a distinct and separate offense.

1 **Comment.** Section 17800 continues former Section 12001(l) without substantive change.
2 See Section 16520 (“firearm”).

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

5 **§ 18000. Surrender of specified weapons constituting nuisance**

6 18000. (a) Any weapon described in [Section 12028(a)], or, upon conviction of
7 the defendant or upon a juvenile court finding that an offense that would be a
8 misdemeanor or felony if committed by an adult was committed or attempted by
9 the juvenile with the use of a firearm, any weapon described in [Section
10 12028(b)], shall be surrendered to one of the following:

11 (1) The sheriff of a county.

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

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

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

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

20 **Comment.** Subdivision (a) of Section 18000 continues the first sentence of former Section
21 12028(c) without substantive change.

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

24 See Section 16520 (“firearm”).

25 **§ 18005. Disposal of weapons constituting nuisance**

26 18005. (a) An officer to whom weapons are surrendered under Section 18000,
27 except upon the certificate of a judge of a court of record, or of the district
28 attorney of the county, that the retention thereof is necessary or proper to the ends
29 of justice, may annually, between the 1st and 10th days of July, in each year, offer
30 the weapons, which the officer in charge of them considers to have value with
31 respect to sporting, recreational, or collection purposes, for sale at public auction
32 to persons licensed pursuant to [Section 12071] to engage in businesses involving
33 any weapon purchased.

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

1 (c) If, under this section, a weapon is not of the type that can be sold to the
2 public, generally, or is not sold under subdivision (b), the weapon, in the month of
3 July, next succeeding, or sooner, if necessary to conserve local resources,
4 including space and utilization of personnel who maintain files and security of
5 those weapons, shall be destroyed so that it can no longer be used as a weapon
6 subject to surrender under Section 18000, except upon the certificate of a judge of
7 a court of record, or of the district attorney of the county, that the retention of it is
8 necessary or proper to the ends of justice.

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

12 **Comment.** Subdivision (a) of Section 18005 continues the third sentence of former Section
13 12028(c) without substantive change.

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

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

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

18 § 18010. Treatment of other weapons constituting nuisance

19 18010. (a) The Attorney General, district attorney, or city attorney may bring an
20 action to enjoin the manufacture of, importation of, keeping for sale of, offering or
21 exposing for sale, giving, lending, or possession of, any item that constitutes a
22 nuisance under [Section 12029].

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

25 (c) These weapons shall be destroyed in the same manner described in Section
26 18005, except that upon the certification of a judge or of the district attorney that
27 the ends of justice will be served thereby, the weapon shall be preserved until the
28 necessity for its use ceases.

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

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

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

35 DIVISION 4. SEIZURE OF FIREARM OR OTHER DEADLY 36 WEAPON AT SCENE OF DOMESTIC VIOLENCE

37 CHAPTER 1. SEIZURE AND SUBSEQUENT PROCEDURES

38 § 18250. Seizure of firearm or other deadly weapon at scene of domestic violence

39 18250. If any of the following persons is at the scene of a domestic violence
40 incident involving a threat to human life or a physical assault, that person shall

1 take temporary custody of any firearm or other deadly weapon in plain sight or
2 discovered pursuant to a consensual or other lawful search as necessary for the
3 protection of the peace officer or other persons present:

4 (a) A sheriff, undersheriff, deputy sheriff, marshal, deputy marshal, or police
5 officer of a city, as defined in subdivision (a) of Section 830.1.

6 (b) A peace officer of the Department of the California Highway Patrol, as
7 defined in subdivision (a) of Section 830.2.

8 (c) A member of the University of California Police Department, as defined in
9 subdivision (b) of Section 830.2.

10 (d) An officer listed in Section 830.6, while acting in the course and scope of the
11 officer's employment as a peace officer.

12 (e) A member of a California State University Police Department, as defined in
13 subdivision (c) of Section 830.2.

14 (f) A peace officer of the Department of Parks and Recreation, as defined in
15 subdivision (f) of Section 830.2.

16 (g) A peace officer, as defined in subdivision (d) of Section 830.31.

17 (h) A peace officer, as defined in subdivisions (a) and (b) of Section 830.32.

18 (i) A peace officer, as defined in Section 830.5.

19 **Comment.** Section 18250 continues the first sentence of former Section 12028.5(b) without
20 substantive change.

21 For what constitutes a domestic violence incident, see Sections 16120 ("abuse"), 16490
22 ("domestic violence"). For what constitutes a deadly weapon, see Section 16430 ("deadly
23 weapon"); see also Section 16520 ("firearm").

24 See Sections 18255 (receipt for weapon), 18260 (delivery of deadly weapon seized by peace
25 officer for community college or school district), 18265 (holding period), 18270 (return of stolen
26 weapon), 18275 (sale or destruction of deadly weapon held longer than one year), 18500 (no
27 liability for act in good faith under this division). For procedures applicable when a law
28 enforcement agency has reasonable cause to believe that return of a weapon would endanger the
29 victim of a domestic violence incident or a person who reported the incident, see Sections 18400-
30 18420.

31 **§ 18255. Receipt for weapon**

32 18255. (a) Upon taking custody of a firearm or other deadly weapon pursuant to
33 this division, the officer shall give the owner or person who possessed the firearm
34 a receipt.

35 (b) The receipt shall describe the firearm or other deadly weapon and list any
36 identification or serial number on the firearm.

37 (c) The receipt shall indicate where the firearm or other deadly weapon can be
38 recovered, the time limit for recovery as required by this division, and the date
39 after which the owner or possessor can recover the firearm or other deadly
40 weapon.

41 **Comment.** Subdivision (a) of Section 18255 continues the second sentence of former Section
42 12028.5(b) without substantive change.

43 Subdivision (b) continues the third sentence of former Section 12028.5(b) without substantive
44 change.

1 Subdivision (c) continues the fourth sentence of former Section 12028.5(b) without substantive
2 change.

3 For what constitutes a deadly weapon, see Section 16430 (“deadly weapon”). See also Section
4 16520 (“firearm”).

5 See Sections 18250 (seizure of firearm or other deadly weapon at scene of domestic violence),
6 18260 (delivery of deadly weapon seized by peace officer for community college or school
7 district), 18265 (holding period), 18270 (return of stolen weapon), 18275 (sale or destruction of
8 deadly weapon held longer than one year), 18500 (no liability for act in good faith under this
9 division). For procedures applicable when a law enforcement agency has reasonable cause to
10 believe that return of a weapon would endanger the victim of a domestic violence incident or a
11 person who reported the incident, see Sections 18400-18420.

12 **§ 18260. Delivery of deadly weapon seized by peace officer for community college or school**
13 **district**

14 18260. Any peace officer, as defined in subdivisions (a) and (b) of Section
15 830.32, who takes custody of a firearm or deadly weapon pursuant to this division,
16 shall deliver the firearm within 24 hours to the city police department or county
17 sheriff’s office in the jurisdiction where the college or school is located.

18 **Comment.** Section 18260 continues former Section 12028.5(c) without substantive change.

19 For what constitutes a deadly weapon, see Section 16430 (“deadly weapon”). See also Section
20 16520 (“firearm”).

21 See Sections 18250 (seizure of firearm or other deadly weapon at scene of domestic violence),
22 18255 (receipt for weapon), 18265 (holding period), 18270 (return of stolen weapon), 18275 (sale
23 or destruction of deadly weapon held longer than one year), 18500 (no liability for act in good
24 faith under this division). For procedures applicable when a law enforcement agency has
25 reasonable cause to believe that return of a weapon would endanger the victim of a domestic
26 violence incident or a person who reported the incident, see Sections 18400-18420.

27 **§ 18265. Holding period**

28 18265. (a) No firearm or other deadly weapon taken into custody pursuant to
29 this division shall be held less than 48 hours.

30 (b) Except as provided in 18400, if a firearm or other deadly weapon is not
31 retained for use as evidence related to criminal charges brought as a result of the
32 domestic violence incident or is not retained because it was illegally possessed, the
33 firearm or other deadly weapon shall be made available to the owner or person
34 who was in lawful possession 48 hours after the seizure, or as soon thereafter as
35 possible, but no later than five business days after the owner or person who was in
36 lawful possession demonstrates compliance with [Section 12021.3].

37 (c) In any civil action or proceeding for the return of firearms or ammunition or
38 other deadly weapon seized by any state or local law enforcement agency and not
39 returned within five business days after the initial seizure, except as provided in
40 Section 18270, the court shall allow reasonable attorney’s fees to the prevailing
41 party.

42 **Comment.** Subdivision (a) of Section 18265 continues the fifth sentence of former Section
43 12028.5(b) without substantive change.

44 Subdivision (b) continues the sixth sentence of former Section 12028.5(b) without substantive
45 change.

1 Subdivision (c) continues the seventh sentence of former Section 12028.5(b) without
2 substantive change.

3 For what constitutes a domestic violence incident, see Sections 16120 (“abuse”), 16490
4 (“domestic violence”). For what constitutes a deadly weapon, see Section 16430 (“deadly
5 weapon”); see also Section 16520 (“firearm”).

6 See Sections 18250 (seizure of firearm or other deadly weapon at scene of domestic violence),
7 18255 (receipt for weapon), 18260 (delivery of deadly weapon seized by peace officer for
8 community college or school district), 18270 (return of stolen weapon), 18275 (sale or
9 destruction of deadly weapon held longer than one year), 18500 (no liability for act in good faith
10 under this division). For procedures applicable when a law enforcement agency has reasonable
11 cause to believe that return of a weapon would endanger the victim of a domestic violence
12 incident or a person who reported the incident, see Sections 18400-18420.

13 **§ 18270. Return of stolen weapon**

14 18270. If a firearm or other deadly weapon has been stolen and has been seized
15 pursuant to this division, it shall be restored to the lawful owner upon satisfaction
16 of all of the following conditions:

17 (a) Its use for evidence has been served.

18 (b) The owner identifies the firearm or other deadly weapon and provides proof
19 of ownership.

20 (c) The law enforcement agency has complied with [Section 12021.3].

21 **Comment.** Section 18270 continues former Section 12028.5(d) without substantive change.

22 For what constitutes a deadly weapon, see Section 16430 (“deadly weapon”); see also Section
23 16520 (“firearm”).

24 See Sections 18250 (seizure of firearm or other deadly weapon at scene of domestic violence),
25 18255 (receipt for weapon), 18260 (delivery of deadly weapon seized by peace officer for
26 community college or school district), 18265 (holding period), 18275 (sale or destruction of
27 deadly weapon held longer than one year), 18500 (no liability for act in good faith under this
28 division). For procedures applicable when a law enforcement agency has reasonable cause to
29 believe that return of a weapon would endanger the victim of a domestic violence incident or a
30 person who reported the incident, see Sections 18400-18420.

31 **§ 18275. Sale or destruction of deadly weapon held longer than one year**

32 18275. (a) Any firearm or other deadly weapon that has been taken into custody
33 and held by any of the following law enforcement authorities for longer than 12
34 months, and has not been recovered by the owner or person who had lawful
35 possession at the time it was taken into custody, shall be considered a nuisance
36 and sold or destroyed as provided in Section 18005:

37 (1) A police, university police, or sheriff’s department.

38 (2) A marshal’s office.

39 (3) A peace officer of the Department of the California Highway Patrol, as
40 defined in subdivision (a) of Section 830.2.

41 (4) A peace officer of the Department of Parks and Recreation, as defined in
42 subdivision (f) of Section 830.2.

43 (5) A peace officer, as defined in subdivision (d) of Section 830.31.

44 (6) A peace officer, as defined in Section 830.5.

1 (b) If a firearm or other deadly weapon is not recovered within 12 months due to
2 an extended hearing process as provided in Section 18420, it is not subject to
3 destruction until the court issues a decision, and then only if the court does not
4 order the return of the firearm or other deadly weapon to the owner.

5 **Comment.** Section 18275 continues former Section 12028.5(e) without substantive change.

6 For what constitutes a deadly weapon, see Section 16430 (“deadly weapon”); see also Section
7 16520 (“firearm”).

8 See Sections 18250 (seizure of firearm or other deadly weapon at scene of domestic violence),
9 18255 (receipt for weapon), 18260 (delivery of deadly weapon seized by peace officer for
10 community college or school district), 18265 (holding period), 18270 (return of stolen weapon),
11 18500 (no liability for act in good faith under this division). For procedures applicable when a
12 law enforcement agency has reasonable cause to believe that return of a weapon would endanger
13 the victim of a domestic violence incident or a person who reported the incident, see Sections
14 18400-18420.

15 CHAPTER 2. PROCEDURE WHERE AGENCY BELIEVES RETURN OF
16 WEAPON WOULD CREATE DANGER

17 **§ 18400. Petition to determine whether weapon should be returned**

18 18400. (a) When a law enforcement agency has reasonable cause to believe that
19 the return of a firearm or other deadly weapon seized under this division would be
20 likely to result in endangering the victim or the person who reported the assault or
21 threat, the agency shall so advise the owner of the firearm or other deadly weapon,
22 and within 60 days of the date of seizure, initiate a petition in superior court to
23 determine if the firearm or other deadly weapon should be returned.

24 (b) The law enforcement agency may make an ex parte application stating good
25 cause for an order extending the time to file a petition.

26 (c) Including any extension of time granted in response to an ex parte request, a
27 petition must be filed within 90 days of the date of seizure of the firearm or other
28 deadly weapon.

29 **Comment.** Section 18400 continues former Section 12028.5(f) without substantive change.

30 For what constitutes a deadly weapon, see Section 16430 (“deadly weapon”); see also Section
31 16520 (“firearm”).

32 See Sections 18405 (notice of petition), 18410 (hearing on petition), 18415 (order of default),
33 18420 (petition for second hearing).

34 See also Sections 18250 (seizure of firearm or other deadly weapon at scene of domestic
35 violence), 18255 (receipt for weapon), 18260 (delivery of deadly weapon seized by peace officer
36 for community college or school district), 18265 (holding period), 18270 (return of stolen
37 weapon), 18275 (sale or destruction of deadly weapon held longer than one year), 18500 (no
38 liability for act in good faith under this division).

39 **§ 18405. Notice of petition**

40 18405. If a petition is filed under Section 18400, the law enforcement agency
41 shall inform the owner or person who had lawful possession of the firearm or other
42 deadly weapon, at that person’s last known address, by registered mail, return
43 receipt requested, that the person has 30 days from the date of receipt of the notice

1 to respond to the court clerk to confirm the person’s desire for a hearing, and that
2 the failure to respond shall result in a default order forfeiting the confiscated
3 firearm or other deadly weapon.

4 (b) For purposes of this section, the person’s last known address shall be
5 presumed to be the address provided to the law enforcement officer by that person
6 at the time of the family violence incident.

7 (c) In the event the person whose firearm or other deadly weapon was seized
8 does not reside at the last address provided to the agency, the agency shall make a
9 diligent, good faith effort to learn the whereabouts of the person and to comply
10 with these notification requirements.

11 **Comment.** Section 18405 continues former Section 12028.5(g) without substantive change.

12 For what constitutes a deadly weapon, see Section 16430 (“deadly weapon”); see also Section
13 16520 (“firearm”).

14 See Sections 18400 (petition to determine whether weapon should be returned), 18410 (hearing
15 on petition), 18415 (order of default), 18420 (petition for second hearing).

16 See also Sections 16120 (“abuse”), 16490 (“domestic violence”), 18250 (seizure of firearm or
17 other deadly weapon at scene of domestic violence), 18255 (receipt for weapon), 18260 (delivery
18 of deadly weapon seized by peace officer for community college or school district), 18265
19 (holding period), 18270 (return of stolen weapon), 18275 (sale or destruction of deadly weapon
20 held longer than one year), 18500 (no liability for act in good faith under this division).

21 **§ 18410. Hearing on petition**

22 18410. (a) If the person who receives a petition under Section 18405 requests a
23 hearing, the court clerk shall set a hearing no later than 30 days from receipt of
24 that request.

25 (b) The court clerk shall notify the person, the law enforcement agency
26 involved, and the district attorney of the date, time, and place of the hearing.

27 (c) Unless it is shown by a preponderance of the evidence that the return of the
28 firearm or other deadly weapon would result in endangering the victim or the
29 person reporting the assault or threat, the court shall order the return of the firearm
30 or other deadly weapon and shall award reasonable attorney’s fees to the
31 prevailing party.

32 **Comment.** Section 18410 continues former Section 12028.5(h) without substantive change.

33 For what constitutes a deadly weapon, see Section 16430 (“deadly weapon”); see also Section
34 16520 (“firearm”).

35 See Sections 18400 (petition to determine whether weapon should be returned), 18405 (notice
36 of petition), 18415 (order of default), 18420 (petition for second hearing).

37 See also Sections 16120 (“abuse”), 16490 (“domestic violence”), 18250 (seizure of firearm or
38 other deadly weapon at scene of domestic violence), 18255 (receipt for weapon), 18260 (delivery
39 of deadly weapon seized by peace officer for community college or school district), 18265
40 (holding period), 18270 (return of stolen weapon), 18275 (sale or destruction of deadly weapon
41 held longer than one year), 18500 (no liability for act in good faith under this division).

42 **§ 18415. Order of default**

43 18415. If the person who receives a petition under Section 18405 does not
44 request a hearing or does not otherwise respond within 30 days of the receipt of
45 the notice, the law enforcement agency may file a petition for an order of default

1 and may dispose of the firearm or other deadly weapon as provided in Section
2 18005.

3 **Comment.** Section 18415 continues former Section 12028.5(i) without substantive change.

4 For what constitutes a deadly weapon, see Section 16430 (“deadly weapon”); see also Section
5 16520 (“firearm”).

6 See Sections 18400 (petition to determine whether weapon should be returned), 18405 (notice
7 of petition), 18410 (hearing on petition), 18420 (petition for second hearing).

8 See also Sections 16120 (“abuse”), 16490 (“domestic violence”), 18250 (seizure of firearm or
9 other deadly weapon at scene of domestic violence), 18255 (receipt for weapon), 18260 (delivery
10 of deadly weapon seized by peace officer for community college or school district), 18265
11 (holding period), 18270 (return of stolen weapon), 18275 (sale or destruction of deadly weapon
12 held longer than one year), 18500 (no liability for act in good faith under this division).

13 **§ 18420. Petition for second hearing**

14 18420. (a) If, at a hearing under Section 18410, the court does not order the
15 return of the firearm or other deadly weapon to the owner or person who had
16 lawful possession, that person may petition the court for a second hearing within
17 12 months from the date of the initial hearing.

18 (b) If there is a petition for a second hearing, unless it is shown by clear and
19 convincing evidence that the return of the firearm or other deadly weapon would
20 result in endangering the victim or the person reporting the assault or threat, the
21 court shall order the return of the firearm or other deadly weapon and shall award
22 reasonable attorney’s fees to the prevailing party.

23 (c) If the owner or person who had lawful possession does not petition the court
24 within this 12-month period for a second hearing or is unsuccessful at the second
25 hearing in gaining return of the firearm or other deadly weapon, the firearm or
26 other deadly weapon may be disposed of as provided in Section 18005.

27 **Comment.** Section 18420 continues former Section 12028.5(j) without substantive change.

28 For what constitutes a deadly weapon, see Section 16430 (“deadly weapon”); see also Section
29 16520 (“firearm”).

30 See Sections 18400 (petition to determine whether weapon should be returned), 18405 (notice
31 of petition), 18410 (hearing on petition), 18415 (order of default).

32 See also Sections 18250 (seizure of firearm or other deadly weapon at scene of domestic
33 violence), 18255 (receipt for weapon), 18260 (delivery of deadly weapon seized by peace officer
34 for community college or school district), 18265 (holding period), 18270 (return of stolen
35 weapon), 18275 (sale or destruction of deadly weapon held longer than one year), 18500 (no
36 liability for act in good faith under this division).

37 **CHAPTER 3. LIABILITY**

38 **§ 18500. No liability for act in good faith under this division**

39 18500. The law enforcement agency, or the individual law enforcement officer,
40 shall not be liable for any act in the good faith exercise of this division.

41 **Comment.** Section 18500 continues former Section 12028.5(k) without substantive change.

1 DIVISION 5. DESTRUCTIVE DEVICES, EXPLOSIVES, AND
2 SIMILAR WEAPONS

3 CHAPTER 1. DESTRUCTIVE DEVICES AND EXPLOSIVES GENERALLY

4 Article 1. Prohibited Acts

5 **§ 18710. Unlawful possession of destructive device other than fixed ammunition greater**
6 **than .60 caliber**

7 18710. (a) Except as provided by this chapter, any person, firm, or corporation
8 who, within this state, possesses any destructive device, other than fixed
9 ammunition of a caliber greater than .60 caliber, is guilty of a public offense.

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

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

16 **§ 18715. Reckless or malicious possession of destructive device or explosive in public place**

17 18715. (a) Every person who recklessly or maliciously has in possession any
18 destructive device or any explosive in any of the following places is guilty of a
19 felony:

20 (1) On a public street or highway.

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

23 (3) In or near any private habitation.

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

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

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

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

31 **§ 18720. Possession of materials with intent to create destructive device or explosive**

32 18720. Every person who possesses any substance, material, or any combination
33 of substances or materials, with the intent to make any destructive device or any
34 explosive without first obtaining a valid permit to make that destructive device or
35 explosive, is guilty of a felony, and is punishable by imprisonment in the state
36 prison for two, three, or four years.

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

1 **§ 18725. Destructive device or explosive on vessel, aircraft, or other vehicle**

2 18725. Every person who willfully does any of the following is guilty of a
3 felony and is punishable by imprisonment in the state prison for two, four, or six
4 years:

5 (a) Carries any destructive device or any explosive on any vessel, aircraft, car, or
6 other vehicle that transports passengers for hire.

7 (b) While on board any vessel, aircraft, car, or other vehicle that transports
8 passengers for hire, places or carries any destructive device or any explosive in
9 any hand baggage, roll, or other container.

10 (c) Places any destructive device or any explosive in any baggage that is later
11 checked with any common carrier.

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

14 **§ 18730. Sale or transportation of destructive device other than fixed ammunition greater**
15 **than .60 caliber**

16 18730. Except as provided by this chapter, any person, firm, or corporation who,
17 within this state, sells, offers for sale, or knowingly transports any destructive
18 device, other than fixed ammunition of a caliber greater than .60 caliber, is guilty
19 of a felony and is punishable by imprisonment in the state prison for two, three, or
20 four years.

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

23 **§ 18735. Sale, possession, or transport of fixed ammunition greater than .60 caliber**

24 18735. (a) Except as provided by this chapter, any person, firm, or corporation
25 who, within this state, sells, offers for sale, possesses or knowingly transports any
26 fixed ammunition of a caliber greater than .60 caliber is guilty of a public offense.

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

31 (c) A second or subsequent conviction shall be punished by imprisonment in the
32 county jail for a term not to exceed one year, or by imprisonment in the state
33 prison, or by a fine not to exceed three thousand dollars (\$3,000), or by both this
34 fine and imprisonment.

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

36 **§ 18740. Use or attempted use of destructive device or explosive with intent to cause fear or**
37 **harm**

38 18740. Every person who possesses, explodes, ignites, or attempts to explode or
39 ignite any destructive device or any explosive with intent to injure, intimidate, or
40 terrify any person, or with intent to wrongfully injure or destroy any property, is

1 guilty of a felony, and shall be punished by imprisonment in the state prison for a
2 period of three, five, or seven years.

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

5 **§ 18745. Use or attempted use of destructive device or explosive with intent to commit**
6 **murder**

7 18745. Every person who explodes, ignites, or attempts to explode or ignite any
8 destructive device or any explosive with intent to commit murder is guilty of a
9 felony, and shall be punished by imprisonment in the state prison for life with the
10 possibility of parole.

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

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

15 18750. Every person who willfully and maliciously explodes or ignites any
16 destructive device or any explosive that causes bodily injury to a person is guilty
17 of a felony, and shall be punished by imprisonment in the state prison for a period
18 of five, seven, or nine years.

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

21 **§ 18755. Willful and malicious use of destructive device or explosive resulting in death,**
22 **mayhem, or great bodily injury**

23 18755. (a) Every person who willfully and maliciously explodes or ignites any
24 destructive device or any explosive that causes the death of any person is guilty of
25 a felony, and shall be punished by imprisonment in the state prison for life without
26 the possibility of parole.

27 (b) Every person who willfully and maliciously explodes or ignites any
28 destructive device or any explosive that causes mayhem or great bodily injury to
29 any person is guilty of a felony, and shall be punished by imprisonment in the state
30 prison for life.

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

33 **§ 18780. No probation or suspension of sentence**

34 18780. A person convicted of a violation of this chapter shall not be granted
35 probation, and the execution of the sentence imposed upon that person shall not be
36 suspended by the court.

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

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Article 2. Exemptions

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

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

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

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

(b) Nothing in this chapter prohibits the sale to, or the purchase, possession, transportation, storage, or use by any person who is a regularly employed and paid officer, employee, or member of a fire department or fire protection or firefighting agency of the federal government, the State of California, a city, county, city and county, district, or other public or municipal corporation or political subdivision of this state, while on duty and acting within the scope and course of employment, of any equipment used by that department or agency in the course of fire suppression.

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

Article 3. Permit and Inspection

§ 18900. Permit for destructive device

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

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

(1) Has been convicted of any felony.

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

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

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

(1) It shall be filed in writing.

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

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

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

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

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

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

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

8 See Section 16460 (“destructive device”).

9 **§ 18905. Permit fees and renewal process**

10 18905. (a) Each applicant for a permit under this article shall pay at the time of
11 filing the application a fee not to exceed the application processing costs of the
12 Department of Justice.

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

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

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

21 **§ 18910. Inspection by Department of Justice**

22 18910. (a) Except as provided in subdivision (b), the Department of Justice
23 shall, for every person, firm, or corporation to whom a permit is issued under this
24 article, annually conduct an inspection for security and safe storage purposes, and
25 to reconcile the inventory of destructive devices.

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

30 **Comment.** Section 18910 continues former Section 12305(f)-(g) without substantive change.

31 See Section 16460 (“destructive device”).

32 **Article 4. Destructive Device Constituting Nuisance**

33 **§ 19000. Destructive device constituting nuisance**

34 19000. (a) Possession of any destructive device in violation of this chapter is a
35 public nuisance.

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

39 (c) Any destructive device found to be in violation of this chapter shall be
40 surrendered to the Department of Justice, or to the sheriff or chief of police, if the

1 sheriff or chief of police has elected to perform the services required by this
2 section. The department, sheriff, or chief of police shall destroy the destructive
3 device so as to render it unusable and unrepairable as a destructive device, except
4 upon the filing of a certificate with the department by a judge or district attorney
5 stating that the preservation of the destructive device is necessary to serve the ends
6 of justice.

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

9 CHAPTER 2. EXPLOSIVE SUBSTANCE OTHER THAN FIXED AMMUNITION

10 § 19100. Carrying concealed explosive substance other than fixed ammunition

11 19100. Except as provided in Chapter 1 (commencing with Section 17700) of
12 Division 2, any person in this state who carries concealed upon the person any
13 explosive substance, other than fixed ammunition, is punishable by imprisonment
14 in a county jail not exceeding one year or in the state prison.

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

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

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

20 § 19190. Concealed explosive substance constituting nuisance

21 19190. The unlawful concealed carrying upon the person of any explosive
22 substance other than fixed ammunition, as provided in Section 19100, is a
23 nuisance and is subject to Sections 18000 and 18005.

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

26 CHAPTER 3. HANDGRENADES

27 § 19200. Prohibition on manufacture, import, sale, gift, loan, or possession of metal military 28 practice handgrenade or metal replica handgrenade

29 19200. (a) Except as provided in Section 19205 and Chapter 1 (commencing
30 with Section 17700) of Division 2, any person in this state who manufactures or
31 causes to be manufactured, imports into the state, keeps for sale, or offers or
32 exposes for sale, or who gives, lends, or possesses any metal military practice
33 handgrenade or metal replica handgrenade is punishable by imprisonment in a
34 county jail not exceeding one year or in the state prison.

35 (b) Notwithstanding subdivision (a), a first offense involving any metal military
36 practice handgrenade or metal replica handgrenade shall be punishable only as an
37 infraction unless the offender is an active participant in a criminal street gang as

1 defined in the Street Terrorism and Enforcement and Prevention Act (Chapter 11
2 (commencing with Section 186.20) of Title 7 of Part 1).

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

6 Subdivision (b) continues the first sentence of the second paragraph of former Section
7 12020(a)(4) without substantive change.

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

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

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

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

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

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

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

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

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

31 **DIVISION 6. LESS LETHAL WEAPONS**

32 **§ 19400. Less lethal weapon or ammunition for official use by peace officer or custodial
33 officer**

34 19400. A person who is a peace officer or a custodial officer, as defined in
35 Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, may, if
36 authorized by and under the terms and conditions as are specified by the person’s
37 employing agency, purchase, possess, or transport any less lethal weapon or
38 ammunition for any less lethal weapon, for official use in the discharge of the
39 person’s duties.

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

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

1 TITLE 3. WEAPONS OTHER THAN FIREARMS

2 DIVISION 1. BB DEVICES

3 § 19910. Sale of BB device to minor

4 19910. Every person who sells any BB device to a minor is guilty of a
5 misdemeanor.

6 **Comment.** Section 19910 continues former Section 12551 without substantive change.
7 See Section 16250 (“BB device”).

8 § 19915. Furnishing BB device to minor without parental permission

9 19915. (a) Every person who furnishes any BB device to any minor, without the
10 express or implied permission of a parent or legal guardian of the minor, is guilty
11 of a misdemeanor.

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

13 (1) A loan.

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

15 **Comment.** Section 19915 continues former Section 12552 without substantive change.
16 See Section 16250 (“BB device”).

17 DIVISION 2. BLOWGUNS

18 § 20010 . Unlawful acts relating to blowguns or blowgun ammunition

19 20010. Any person who knowingly manufactures, sells, offers for sale,
20 possesses, or uses a blowgun or blowgun ammunition in this state is guilty of a
21 misdemeanor.

22 **Comment.** Section 20010 continues former Section 12582 without substantive change.

23 For circumstances in which this section is inapplicable, see Section 20015 (use of blowgun or
24 blowgun ammunition by veterinarian or animal control professional).

25 See Sections 16270 (“blowgun”), 16280 (“blowgun ammunition”).

26 § 20015. Use of blowgun or blowgun ammunition by veterinarian or animal control
27 professional

28 20015. Nothing in this division shall prohibit the sale to, purchase by,
29 possession of, or use of any blowgun or blowgun ammunition by zookeepers,
30 animal control officers, Department of Fish and Game personnel, humane officers
31 whose names are maintained in the county record of humane officers pursuant to
32 Section 14502 of the Corporations Code, or veterinarians in the course and scope
33 of their business in order to administer medicine to animals.

34 **Comment.** Section 20015 continues former Section 12583 without substantive change.
35 See Sections 16270 (“blowgun”), 16280 (“blowgun ammunition”).

1

DIVISION 3. BOOBYTRAP

2 **§ 20110. Boobytrap**

3 20110. (a) Except as provided in Chapter 1 (commencing with Section 18710)
4 of Division 5 of Title 2, any person who assembles, maintains, places, or causes to
5 be placed a boobytrap device is guilty of a felony punishable by imprisonment in
6 the state prison for two, three, or five years.

7 (b) Possession of any device with the intent to use the device as a boobytrap is
8 punishable by imprisonment in state prison, or in a county jail not exceeding one
9 year, or by a fine not exceeding five thousand dollars (\$5,000), or by both that fine
10 and imprisonment.

11 **Comment.** Section 20110 continues subdivisions (a) and (b) of former Section 12355 without
12 substantive change.

13 See Section 16310 (“boobytrap”).

14

DIVISION 4. IMITATION FIREARMS

15 **§ 20150. Consequences of making imitation firearm or specified device look more like**
16 **firearm**

17 20150. (a) Any person who changes, alters, removes, or obliterates any
18 coloration or markings that are required by any applicable state or federal law or
19 regulation, for any imitation firearm, or any device described in [subdivision (c) of
20 Section 12555], in a way that makes the imitation firearm or device look more like
21 a firearm, is guilty of a misdemeanor.

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

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

26 **Comment.** Section 20150 continues former Section 12553(a) without substantive change.

27 See Sections 16520 (“firearm”), 16700 (“imitation firearm”).

28 **§ 20155. Failure to comply with federal law or regulation on marking of toy, look-alike, or**
29 **imitation firearm**

30 20155. Any manufacturer, importer, or distributor of imitation firearms that fails
31 to comply with any applicable federal law or regulation governing the marking of
32 a toy, look-alike, or imitation firearm, as defined by federal law or regulation, is
33 guilty of a misdemeanor.

34 **Comment.** Section 20155 continues former Section 12553(b) without substantive change.

35 See Section 16700 (“imitation firearm”).

36 **§ 20160. Advisory requirement for imitation firearm**

37 20160. (a) Any imitation firearm manufactured after July 1, 2005, shall, at the
38 time of offer for sale in this state, be accompanied by a conspicuous advisory in

1 writing as part of the packaging, but not necessarily affixed to the imitation
2 firearm, to the effect that the product may be mistaken for a firearm by law
3 enforcement officers or others, that altering the coloration or markings required by
4 state or federal law or regulations so as to make the product look more like a
5 firearm is dangerous, and may be a crime, and that brandishing or displaying the
6 product in public may cause confusion and may be a crime.

7 (b) Any manufacturer, importer, or distributor that fails to comply with this
8 advisory for any imitation firearm manufactured after July 1, 2005, shall be liable
9 for a civil fine for each action brought by a city attorney or district attorney of not
10 more than one thousand dollars (\$1,000) for the first action, five thousand dollars
11 (\$5,000) for the second action, and ten thousand dollars (\$10,000) for the third
12 action and each subsequent action.

13 **Comment.** Section 20160 continues former Section 12554 without substantive change.
14 See Sections 16520 (“firearm”), 16700 (“imitation firearm”).

15 **§ 20165. Unlawful commercial activities relating to imitation firearms**

16 20165. (a) Any person who, for commercial purposes, purchases, sells,
17 manufactures, ships, transports, distributes, or receives, by mail order or in any
18 other manner, an imitation firearm, except as authorized by this section, is liable
19 for a civil fine in an action brought by the city attorney or the district attorney of
20 not more than ten thousand dollars (\$10,000) for each violation.

21 (b) The manufacture, purchase, sale, shipping, transport, distribution, or receipt,
22 by mail or in any other manner, of an imitation firearm is authorized if the device
23 is manufactured, purchased, sold, shipped, transported, distributed, or received for
24 any of the following purposes:

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

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

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

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

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

31 **Comment.** Section 20165 continues former Section 12555(a)-(b) without substantive change.

32 See Section 16700 (“imitation firearm”), which includes special guidance for interpreting that
33 term in the context of this section.

34 **§ 20170. Display of imitation firearm in public place**

35 20170. (a) No person may openly display or expose any imitation firearm in a
36 public place.

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

39 (1) A street.

40 (2) A sidewalk.

41 (3) A bridge.

42 (4) An alley.

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

10 **Comment.** Subdivision (a) of Section 20170 continues former Section 12556(a) without
11 substantive change.

12 For circumstances in which this section is inapplicable, see Section 20175 (exemptions). For
13 consequences of violating this section, see Section 20180 (punishment).

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

15 See Section 16700 (“imitation firearm”).

16 **§ 20175. Exemptions**

17 20175. Section 20170 does not apply in any of the following circumstances:

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

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

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

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

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

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

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

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

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

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

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

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

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

9 **Comment.** Section 20175 continues former Section 12556(d) without substantive change.
10 See Section 16700 ("imitation firearm").

11 **§ 20180. Punishment**

12 20180. (a) Except as provided in subdivision (b), violation of Section 20170 is
13 an infraction punishable by a fine of one hundred dollars (\$100) for the first
14 offense, and three hundred dollars (\$300) for a second offense.

15 (b) A third or subsequent violation of Section 20170 is punishable as a
16 misdemeanor.

17 (c) Nothing in Sections 20170, 20175, or this section shall be construed to
18 preclude prosecution for a violation of Section 171b, 171.5, or 626.10.

19 **Comment.** Subdivision (a) of Section 20180 continues former Section 12556(b) without
20 substantive change.

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

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

23 **DIVISION 5. KNIVES AND SIMILAR WEAPONS**

24 **CHAPTER 1. GENERAL PROVISIONS**

25 **§ 20200. Circumstances in which knife is not deemed "concealed"**

26 20200. A knife carried in a sheath that is worn openly suspended from the waist
27 of the wearer is not concealed within the meaning of [Section 12020].

28 **Comment.** Section 20200 continues former Section 12020(d) without substantive change.

29 **CHAPTER 2. DISGUISED OR MISLEADING APPEARANCE**

30 **Article 1. Air Gauge Knife**

31 **§ 20310. Prohibition on manufacture, import, sale, gift, loan, or possession of air gauge**
32 **knife**

33 20310. Except as provided in Chapter 1 (commencing with Section 17700) of
34 Division 2 of Title 2, any person in this state who manufactures or causes to be
35 manufactured, imports into the state, keeps for sale, or offers or exposes for sale,

1 or who gives, lends, or possesses any air gauge knife is punishable by
2 imprisonment in a county jail not exceeding one year or in the state prison.

3 **Comment.** With respect to an air gauge knife, Section 20310 continues former Section
4 12020(a)(1) without substantive change.

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

7 See Section 16140 (“air gauge knife”). See also Sections 17800 (distinct and separate offense),
8 20390 (air gauge knife constituting nuisance).

9 **§ 20390. Air gauge knife constituting nuisance**

10 20390. Except as provided in Chapter 1 (commencing with Section 17700) of
11 Division 2 of Title 2, any air gauge knife is a nuisance and is subject to Section
12 18010.

13 **Comment.** With respect to an air gauge knife, Section 20390 continues the first part of the first
14 sentence of former Section 12029 without substantive change.

15 See Section 16140 (“air gauge knife”).

16 **Article 2. Belt Buckle Knife**

17 **§ 20410. Prohibition on manufacture, import, sale, gift, loan, or possession of belt buckle**
18 **knife**

19 20410. Except as provided in Chapter 1 (commencing with Section 17700) of
20 Division 2 of Title 2, any person in this state who manufactures or causes to be
21 manufactured, imports into the state, keeps for sale, or offers or exposes for sale,
22 or who gives, lends, or possesses any belt buckle knife is punishable by
23 imprisonment in a county jail not exceeding one year or in the state prison.

24 **Comment.** With respect to a belt buckle knife, Section 20410 continues former Section
25 12020(a)(1) without substantive change.

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

28 See Section 16260 (“belt buckle knife”). See also Sections 17800 (distinct and separate
29 offense), 20490 (belt buckle knife constituting nuisance).

30 **§ 20490. Belt buckle knife constituting nuisance**

31 20490. Except as provided in Chapter 1 (commencing with Section 17700) of
32 Division 2 of Title 2, any belt buckle knife is a nuisance and is subject to Section
33 18010.

34 **Comment.** With respect to a belt buckle knife, Section 20490 continues the first part of the
35 first sentence of former Section 12029 without substantive change.

36 See Section 16260 (“belt buckle knife”).

37 **Article 3. Cane Sword**

38 **§ 20510. Prohibition on manufacture, import, sale, gift, loan, or possession of cane sword**

39 20510. Except as provided in Chapter 1 (commencing with Section 17700) of
40 Division 2 of Title 2, any person in this state who manufactures or causes to be

1 manufactured, imports into the state, keeps for sale, or offers or exposes for sale,
2 or who gives, lends, or possesses any cane sword is punishable by imprisonment
3 in a county jail not exceeding one year or in the state prison.

4 **Comment.** With respect to a cane sword, Section 20510 continues former Section 12020(a)(1)
5 without substantive change.

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

8 See Section 16340 (“cane sword”). See also Sections 17800 (distinct and separate offense),
9 20590 (cane sword constituting nuisance).

10 **§ 20590. Cane sword constituting nuisance**

11 20590. Except as provided in Chapter 1 (commencing with Section 17700) of
12 Division 2 of Title 2, any cane sword is a nuisance and is subject to Section 18010.

13 **Comment.** With respect to a cane sword, Section 20590 continues the first part of the first
14 sentence of former Section 12029 without substantive change.

15 See Section 16340 (“cane sword”).

16 **Article 4. Lipstick Case Knife**

17 **§ 20610. Prohibition on manufacture, import, sale, gift, loan, or possession of lipstick case**
18 **knife**

19 20610. Except as provided in Chapter 1 (commencing with Section 17700) of
20 Division 2 of Title 2, any person in this state who manufactures or causes to be
21 manufactured, imports into the state, keeps for sale, or offers or exposes for sale,
22 or who gives, lends, or possesses any lipstick case knife is punishable by
23 imprisonment in a county jail not exceeding one year or in the state prison.

24 **Comment.** With respect to a lipstick case knife, Section 20610 continues former Section
25 12020(a)(1) without substantive change.

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

28 See Section 16830 (“lipstick case knife”). See also Sections 17800 (distinct and separate
29 offense), 20690 (lipstick case knife constituting nuisance).

30 **§ 20690. Lipstick case knife constituting nuisance**

31 20690. Except as provided in Chapter 1 (commencing with Section 17700) of
32 Division 2 of Title 2, any lipstick case knife is a nuisance and is subject to Section
33 18010.

34 **Comment.** With respect to a lipstick case knife, Section 20690 continues the first part of the
35 first sentence of former Section 12029 without substantive change.

36 See Section 16830 (“lipstick case knife”).

37 **Article 5. Shobi-zue**

38 **§ 20710. Prohibition on manufacture, import, sale, gift, loan, or possession of shobi-zue**

39 20710. Except as provided in Chapter 1 (commencing with Section 17700) of
40 Division 2 of Title 2, any person in this state who manufactures or causes to be

1 manufactured, imports into the state, keeps for sale, or offers or exposes for sale,
2 or who gives, lends, or possesses any shobi-zue is punishable by imprisonment in
3 a county jail not exceeding one year or in the state prison.

4 **Comment.** With respect to a shobi-zue, Section 20710 continues former Section 12020(a)(1)
5 without substantive change.

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

8 See Section 17160 (“shobi-zue”). See also Sections 17800 (distinct and separate offense),
9 20790 (shobi-zue constituting nuisance).

10 **§ 20790. Shobi-zue constituting nuisance**

11 20790. Except as provided in Chapter 1 (commencing with Section 17700) of
12 Division 2 of Title 2, any shobi-zue is a nuisance and is subject to Section 18010.

13 **Comment.** With respect to a shobi-zue, Section 20790 continues the first part of the first
14 sentence of former Section 12029 without substantive change.

15 See Section 17160 (“shobi-zue”).

16 **Article 6. Undetectable Knife**

17 **§ 20810. Restrictions relating to undetectable knife**

18 20810. (a) Any person in this state who commercially manufactures or causes to
19 be commercially manufactured, or who knowingly imports into the state for
20 commercial sale, or who knowingly exports out of this state for commercial,
21 dealer, wholesaler, or distributor sale, or who keeps for commercial sale, or offers
22 or exposes for commercial, dealer, wholesaler, or distributor sale, any undetectable
23 knife is guilty of a misdemeanor.

24 (b) Notwithstanding any other provision of law, commencing January 1, 2000,
25 all knives or other instrument with or without a handguard that is capable of ready
26 use as a stabbing weapon that may inflict great bodily injury or death that are
27 commercially manufactured in this state that utilize materials that are not
28 detectable by a metal detector or magnetometer, shall be manufactured to include
29 materials that will ensure they are detectable by a metal detector or magnetometer,
30 either handheld or otherwise, that is set at standard calibration.

31 **Comment.** Subdivision (a) of Section 20810 continues the first sentence of former Section
32 12001.1(a) without change.

33 Subdivision (b) continues former Section 12001.1(b) without change.

34 For circumstances in which this section is inapplicable, see Sections 20815 (undetectable knife
35 for law enforcement or military entity), 20820 (undetectable knife for historical society, museum,
36 or institutional collection open to public).

37 See Section 17290 (“undetectable knife”).

38 **Staff Note.** Section 12001.1 was recently amended by urgency legislation. See 2008 Cal. Stat.
ch. 111, § 1 (SB 1033 (G. Runner)). Proposed Section 20810 incorporates the new legislation.

38 **§ 20815. Undetectable knife for law enforcement or military entity**

39 20815. Section 20810 does not apply to the manufacture or importation of any
40 undetectable knife for sale to a law enforcement or military entity with a valid

1 agency, department, or unit purchase order, nor does Section 20810 apply to the
2 subsequent sale of any undetectable knife to a law enforcement or military entity.

3 **Comment.** Section 20815 continues former Section 12001.1(c) without substantive change.
4 See Section 17290 (“undetectable knife”).

☞ **Staff Note.** Section 12001.1 was recently amended by urgency legislation. See 2008 Cal. Stat. ch. 111, § 1 (SB 1033 (G. Runner)). Proposed Section 20815 incorporates the new legislation.

5 **§ 20820. Undetectable knife for historical society, museum, or institutional collection open**
6 **to public**

7 20820. Section 20810 does not apply to the manufacture or importation of any
8 undetectable knife for sale to a federal, state, or local historical society, museum,
9 or institutional collection that is open to the public, provided that the undetectable
10 knife is properly housed and secured from unauthorized handling, nor does
11 Section 20810 apply to the subsequent sale of the knife to any of these entities.

12 **Comment.** Section 20820 continues former Section 12001.1(d) without substantive change.
13 See Section 17290 (“undetectable knife”).

14 **Article 7. Writing Pen Knife**

15 **§ 20910. Prohibition on manufacture, import, sale, gift, loan, or possession of writing pen**
16 **knife**

17 20910. Except as provided in Chapter 1 (commencing with Section 17700) of
18 Division 2 of Title 2, any person in this state who manufactures or causes to be
19 manufactured, imports into the state, keeps for sale, or offers or exposes for sale,
20 or who gives, lends, or possesses any writing pen knife is punishable by
21 imprisonment in a county jail not exceeding one year or in the state prison.

22 **Comment.** With respect to a writing pen knife, Section 20910 continues former Section
23 12020(a)(1) without substantive change.

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

26 See Section 17350 (“writing pen knife”). See also Sections 17800 (distinct and separate
27 offense), 20990 (writing pen knife constituting nuisance).

28 **§ 20990. Writing pen knife constituting nuisance**

29 20990. Except as provided in Chapter 1 (commencing with Section 17700) of
30 Division 2 of Title 2, any writing pen knife is a nuisance and is subject to Section
31 18010.

32 **Comment.** With respect to a writing pen knife, Section 20990 continues the first part of the
33 first sentence of former Section 12029 without substantive change.

34 See Section 17350 (“writing pen knife”).

1

CHAPTER 3. BALLISTIC KNIFE

2 **§ 21110. Prohibition on manufacture, import, sale, gift, loan, or possession of ballistic knife**

3 21110. Except as provided in Chapter 1 (commencing with Section 17700) of
4 Division 2 of Title 2, any person in this state who manufactures or causes to be
5 manufactured, imports into the state, keeps for sale, or offers or exposes for sale,
6 or who gives, lends, or possesses any ballistic knife is punishable by imprisonment
7 in a county jail not exceeding one year or in the state prison.

8 **Comment.** With respect to a ballistic knife, Section 21110 continues former Section
9 12020(a)(1) without substantive change.

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

12 See Section 16220 (“ballistic knife”). See also Sections 17800 (distinct and separate offense),
13 21190 (ballistic knife constituting nuisance).

14 **§ 21190. Ballistic knife constituting nuisance**

15 21190. Except as provided in Chapter 1 (commencing with Section 17700) of
16 Division 2 of Title 2, any ballistic knife is a nuisance and is subject to Section
17 18010.

18 **Comment.** With respect to a ballistic knife, Section 21190 continues the first part of the first
19 sentence of former Section 12029 without substantive change.

20 See Section 16220 (“ballistic knife”).

21

CHAPTER 4. DIRK OR DAGGER

22 **§ 21310. Carrying concealed dirk or dagger**

23 21310. Except as provided in Chapter 1 (commencing with Section 17700) of
24 Division 2 of Title 2, any person in this state who carries concealed upon the
25 person any dirk or dagger is punishable by imprisonment in a county jail not
26 exceeding one year or in the state prison.

27 **Comment.** Section 21310 continues the first paragraph of former Section 12020(a)(4) without
28 substantive change.

29 For circumstances in which this section is inapplicable, see Sections 16590 (“generally
30 prohibited weapon”), 17700-17745 (exemptions relating to generally prohibited weapons), 20200
31 (circumstances in which knife is not deemed “concealed”).

32 See Section 16470 (“dirk” or “dagger”). See also Sections 17800 (distinct and separate
33 offense), 21390 (concealed dirk or dagger constituting nuisance).

34 **§ 21390. Concealed dirk or dagger constituting nuisance**

35 21390. The unlawful concealed carrying upon the person of any dirk or dagger,
36 as provided in Section 21310, is a nuisance and is subject to Sections 18000 and
37 18005.

38 **Comment.** With respect to a dirk or dagger, Section 21390 continues former Section 12028(a)
39 without substantive change.

40 See Section 16470 (“dirk” or “dagger”).

1

CHAPTER 5. SWITCHBLADE KNIFE

2 **§ 21510. Restrictions relating to switchblade knife**

3 21510. Every person who does any of the following with a switchblade knife
4 having a blade two or more inches in length is guilty of a misdemeanor:

5 (a) Possesses the knife in the passenger's or driver's area of any motor vehicle in
6 any public place or place open to the public.

7 (b) Carries the knife upon the person.

8 (c) Sells, offers for sale, exposes for sale, loans, transfers, or gives the knife to
9 any other person.

10 **Comment.** Section 21510 continues the first paragraph of former Section 653k without
11 substantive change.

12 See Sections 16965 ("passenger's or driver's area"), 17235 ("switchblade knife").

13 **§ 21590. Switchblade knife constituting nuisance**

14 21590. The unlawful possession or carrying of any switchblade knife, as
15 provided in Section 21510, is a nuisance and is subject to Sections 18000 and
16 18005.

17 **Comment.** With respect to a switchblade knife, Section 21590 continues former Section
18 12028(a) without substantive change.

19 See Section 17235 ("switchblade knife").

20

DIVISION 6. KNUCKLES

21

CHAPTER 1. HARD PLASTIC KNUCKLES

22 **§ 21710. Restrictions relating to hard plastic knuckles**

23 21710. Any person in this state who commercially manufactures or causes to be
24 commercially manufactured, or who knowingly imports into the state for
25 commercial sale, keeps for commercial sale, or offers or exposes for commercial
26 sale, any hard plastic knuckles is guilty of a misdemeanor.

27 **Comment.** Section 21710 continues the first sentence of former Section 12020.1 without
28 substantive change.

29 See Section 16680 ("hard plastic knuckles").

30

CHAPTER 2. METAL KNUCKLES

31 **§ 21810. Prohibition on manufacture, import, sale, gift, loan, or possession of metal**
32 **knuckles**

33 21810. Except as provided in Chapter 1 (commencing with Section 17700) of
34 Division 2 of Title 2, any person in this state who manufactures or causes to be
35 manufactured, imports into the state, keeps for sale, or offers or exposes for sale,

1 or who gives, lends, or possesses any metal knuckles is punishable by
2 imprisonment in a county jail not exceeding one year or in the state prison.

3 **Comment.** With respect to metal knuckles, Section 21810 continues former Section
4 12020(a)(1) without substantive change.

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

7 See Section 16920 (“metal knuckles”). See also Sections 17800 (distinct and separate offense),
8 21890 (metal knuckles constituting nuisance).

9 **§ 21890. Metal knuckles constituting nuisance**

10 21890. Except as provided in Chapter 1 (commencing with Section 17700) of
11 Division 2 of Title 2, metal knuckles are a nuisance and are subject to Section
12 18010.

13 **Comment.** With respect to metal knuckles, Section 21890 continues the first part of the first
14 sentence of former Section 12029 without substantive change.

15 See Section 16920 (“metal knuckles”).

16 **DIVISION 7. NUNCHAKU**

17 **§ 22010. Prohibition on manufacture, import, sale, gift, loan, or possession of nunchaku**

18 22010. Except as provided in Section 22015 and Chapter 1 (commencing with
19 Section 17700) of Division 2 of Title 2, any person in this state who manufactures
20 or causes to be manufactured, imports into the state, keeps for sale, or offers or
21 exposes for sale, or who gives, lends, or possesses any nunchaku is punishable by
22 imprisonment in a county jail not exceeding one year or in the state prison.

23 **Comment.** With respect to a nunchaku, Section 22010 continues former Section 12020(a)(1)
24 without substantive change.

25 For circumstances in which this section is inapplicable, see Sections 16590 (“generally
26 prohibited weapon”), 17700-17745 (exemptions relating to generally prohibited weapons), 22015
27 (nunchaku for school teaching arts of self-defense).

28 See Section 16940 (“nunchaku”). See also Sections 17800 (distinct and separate offense),
29 22090 (nunchaku constituting nuisance).

30 **§ 22015. Nunchaku for school teaching arts of self-defense**

31 22015. Section 22010 does not apply to either of the following:

32 (a) The possession of a nunchaku on the premises of a school that holds a
33 regulatory or business license and teaches the arts of self-defense.

34 (b) The manufacture of a nunchaku for sale to, or the sale of a nunchaku to, a
35 school that holds a regulatory or business license and teaches the arts of self-
36 defense.

37 **Comment.** Subdivision (a) of Section 22015 continues former Section 12020(b)(3) without
38 substantive change.

39 Subdivision (b) continues former Section 12020(b)(4) without substantive change.

40 For additional circumstances in which Section 16910 is inapplicable, see Sections 16590
41 (“generally prohibited weapon”), 17700-17745 (exemptions relating to generally prohibited
42 weapons).

1 See Section 16940 (“nunchaku”).

2 **§ 22090. Nunchaku constituting nuisance**

3 22090. Except as provided in Section 22015 and in Chapter 1 (commencing with
4 Section 17700) of Division 2 of Title 2, any nunchaku is a nuisance and is subject
5 to Section 18010.

6 **Comment.** With respect to a nunchaku, Section 22090 continues the first part of the first
7 sentence of former Section 12029 without substantive change.

8 See Section 16940 (“nunchaku”).

9 **DIVISION 8. SAPS AND SIMILAR WEAPONS**

10 **§ 22210. Prohibition on manufacture, import, sale, gift, loan, or possession of leaded cane,**
11 **blackjack, slungshot, billy, sandclub, sap, or sandbag**

12 22210. Except as provided in Section 22215 and Chapter 1 (commencing with
13 Section 17700) of Division 2 of Title 2, any person in this state who manufactures
14 or causes to be manufactured, imports into the state, keeps for sale, or offers or
15 exposes for sale, or who gives, lends, or possesses any leaded cane, or any
16 instrument or weapon of the kind commonly known as a blackjack, slungshot,
17 billy, sandclub, sap, or sandbag, is punishable by imprisonment in a county jail not
18 exceeding one year or in the state prison.

19 **Comment.** With respect to a leaded cane or “any instrument or weapon of the kind commonly
20 known as a blackjack, slungshot, billy, sandclub, sap, or sandbag,” Section 22210 continues
21 former Section 12020(a)(1) without substantive change.

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

24 See Section 16760 (“leaded cane”). See also Sections 17800 (distinct and separate offense),
25 22290 (leaded cane, blackjack, slungshot, billy, sandclub, sap, or sandbag constituting nuisance).

26 **§ 22215. Exemption relating to wooden clubs or batons for special police officers or**
27 **uniformed security guards**

28 22215. Section 22210 does not apply to the manufacture for, sale to, exposing or
29 keeping for sale to, importation of, or lending of wooden clubs or batons to special
30 police officers or uniformed security guards authorized to carry any wooden club
31 or baton pursuant to Section 22295 by entities that are in the business of selling
32 wooden clubs or batons to special police officers and uniformed security guards
33 when engaging in transactions with those persons.

34 **Comment.** Section 22215 continues former Section 12020(b)(14) without substantive change.

35 For additional circumstances in which Section 22210 is inapplicable, see Sections 16590
36 (“generally prohibited weapon”), 17700-17745 (exemptions relating to generally prohibited
37 weapons).

1 **§ 22290. Ledged cane, blackjack, slungshot, billy, sandclub, sap, or sandbag constituting**
2 **nuisance**

3 22290. Except as provided in Section 22210 and in Chapter 1 (commencing with
4 Section 17700) of Division 2 of Title 2, any ledged cane or any instrument or
5 weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub,
6 sap, or sandbag is a nuisance and is subject to Section 18010.

7 **Comment.** With respect to a ledged cane or “any instrument or weapon of the kind commonly
8 known as a blackjack, slungshot, billy, sandclub, sap, or sandbag,” Section 22290 continues the
9 first part of the first sentence of former Section 12029 without substantive change.

10 See Section 16760 (“ledged cane”).

11 **§ 22295. Wooden club or baton for law enforcement purposes**

12 § 22295. (a) Nothing in [this chapter] prohibits any police officer, special police
13 officer, peace officer, or law enforcement officer from carrying any wooden club
14 or baton.

15 (b) Nothing in [this chapter] prohibits a uniformed security guard, regularly
16 employed and compensated by a person engaged in any lawful business, while
17 actually employed and engaged in protecting and preserving property or life
18 within the scope of employment, from carrying any wooden club or baton if the
19 uniformed security guard has satisfactorily completed a course of instruction
20 certified by the Department of Consumer Affairs in the carrying and use of the
21 club or baton. The training institution certified by the Department of Consumer
22 Affairs to present this course, whether public or private, is authorized to charge a
23 fee covering the cost of the training.

24 (c) The Department of Consumer Affairs, in cooperation with the Commission
25 on Peace Officer Standards and Training, shall develop standards for a course in
26 the carrying and use of a club or baton.

27 (d) Any uniformed security guard who successfully completes a course of
28 instruction under this section is entitled to receive a permit to carry and use a club
29 or baton within the scope of employment, issued by the Department of Consumer
30 Affairs. The department may authorize a certified training institution to issue
31 permits to carry and use a club or baton. A fee in the amount provided by law shall
32 be charged by the Department of Consumer Affairs to offset the costs incurred by
33 the department in course certification, quality control activities associated with the
34 course, and issuance of the permit.

35 (e) Any person who has received a permit or certificate that indicates
36 satisfactory completion of a club or baton training course approved by the
37 Commission on Peace Officer Standards and Training prior to January 1, 1983,
38 shall not be required to obtain a club or baton permit or complete a course certified
39 by the Department of Consumer Affairs.

40 (f) Any person employed as a county sheriff’s or police security officer, as
41 defined in Section 831.4, shall not be required to obtain a club or baton permit or
42 to complete a course certified by the Department of Consumer Affairs in the
43 carrying and use of a club or baton, provided that the person completes a course

1 approved by the Commission on Peace Officer Standards and Training in the
2 carrying and use of the club or baton, within 90 days of employment.

3 (g) Nothing in [this chapter] prohibits an animal control officer, as described in
4 Section 830.9, from carrying any wooden club or baton if the animal control
5 officer has satisfactorily completed a course of instruction certified by the
6 Department of Consumer Affairs in the carrying and use of the club or baton. The
7 training institution certified by the Department of Consumer Affairs to present this
8 course, whether public or private, is authorized to charge a fee covering the cost of
9 the training.

10 **Comment.** With respect to a wooden club or baton, subdivision (a) of Section 22295 continues
11 former Section 12002(a) without substantive change. The remainder of former Section 12002(a)
12 is continued in Section 17515 without substantive change.

13 Subdivisions (b)-(g) continue former Section 12002(b)-(g) without substantive change.

14 DIVISION 9. SHURIKEN

15 § 22410. Prohibition on manufacture, import, sale, gift, loan, or possession of shuriken

16 22410. Except as provided in Chapter 1 (commencing with Section 17700) of
17 Division 2 of Title 2, any person in this state who manufactures or causes to be
18 manufactured, imports into the state, keeps for sale, or offers or exposes for sale,
19 or who gives, lends, or possesses any shuriken is punishable by imprisonment in a
20 county jail not exceeding one year or in the state prison.

21 **Comment.** With respect to a shuriken, Section 22410 continues former Section 12020(a)(1)
22 without substantive change.

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

25 See Section 17200 (“shuriken”). See also Sections 17800 (distinct and separate offense), 22490
26 (shuriken constituting nuisance).

27 § 22490. Shuriken constituting nuisance

28 22490. Except as provided in Chapter 1 (commencing with Section 17700) of
29 Division 2 of Title 2, any shuriken is a nuisance and is subject to Section 18010.

30 **Comment.** With respect to a shuriken, Section 22490 continues the first part of the first
31 sentence of former Section 12029 without substantive change.

32 See Section 17200 (“shuriken”).

33 DIVISION 10. STUN GUN

34 § 22610. Unlawful acts relating to stun gun

35 22610. Notwithstanding any other provision of law, any person may purchase,
36 possess, or use a stun gun, subject to the following requirements:

37 (a) No person convicted of a felony or any crime involving an assault under the
38 laws of the United States, the State of California, or any other state, government,

1 or country, or convicted of misuse of a stun gun under Section 244.5, shall
2 purchase, possess, or use any stun gun.

3 (b) No person addicted to any narcotic drug shall purchase, possess, or use a
4 stun gun.

5 (c)(1) No person shall sell or furnish any stun gun to a minor unless the minor is
6 at least 16 years of age and has the written consent of the minor's parent or legal
7 guardian.

8 (2) Violation of this subdivision shall be a public offense punishable by a fifty
9 dollar (\$50) fine for the first offense. Any subsequent violation of this subdivision
10 is a misdemeanor.

11 (d) No minor shall possess any stun gun unless the minor is at least 16 years of
12 age and has the written consent of the minor's parent or legal guardian.

13 **Comment.** Section 22610 continues former Section 12651 without substantive change.
14 See Section 17230 ("stun gun"). See also Section 22620 (violation punishable as
15 misdemeanor).

16 **§ 22615. Serial number and name of manufacturer**

17 22615. Each stun gun sold shall contain both of the following:

18 (a) The name of the manufacturer stamped on the stun gun.

19 (b) The serial number applied by the manufacturer.

20 **Comment.** Section 22615 continues former Section 12652 without substantive change.
21 See Section 17230 ("stun gun"). See also Section 22620 (violation punishable as
22 misdemeanor).

23 **§ 22620. Violation punishable as misdemeanor**

24 22620. Unless otherwise specified, any violation of this division is a
25 misdemeanor.

26 **Comment.** Section 22620 continues former Section 12653 without substantive change.

27 **§ 22625. Instruction booklet for stun gun**

28 22625. (a) Each stun gun sold in this state shall be accompanied by an
29 instruction booklet.

30 (b) Violation of this section shall be a public offense punishable by a fifty dollar
31 (\$50) fine for each weapon sold without the booklet.

32 **Comment.** Section 22625 continues former Section 12654 without substantive change.
33 See Section 17230 ("stun gun").

1

DIVISION 11. TEAR GAS AND TEAR GAS WEAPONS

2

CHAPTER 1. GENERAL PROVISIONS

3

§ 22810. Lawful and unlawful acts relating to tear gas and tear gas weapons

4

22810. Notwithstanding any other provision of law, any person may purchase, possess, or use tear gas or any tear gas weapon for the projection or release of tear gas if the tear gas or tear gas weapon is used solely for self-defense purposes, subject to the following requirements:

7

8

(a) No person convicted of a felony or any crime involving an assault under the laws of the United States, the State of California, or any other state, government, or country, or convicted of misuse of tear gas under subdivision (g), shall purchase, possess, or use tear gas or any tear gas weapon.

10

11

12

(b) No person addicted to any narcotic drug shall purchase, possess, or use tear gas or any tear gas weapon.

13

14

(c) No person shall sell or furnish any tear gas or tear gas weapon to a minor.

15

(d) No minor shall purchase, possess, or use tear gas or any tear gas weapon.

16

17

(e)(1) No person shall purchase, possess, or use any tear gas weapon that expels a projectile, or that expels the tear gas by any method other than an aerosol spray, or that contains more than 2.5 ounces net weight of aerosol spray.

18

19

(2) Every tear gas container and tear gas weapon that may be lawfully purchased, possessed, and used pursuant to this section shall have a label that states: "WARNING: The use of this substance or device for any purpose other than self-defense is a crime under the law. The contents are dangerous — use with care."

23

24

(3) After January 1, 1984, every tear gas container and tear gas weapon that may be lawfully purchased, possessed, and used pursuant to this section shall have a label that discloses the date on which the useful life of the tear gas weapon expires.

27

28

(4) Every tear gas container and tear gas weapon that may be lawfully purchased pursuant to this section shall be accompanied at the time of purchase by printed instructions for use.

30

31

(f) Effective March 1, 1994, every tear gas container and tear gas weapon that may be lawfully purchased, possessed, and used pursuant to this section shall be accompanied by an insert including directions for use, first aid information, safety and storage information, and explanation of the legal ramifications of improper use of the tear gas container or tear gas product.

35

36

(g)(1) Except as provided in paragraph (2), any person who uses tear gas or any tear gas weapon except in self-defense is guilty of a public offense and is punishable by imprisonment in a state prison for 16 months, or two or three years or in a county jail not to exceed one year or by a fine not to exceed one thousand dollars (\$1,000), or by both the fine and imprisonment.

39

1 (2) If the use is against a peace officer, as defined in Chapter 4.5 (commencing
2 with Section 830) of Title 3 of Part 2, engaged in the performance of official
3 duties and the person committing the offense knows or reasonably should know
4 that the victim is a peace officer, the offense is punishable by imprisonment in a
5 state prison for 16 months or two or three years or by a fine of one thousand
6 dollars (\$1,000), or by both the fine and imprisonment.

7 **Comment.** Section 22810 continues former Section 12403.7 without substantive change.
8 See Sections 17240 (“tear gas”), 17250 (“tear gas weapon”).

9 **§ 22815. Minor 16-years-old or older**

10 22815. (a) Notwithstanding subdivision (d) of Section 22810, a minor who has
11 attained the age of 16 years may purchase and possess tear gas or a tear gas
12 weapon pursuant to this division if the minor is accompanied by a parent or
13 guardian, or has the written consent of a parent or guardian.

14 (b) Notwithstanding subdivision (c) of Section 22810, a person may sell or
15 furnish tear gas or a tear gas weapon to a minor who has attained the age of 16
16 years and who is accompanied by a parent or guardian, or who presents a
17 statement of consent signed by the minor’s parent or guardian.

18 (c) Any civil liability of a minor arising out of the minor’s use of tear gas or a
19 tear gas weapon other than for self-defense is imposed upon the person, parent, or
20 guardian who signed the statement of consent specified in subdivision (b). That
21 person, parent, or guardian shall be jointly and severally liable with the minor for
22 any damages proximately resulting from the negligent or wrongful act or omission
23 of the minor in the use of the tear gas or a tear gas weapon.

24 **Comment.** Section 22815 continues former Section 12403.8 without substantive change.
25 See Sections 17240 (“tear gas”), 17250 (“tear gas weapon”).

26 **§ 22820. Peace officer trained in use of tear gas**

27 22820. Nothing in this division prohibits any person who is a peace officer, as
28 defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, from
29 purchasing, possessing, transporting, or using any tear gas or tear gas weapon if
30 the person has satisfactorily completed a course of instruction approved by the
31 Commission on Peace Officer Standards and Training in the use of tear gas.

32 **Comment.** Section 22820 continues former Section 12403 without substantive change.
33 See Sections 17240 (“tear gas”), 17250 (“tear gas weapon”).

34 **§ 22825. Custodial officer of county**

35 22825. A custodial officer of a county may carry a tear gas weapon pursuant to
36 Section 22820 only while on duty. A custodial officer of a county may carry a tear
37 gas weapon while off duty only in accordance with all other laws.

38 **Comment.** Section 22825 continues former Section 12403.9 without substantive change.
39 See Sections 17240 (“tear gas”), 17250 (“tear gas weapon”).

1 **§ 22830. Member of military or federal law enforcement officer**

2 22830. Nothing in this division prohibits any member of the military or naval
3 forces of this state or of the United States or any federal law enforcement officer
4 from purchasing, possessing, or transporting any tear gas or tear gas weapon for
5 official use in the discharge of duties.

6 **Comment.** Section 22830 continues former Section 12403.1 without substantive change.
7 See Sections 17240 (“tear gas”), 17250 (“tear gas weapon”).

8 **§ 22835. Private investigator or private patrol operator or employee**

9 22835. Notwithstanding any other provision of law, a person holding a license
10 as a private investigator pursuant to Chapter 11.3 (commencing with Section
11 7512) of Division 3 of the Business and Professions Code, or private patrol
12 operator pursuant to Chapter 11.5 (commencing with Section 7580) of Division 3
13 of the Business and Professions Code, or a uniformed patrolperson employee of a
14 private patrol operator, may purchase, possess, or transport any tear gas weapon, if
15 it is used solely for defensive purposes in the course of the activity for which the
16 license was issued and if the person has satisfactorily completed a course of
17 instruction approved by the Department of Consumer Affairs in the use of tear gas.

18 **Comment.** Section 22835 continues former Section 12403.5 without substantive change.
19 See Sections 17240 (“tear gas”), 17250 (“tear gas weapon”).

20 **§ 22840. Tear gas or tear gas weapons in prison, jail, or similar institution**

21 22840. Nothing in this division authorizes the possession of tear gas or a tear gas
22 weapon in any institution described in Section 4574, or within the grounds
23 belonging or adjacent to any institution described in Section 4574, except where
24 authorized by the person in charge of the institution.

25 **Comment.** Section 22840 continues former Section 12404 without substantive change.
26 See Sections 17240 (“tear gas”), 17250 (“tear gas weapon”).

27 CHAPTER 2. UNLAWFUL POSSESSION, SALE, OR TRANSPORTATION

28 **§ 22900. Unlawful sale, possession, or transportation of tear gas or tear gas weapon**

29 22900. Any person, firm, or corporation who within this state knowingly sells or
30 offers for sale, possesses, or transports any tear gas or tear gas weapon, except as
31 permitted under the provisions of this division, is guilty of a public offense and
32 upon conviction thereof shall be punishable by imprisonment in the county jail for
33 not exceeding one year or by a fine not to exceed two thousand dollars (\$2,000),
34 or by both.

35 **Comment.** Section 22900 continues former Section 12420 without substantive change.
36 See Sections 17240 (“tear gas”), 17250 (“tear gas weapon”).

1 (3) It shall state the applicant's name, business in which engaged, business
2 address, and a full description of the place or vehicle in which the tear gas or tear
3 gas weapon is to be transported, kept, installed, or maintained.

4 (b) If the tear gas or tear gas weapon is to be used in connection with, or to
5 constitute, a protective system, the application shall also contain the name of the
6 person who is to install the protective system.

7 (c) Applications and permits shall be uniform throughout the state upon forms
8 prescribed by the Department of Justice.

9 **Comment.** Section 23005 continues the first three paragraphs of former Section 12424 without
10 substantive change.

11 See Sections 17240 ("tear gas"), 17250 ("tear gas weapon").

12 **§ 23010. Permit fees and renewal process**

13 23010. (a) Each applicant for a permit shall pay, at the time of filing the
14 application, a fee determined by the Department of Justice, not to exceed the
15 application processing costs of the Department of Justice.

16 (b) A permit granted pursuant to this chapter may be renewed one year from the
17 date of issuance, and annually thereafter, upon the filing of a renewal application
18 and the payment of a permit renewal fee, not to exceed the application processing
19 costs of the Department of Justice.

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

24 **Comment.** Section 23010 continues the fourth paragraph of former Section 12424 without
25 substantive change.

26 See Sections 17240 ("tear gas"), 17250 ("tear gas weapon").

27 **§ 23015. Permit for bank or other financial institution**

28 23015. (a) Notwithstanding Section 23000, a bank, a savings and loan
29 association, a credit union, or an industrial loan company that maintains more than
30 one office or branch may make a single annual application for a permit.

31 (b) In addition to the requirements set forth in this chapter, an application under
32 this section shall separately state the business address and a full description of
33 each office or branch in which the tear gas or tear gas weapon is to be kept,
34 installed, or maintained. Any location addition or deletion as to an office or branch
35 shall be reported to the department within 60 days of the change.

36 (c) A single permit issued under this section shall allow for the possession,
37 operation, and maintenance of tear gas at each office or branch named in the
38 application, including any location change.

39 **Comment.** Section 20315 continues former Section 12424.5 without substantive change.

40 See Sections 17240 ("tear gas"), 17250 ("tear gas weapon").

1 **§ 23515. Violent use of firearm**

2 23515. As used in [this chapter], an offense that involves the violent use of a
3 firearm includes any of the following:

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

6 (b) A violation of Section 246.

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

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

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

11 DIVISION 2. FIREARM SAFETY DEVICES, GUN SAFES, AND
12 RELATED WARNINGS

13 **§ 23620. Aroner-Scott-Hayden Firearms Safety Act of 1999**

14 23620. This division and Sections 16540, 16610, and 16870 shall be known and
15 may be cited as the “Aroner-Scott-Hayden Firearms Safety Act of 1999.”

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

17 **§ 23625. Legislative findings**

18 23625. The Legislature makes the following findings:

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

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

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

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

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

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

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

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

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

20 **Comment.** Section 23625 continues former Section 12087.5 without substantive change.
21 See Sections 16520 (“firearm”), 16640 (“handgun”).

22 § 23630. Limitations on application

23 23630. (a) This division does not apply to the commerce of any antique firearm.

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

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

31 **Comment.** In combination with Section 16170(b), Section 23630 continues former Section
32 12088.8 without substantive change.

33 See Sections 16170(b) (“antique firearm”), 16520 (“firearm”), 16540 (“firearm safety device”),
34 16610 (“gun safe”).

35 § 23635. Firearm safety device requirement, warning requirement for noncomplying long- 36 gun safe, and warning described in Section 23640

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

1 manufacturer and model of the firearm, or to the physical characteristics of the
2 firearm that match those listed on the roster for use with the device.

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

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

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

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

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

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

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

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

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

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

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

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

39 (3) This warning shall be displayed in both English and Spanish, in conspicuous
40 and legible type in contrast by typography, layout, or color with other printed
41 matter on the package or descriptive materials, in a manner consistent with Part
42 1500.121 of Title 16 of the Code of Federal Regulations, or successor regulations
43 thereto.

1 (e) Any firearm sold or transferred in this state by a licensed firearms dealer,
2 including a private transfer through a dealer, and any firearm manufactured in this
3 state, shall be accompanied by warning language or a label as described in Section
4 23640.

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

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

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

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

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

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

13 **§ 23640. Warning label**

14 23640. (a) The packaging of any firearm and any descriptive materials that
15 accompany any firearm sold or transferred in this state, or delivered for sale in this
16 state, by any licensed manufacturer, or licensed dealer, shall bear a label
17 containing the following warning statement:

18 **WARNING**

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

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

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

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

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

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

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

38 **Comment.** Section 23640 continues former Section 12088.3 without substantive change.

39 See Section 16520 (“firearm”).

1 **§ 23645. Punishment for violation of Section 23635 or 23640**

2 23645. (a) Any violation of Section 23635 or Section 23640 is punishable by a
3 fine of one thousand dollars (\$1,000).

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

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

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

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

14 **§ 23650. Minimum safety standard for firearm safety devices and gun safes**

15 23650. (a) The Attorney General shall develop regulations to implement a
16 minimum safety standard for firearm safety devices and gun safes to significantly
17 reduce the risk of firearm-related injuries to children 17 years of age and younger.
18 The final standard shall do all of the following:

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

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

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

28 (4) Include additional provisions as appropriate.

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

37 (c) The Attorney General shall commence development of regulations under this
38 section no later than January 1, 2000. The Attorney General shall adopt and issue
39 regulations implementing a final standard no later than January 1, 2001. The
40 Attorney General shall report to the Legislature on these standards by January 1,
41 2001. The final standard shall be effective January 1, 2002.

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

1 **§ 23655. Testing of firearm safety devices**

2 23655. (a) The Department of Justice shall certify laboratories to verify
3 compliance with standards for firearm safety devices set forth in Section 23650.

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

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

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

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

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

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

26 **Comment.** Section 23655 continues former Section 12088 without substantive change.
27 See Sections 16440 ("dealer"), 16520 ("firearm"), 16540 ("firearm safety device").

28 **§ 23660. Sale, distribution, or manufacture of unlisted or noncomplying firearm safety**
29 **device**

30 23660. (a) No person shall keep for commercial sale, offer, or expose for
31 commercial sale, or commercially sell any firearm safety device that is not listed
32 on the roster maintained pursuant to subdivision (d) of Section 23655, or that does
33 not comply with the standards for firearm safety devices adopted pursuant to
34 Section 23650.

35 (b) No person may distribute as part of an organized firearm safety program,
36 with or without consideration, any firearm safety device that is not listed on the
37 roster maintained pursuant to subdivision (d) of Section 23655, or that does not
38 comply with the standards for firearm safety devices adopted pursuant to Section
39 23650.

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

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

43 See Sections 16520 ("firearm"), 16540 ("firearm safety device").

1 **§ 23665. Sale or manufacture of noncomplying long-gun safe**

2 23665. (a) No long-gun safe may be manufactured in this state for sale in this
3 state that does not comply with the standards for gun safes adopted pursuant to
4 Section 23650, unless the long-gun safe is labeled by the manufacturer consistent
5 with the requirements of Section 23635.

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

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

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

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

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

23 **§ 23670. Punishment for violation of Section 23660 or 23665**

24 23670. (a)(1) A violation of Section 23660 or 23665 is punishable by a civil fine
25 of up to five hundred dollars (\$500).

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

30 (3) A third or subsequent violation that occurs within five years of two or more
31 previous offenses is punishable by a civil fine of up to five thousand dollars
32 (\$5,000) and, if the violation is committed by a licensed firearms dealer, the
33 firearms dealer shall be permanently ineligible to sell firearms in this state.

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

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

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

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

1 **§ 23675. Effect of compliance**

2 23675. Compliance with the requirements set forth in this division does not
3 relieve any person from liability to any other person as may be imposed pursuant
4 to common law, statutory law, or local ordinance.

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

6 **§ 23680. Recall, replacement, or correction of nonconforming device**

7 23680. (a) If at any time the Attorney General determines that a gun safe or
8 firearm safety device subject to the provisions of this division and sold after
9 January 1, 2002, does not conform with the standards required by subdivision (a)
10 of Section 23635 or Section 23650, the Attorney General may order the recall and
11 replacement of the gun safe or firearm safety device, or order that the gun safe or
12 firearm safety device be brought into conformity with those requirements.

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

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

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

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

23 **§ 23685. Report of incident in which child suffers unintentional or self-inflicted gunshot**
24 **wound**

25 23685. Each law enforcement agency investigating an incident shall report
26 to the State Department of Health Services any information obtained that
27 reasonably supports the conclusion that:

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

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

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

34 See Section 16520 (“firearm”).

35 **§ 23690. Fee**

36 23690. (a)(1) The Department of Justice may require each dealer to charge each
37 firearm purchaser or transferee a fee not to exceed one dollar (\$1) for each firearm
38 transaction.

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

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

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

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

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

10 DIVISION 3. DISGUISED OR MISLEADING APPEARANCE

11 CHAPTER 1. MISCELLANEOUS PROVISIONS

12 § 23800. Bright orange or bright green firearm

13 23800. Any person who, for commercial purposes, purchases, sells,
14 manufactures, ships, transports, distributes, or receives a firearm, where the
15 coloration of the entire exterior surface of the firearm is bright orange or bright
16 green, either singly, in combination, or as the predominant color in combination
17 with other colors in any pattern, is liable for a civil fine in an action brought by the
18 city attorney of the city, or the district attorney for the county, of not more than ten
19 thousand dollars (\$10,000).

20 **Comment.** Section 23800 continues former Section 12020.3 without substantive change.
21 See Section 16520 (“firearm”).

22 CHAPTER 2. OBLITERATION OF IDENTIFICATION MARKS

23 § 23900. Obliteration of firearm identification marks prohibited

24 23900. Any person who changes, alters, removes, or obliterates the name of the
25 maker, model, manufacturer’s number, or other mark of identification, including
26 any distinguishing number or mark assigned by the Department of Justice, on any
27 pistol, revolver, or any other firearm, without first having secured written
28 permission from the department to make that change, alteration, or removal shall
29 be punished by imprisonment in the state prison.

30 **Comment.** Section 23900 continues former Section 12090 without substantive change.
31 See Sections 16520 (“firearm”), 16530 (“firearm capable of being concealed upon the person,”
32 “pistol,” and “revolver”).

33 § 23905. Presumption

34 23905. Possession of any pistol or revolver upon which the name of the maker,
35 model, manufacturer’s number or other mark of identification has been changed,

1 altered, removed, or obliterated, shall be presumptive evidence that the possessor
2 has changed, altered, removed, or obliterated the same.

3 **Comment.** Section 23905 continues former Section 12091 without change. Continuation of
4 this material is not intended to reflect any determination regarding its constitutionality. For a case
5 discussing the constitutionality of former Section 12091, see *In re Christopher K.*, 91 Cal. App.
6 4th 853, 110 Cal. Rptr. 914 (2001).

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

9 **§ 23910. Assignment of number or mark when firearm lacks one**

10 23910. The Department of Justice upon request may assign a distinguishing
11 number or mark of identification to any firearm whenever the firearm lacks a
12 manufacturer’s number or other mark of identification, or whenever the
13 manufacturer’s number or other mark of identification or a distinguishing number
14 or mark assigned by the department has been destroyed or obliterated.

15 **Comment.** Section 23910 continues former Section 12092 without substantive change.
16 See Section 16520 (“firearm”).

17 **§ 23915. Additional number or identifying indicium**

18 23915. (a) Any person may place or stamp on any pistol, revolver, or other
19 firearm any number or identifying indicium, provided the number or identifying
20 indicium does not change, alter, remove, or obliterate the manufacturer’s name,
21 number, model, or other mark of identification.

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

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

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

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

31 **§ 23920. Possession, sale, or purchase of firearm with knowledge of obliteration of**
32 **identifying number or mark**

33 23920. Except as provided in Section 23925, any person who, with knowledge
34 of any change, alteration, removal, or obliteration described in this section, buys,
35 receives, disposes of, sells, offers for sale, or has in possession any pistol,
36 revolver, or other firearm that has had the name of the maker or model, or the
37 manufacturer’s number or other mark of identification, including any
38 distinguishing number or mark assigned by the Department of Justice, changed,
39 altered, removed, or obliterated, is guilty of a misdemeanor.

40 **Comment.** Section 23920 continues former Section 12094(a) without substantive change.

41 For circumstances in which this section is inapplicable, see Section 23925 (exemptions).

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

1 See Section 16320 (“camouflaging firearm container”). See also Sections 17800 (distinct and
2 separate offense), 24390 (camouflaging firearm container constituting nuisance).

3 **§ 24390. Camouflaging firearm container constituting nuisance**

4 24390. Except as provided in Chapter 1 (commencing with Section 17700) of
5 Division 2 of Title 2, any camouflaging firearm container is a nuisance and is
6 subject to Section 18010.

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

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

10 CHAPTER 4. CANE GUN

11 **§ 24410. Prohibition on manufacture, import, sale, gift, loan, or possession of cane gun**

12 24410. Except as provided in Chapter 1 (commencing with Section 17700) of
13 Division 2 of Title 2, any person in this state who manufactures or causes to be
14 manufactured, imports into the state, keeps for sale, or offers or exposes for sale,
15 or who gives, lends, or possesses any cane gun is punishable by imprisonment in a
16 county jail not exceeding one year or in the state prison.

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

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

21 See Section 16330 (“cane gun”). See also Sections 17800 (distinct and separate offense),
22 24490 (cane gun constituting nuisance).

23 **§ 24490. Cane gun constituting nuisance**

24 24490. Except as provided in Chapter 1 (commencing with Section 17700) of
25 Division 2 of Title 2, any cane gun is a nuisance and is subject to Section 18010.

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

28 See Section 16330 (“cane gun”).

29 CHAPTER 5. FIREARM NOT IMMEDIATELY RECOGNIZABLE AS A FIREARM

30 **§ 24510. Prohibition on manufacture, import, sale, gift, loan, or possession of firearm not**
31 **immediately recognizable as firearm**

32 24510. Except as provided in Chapter 1 (commencing with Section 17700) of
33 Division 2 of Title 2, any person in this state who manufactures or causes to be
34 manufactured, imports into the state, keeps for sale, or offers or exposes for sale,
35 or who gives, lends, or possesses any firearm not immediately recognizable as a
36 firearm is punishable by imprisonment in a county jail not exceeding one year or
37 in the state prison.

38 **Comment.** With respect to a firearm that is not immediately recognizable as a firearm, Section
39 24510 continues former Section 12020(a)(1) without substantive change.

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

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

5 **§ 24590. Firearm not immediately recognizable as such constitutes nuisance**

6 24590. Except as provided in Chapter 1 (commencing with Section 17700) of
7 Division 2 of Title 2, any firearm not immediately recognizable as a firearm is a
8 nuisance and is subject to Section 18010.

9 **Comment.** With respect to a firearm that is not immediately recognizable as a firearm, Section
10 24590 continues the first part of the first sentence of former Section 12029 without substantive
11 change.

12 See Section 16520 (“firearm”).

13 CHAPTER 6. UNDETECTABLE FIREARM AND
14 FIREARM DETECTION EQUIPMENT

15 **§ 24610. Prohibition on manufacture, import, sale, gift, loan, or possession of undetectable
16 firearm**

17 24610. Except as provided in Chapter 1 (commencing with Section 17700) of
18 Division 2 of Title 2, any person in this state who manufactures or causes to be
19 manufactured, imports into the state, keeps for sale, or offers or exposes for sale,
20 or who gives, lends, or possesses any undetectable firearm is punishable by
21 imprisonment in a county jail not exceeding one year or in the state prison.

22 **Comment.** With respect to an undetectable firearm, Section 24610 continues former Section
23 12020(a)(1) without substantive change.

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

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

28 **§ 24680. Firearm detection equipment**

29 24680. Any firearm detection equipment newly installed in a nonfederal public
30 building in this state shall be of a type identified by either the United States
31 Attorney General, the Secretary of Transportation, or the Secretary of the
32 Treasury, as appropriate, as available state-of-the-art equipment capable of
33 detecting an undetectable firearm, while distinguishing innocuous metal objects
34 likely to be carried on one’s person sufficient for reasonable passage of the public.

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

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

