Memorandum 2008-59

Nonsubstantive Reorganization of Deadly Weapon Statutes:
Title 4 (Divisions 7-10) of New Part 6

In its nonsubstantive study of the statutes relating to deadly weapons, the Commission is preparing a tentative recommendation, which would reorganize almost all of the material in Title 2 of Part 4 of the Penal Code (Penal Code §§ 12000-12809) in a user-friendly manner in a new Part 6 of the Penal Code. The Commission has previously reviewed and tentatively approved drafts of Titles 1-3 and a partial draft (Divisions 1-6) of Title 4 of new Part 6. Attached for review is a draft of Divisions 7-9 of Title 4, and a draft of Chapter 1 of Division 10. A draft of Chapter 2 of Division 10, relating to assault weapons and .50 BMG rifles, will be provided in a supplement. The remainder of new Part 6 will be produced for the February meeting.

Staff Notes (☞ Staff Note) in the draft raise issues to consider. The staff does not plan to discuss each of these issues at the upcoming meeting. Rather, persons should identify any issues of concern, and then raise those issues for discussion at the meeting or express their concerns in writing, preferably before the meeting (but afterwards is also acceptable).

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

One issue is sufficiently significant that it is discussed below and the staff plans to raise it for discussion at the upcoming meeting. The issue relates to certain exceptions stated in Penal Code Section 12078, and whether those exceptions are meant to extend to Penal Code Section 12077.5, which is an optional provision.

Unless otherwise noted, all statutory references in this memorandum are to the Penal Code.

Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission’s website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission’s staff, through the website or otherwise.
RELATIONSHIP BETWEEN SECTIONS 12077.5 AND 12078(a)(2)-(5)

As presented in the attached draft, “Chapter 5. Firearms Eligibility Check” of “Division 9. Special Firearm Rules Relating to Particular Persons” would consist of two articles.

Article 1, entitled “Fingerprint Requirement and Firearms Eligibility Check,” would contain the substance of Section 12077.5 and a provision that is not relevant here. Section 12077.5 says that “[a]n individual may request that the Department of Justice perform a firearms eligibility check for that individual.” The provision also specifies the procedure for such a firearms eligibility check.

Article 2, entitled “Exceptions Relating to Law Enforcement,” would contain the substance of existing Section 12078(a)(2)-(5), as that substance pertains to existing Section 12077.5. That is consistent with the latest draft of the Commission’s tentative outline for new Part 6. See Memorandum 2008-48, Exhibit p. 23. For the reasons discussed below, however, the staff believes this article should be deleted as unnecessary, illogical, and potentially confusing.

Existing Section 12078 is an enormous provision that consists of 48 different exceptions, each of which relates to one or more enumerated code sections. As so drafted, the meaning of each exception is difficult to grasp without careful study.

To make the substance of Section 12078 more readily understandable, the Commission has been dividing it up, such that each exception is stated in close proximity to each substantive rule it modifies. In the staff’s estimation, that approach has been working well.

But four of the exceptions in Section 12078 relate to “subdivision (b) of Section 12801 and the preceding provisions of this article ....” (Emphasis added.) For example, Section 12078(a)(2) provides:

(2) Subdivision (b) of Section 12801 and the preceding provisions of this article do not apply to deliveries, transfers, or sales of firearms made to authorized law enforcement representatives of cities, counties, cities and counties, or state or federal governments for exclusive use by those governmental agencies if, prior to the delivery, transfer, or sale of these firearms, written authorization from the head of the agency authorizing the transaction is presented to the person from whom the purchase, delivery, or transfer is being made. Proper written authorization is defined as verifiable written certification from the head of the agency by which the purchaser or transferee is employed, identifying the employee as an individual authorized to conduct the transaction, and authorizing the transaction for the exclusive use of the agency by which he or she is employed. Within 10 days of the date a
handgun is acquired by the agency, a record of the same shall be entered as an institutional weapon into the Automated Firearms System (AFS) via the California Law Enforcement Telecommunications System (CLETS) by the law enforcement or state agency. Those agencies without access to AFS shall arrange with the sheriff of the county in which the agency is located to input this information via this system.  

(Emphasis added.) Paragraphs (a)(3), (a)(4), and (a)(5) of Section 12078 establish similar exceptions to “[s]ubdivision (b) of Section 12801 and the preceding provisions of this article.” (Emphasis added.)

Section 12077.5 is one of “the preceding provisions” of the article that contains Section 12078. Thus, if paragraphs (a)(2), (a)(3), (a)(4), and (a)(5) of Section 12078 are read literally, they establish exceptions to Section 12077.5, and those exceptions should be included in the new chapter that would contain the substance of Section 12077.5. The Commission’s outline of new Part 6 is based on this premise. See Memorandum 2008-48, Exhibit p. 23.

However, the procedure in Section 12077.5 is optional, not mandatory. The section says “[a]n individual may request that the Department of Justice perform a firearms eligibility check for that individual.” (Emphasis added.) Because the procedure is optional rather than mandatory, it does not make sense to specify exceptions to that procedure. Doing so could create unnecessary confusion and other problems.

The staff therefore believes that paragraphs (a)(2)-(5) of Section 12078 are not meant to apply to Section 12077.5, and do not need to be continued with respect to that provision. We have included them in the attached draft (as Article 2 of Chapter 5 of Division 9, shown on pages 31-33) simply to illustrate the problem. Because Section 12077.5 is an optional provision, we recommend that (1) Article 2 be deleted in its entirety, (2) the heading of Article 1 also be deleted, and (3) the situation be explained in the preliminary part of the Commission’s report.

Does the Commission agree with the staff’s recommended approach? Do any of the Commissioners, stakeholders, or anyone else see the situation differently, or see a better way to deal with this matter?
As always, informed input would be much appreciated, on this issue or any other matter relating to the Commission’s study.

Respectfully submitted,

Barbara Gaal
Chief Deputy Counsel
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PROPOSED LEGISLATION

☞ Staff Note. This is a work in progress. The material shown below may be changed.

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

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

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

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

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

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DIVISION 7. MANUFACTURE OF FIREARMS

☞ Staff Note. This division is organized as follows:

• Chapter 1, entitled “License Requirement for Manufacture of Firearms,” contains the material currently in Section 12085, except definitional material that would be in the “Definitions” portion of new Part 6.
• Chapter 2, entitled “Issuance, Forfeiture, and Conditions of License to Manufacture Firearms,” contains the material currently in Section 12086, except definitional material that would be in the “Definitions” portion of new Part 6. The chapter is divided into two articles: “Article 1. Licensing Process,” which contains the material currently in Section 12086(b) & (f)-(h), and “Article 2. Prohibitions and Requirements Applicable to Licensee,” which contains the material currently in Section 12086(c).

This approach is intended to be user-friendly, but will also facilitate conforming of cross-references to Sections 12085 and 12086.

CHAPTER 1. LICENSE REQUIREMENT FOR MANUFACTURE OF FIREARMS

§ 29010. Prohibition against unlicensed manufacture of firearms

29010. (a) Commencing July 1, 1999, no person, firm, or corporation licensed to manufacture firearms pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code may manufacture firearms within this state unless licensed pursuant to Chapter 2 (commencing with Section 29050).
(b) Subdivision (a) does not apply to a person licensed to manufacture firearms pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code who manufactures fewer than 100 firearms in a calendar year within this state.

(c) If a person, firm, or corporation required to be licensed pursuant to Chapter 2 (commencing with Section 29050) ceases operations, then the records required pursuant to Section 29130 and subdivision (b) of Section 29115 shall be forwarded to the federal Bureau of Alcohol, Tobacco, and Firearms within three days of the closure of business.

(d) A violation of this section is a misdemeanor.

Comment. Section 29010 continues subdivisions (a)-(d) of former Section 12085 without substantive change.

See Section 16520 (“firearm”).

☞ Staff Notes.

(1) Existing Section 12085 uses the phrase “person, firm, or corporation” in two places. Proposed Section 29010 would continue those phrases without change.

Usually, however, the term “person” is defined to include a corporation or other entity, not just an individual. For example, existing Section 7 says that in the Penal Code, “the word ‘person’ includes a corporation as well as a natural person.” No other definition of “person” applies to Section 12085, and usage of the term in Title 2 of Part 4 of the Penal Code is not consistent. See Memorandum 2008-17, Attachment pp. 37-38. The possibility of standardizing that usage is already on the Commission’s list of “Minor Clean-up Issues for Possible Future Legislative Attention.” See Memorandum 2008-61 (Item #4).

(2) Proposed Section 29010 would continue existing Section 12085(a)-(d). The remainder of Section 12085 relates to use of the term “firearm.” In drafting the definition of “firearm” for new Part 6, the staff inadvertently failed to incorporate that material. As discussed in Memorandum 2008-58, the definition of “firearm” should be revised to continue existing Section 12085(e).

CHAPTER 2. ISSUANCE, FORFEITURE, AND CONDITIONS OF LICENSE TO MANUFACTURE FIREARMS

Article 1. Licensing Process

§ 29050. Issuance of license to manufacture firearms

29050. (a) The Department of Justice shall accept applications for, and shall grant licenses permitting, the manufacture of firearms within this state.

(b) No license shall be granted by the department unless and until the applicant presents proof that the applicant has all of the following:

(1) A valid license to manufacture firearms issued pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code.

(2) Any regulatory or business license, or licenses, required by local government.

(3) A valid seller’s permit or resale certificate issued by the State Board of Equalization, if applicable.
(4) A certificate of eligibility issued by the Department of Justice pursuant to Section 26710.
(c) A license granted by the department shall be valid for no more than one year from the date of issuance and shall be in the form prescribed by the Attorney General.
(d) The department shall inform applicants who are denied licenses of the reasons for the denial in writing.

Comment. Subdivision (a) of Section 29050 continues the first sentence of former Section 12086(b)(1) without substantive change.
Subdivision (b) continues former Section 12086(b)(2) without substantive change.
Subdivision (c) continues former Section 12086(b)(4) without substantive change.
Subdivision (d) continues the second sentence of former Section 12086(b)(1) without substantive change.
See Sections 16450 (“department”), 16520 (“firearm”).

§ 29055. Fees and regulations
29055. (a) The department shall adopt regulations to administer this chapter and Chapter 1 (commencing with Section 29010).
(b) The department shall recover the full costs of administering the program by collecting fees from license applicants. Recoverable costs shall include, but not be limited to, the costs of inspections and maintaining a centralized list of licensed firearm manufacturers.
(c) The fee for licensed manufacturers who produce fewer than 500 firearms in a calendar year within this state shall not exceed (i) two hundred fifty dollars ($250) per year or (ii) the actual costs of inspections and maintaining a centralized list of firearm manufacturers and any other duties of the department required pursuant to this chapter and Chapter 1 (commencing with Section 29010), whichever is less.

Comment. Section 29055 continues former Section 12086(b)(3) without substantive change.
See Sections 16450 (“department”), 16520 (“firearm”).

§ 29060. Centralized list of persons licensed to manufacture firearms
29060. (a) Except as otherwise provided in subdivisions (a) and (b) of Section 20965, the Department of Justice shall maintain a centralized list of all persons licensed pursuant to subdivision (b) of Section 29050.
(b) The centralized list shall be provided annually to each police department and county sheriff within the state.

Comment. Section 29060 continues former Section 12086(f)(1) without substantive change.

§ 29065. Revocation of license
29065. (a) Except as provided in subdivision (b), the license of any licensee who violates this chapter may be revoked.
(b) The license of any licensee who knowingly or with gross negligence violates this chapter or violates this chapter three times shall be revoked, and that person,
firm, or corporation shall become permanently ineligible to obtain a license
pursuant to this chapter.
  (c) Upon the revocation of the license, notification shall be provided to local law
enforcement authorities in the jurisdiction where the licensee’s business is located
and to the federal Bureau of Alcohol, Tobacco, and Firearms.

Comment. Subdivision (a) of Section 29065 continues former Section 12086(f)(2) without
substantive change.
  Subdivision (b) continues former Section 12086(f)(3) without substantive change. For
guidance in applying this subdivision, see Section 16010 (continuation of existing law). See also
Section 16015 (determining existence of prior conviction).
  Subdivision (c) continues former Section 12086(g)(1) without substantive change.

☞ Staff Note. Existing Section 12086(f)(3) uses the phrase “person, firm, or corporation.”
Proposed Section 29065 would continue that phrase without change. For further discussion
relating to this phrase, see the Staff Note on proposed Section 29010.

§ 29070. Release of information about licensees

29070. (a) The department shall make information concerning the location and
name of a licensee available, upon request, for the following purposes only:
  (1) Law enforcement.
  (2) When the information is requested by a person licensed pursuant to Chapter
44 (commencing with Section 921) of Title 18 of the United States Code for
determining the validity of the license for firearm shipments.
  (b) Notwithstanding subdivision (a), the department shall make the name and
business address of a licensee available to any person upon written request.

Comment. Subdivision (a) of Section 29070 continues former Section 12086(g)(2) without
substantive change.
  Subdivision (b) continues former Section 12086(g)(3) without substantive change.

See Sections 16450 (“department”), 16520 (“firearm”), 16820 (“licensee”).

§ 29075. Information to be maintained and made available by Department of Justice

29075. The Department of Justice shall maintain and make available upon
request information concerning all of the following:
  (a) The number of inspections conducted and the amount of fees collected
pursuant to Section 29055.
  (b) The number of licensees removed from the centralized list described in
Sections 29060 and 29065.
  (c) The number of licensees found to have violated this chapter.

Comment. Section 29075 continues former Section 12086(h) without substantive change.

See Section 16820 (“licensee”).
Article 2. Prohibitions and Requirements Applicable to Licensee

§ 29100. Compliance with prohibitions and requirements
29100. A licensee shall comply with the prohibitions and requirements described in this article.
Comment. Section 29100 continues the introductory clause of former Section 12086(c) without substantive change.
See Section 16820 (“licensee”).

§ 29105. Place of conducting business
29105. The business of a licensee shall be conducted only in the buildings designated in the license.
Comment. Section 29105 continues former Section 12086(c)(1) without substantive change.
See Section 16820 (“licensee”).

§ 29110. Display of license
29110. A licensee shall display the license or a copy thereof, certified by the department, on the premises where it can easily be seen.
Comment. Section 29110 continues former Section 12086(c)(2) without substantive change.
See Sections 16450 (“department”), 16820 (“licensee”).

§ 29115. Lost or stolen firearm
29115. (a) Whenever a licensee discovers that a firearm has been stolen or is missing from the licensee’s premises, the licensee shall report the loss or theft within 48 hours of the discovery to all of the following:
(1) The Department of Justice, in a manner prescribed by the department.
(2) The federal Bureau of Alcohol, Tobacco, and Firearms.
(3) The police department in the city or city and county where the building designated in the license is located.
(4) If there is no police department in the city or city and county where the building designated in the license is located, the sheriff of the county where the building designated in the license is located.
(b) For at least 10 years, the licensee shall maintain records of all firearms that are lost or stolen, as prescribed by the Department of Justice.
Comment. Subdivision (a) of Section 29115 continues former Section 12086(c)(3) without substantive change.
Subdivision (b) continues former Section 12086(c)(10) without substantive change.
See Sections 16520 (“firearm”), 16820 (“licensee”).

§ 29120. Restrictions on employee access to firearms
29120. (a) A licensee shall require that each employee obtain a certificate of eligibility pursuant to Section 26710, which shall be renewed annually, before being allowed to come into contact with any firearm.
(b) A licensee shall prohibit any employee who the licensee knows or reasonably should know is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm from coming into contact with any firearm.

Comment. Section 29120 continues former Section 12086(c)(4) without substantive change. See Sections 16520 (“firearm”), 16820 (“licensee”).

Staff Note. The text of this provision reflects an amendment made by AB 837 (Feuer). See 2008 Cal. Stat. ch. 698.

§ 29125. Unique serial number on each firearm

29125. (a) Each firearm a licensee manufactures in this state shall be identified with a unique serial number stamped onto the firearm utilizing the method of compression stamping.

(b) Licensed manufacturers who produce fewer than 500 firearms in a calendar year within this state may serialize long guns only by utilizing a method of compression stamping or by engraving the serial number onto the firearm.

(c) The licensee shall stamp the serial number onto the firearm within one business day of the time the frame or receiver is manufactured.

(d) The licensee shall not use the same serial number for more than one firearm.

Comment. Section 29125 continues former Section 12086(c)(5) without substantive change. See Sections 16520 (“firearm”), 16820 (“licensee”).

§ 29130. Recordkeeping requirements

29130. (a) A licensee shall record the type, model, caliber, or gauge, and serial number of each firearm manufactured or acquired, and the date of the manufacture or acquisition, within one business day of the manufacture or acquisition.

(b) The licensee shall maintain permanently within the building designated in the license the records required pursuant to subdivision (a).

(c) Backup copies of the records described in subdivision (a), whether electronic or hard copy, shall be made at least once a month. These backup records shall be maintained in a facility separate from the one in which the primary records are stored.

Comment. Section 29130 continues former Section 12086(c)(6) without substantive change. See Sections 16520 (“firearm”), 16820 (“licensee”).

§ 29135. Inspections

29135. (a) A licensee shall allow the department to inspect the building designated in the license to ensure compliance with the requirements of this chapter.

(b) A licensee shall allow any peace officer, authorized law enforcement employee, or Department of Justice employee designated by the Attorney General, upon the presentation of proper identification, to inspect facilities and records during business hours to ensure compliance with the requirements of this chapter.
Comment. Section 29135 continues former Section 12086(c)(7) without substantive change.
See Section 16820 (“licensee”).

§ 29140. Storage of firearms and barrels for firearms in secure facility
29140. A licensee shall store in a secure facility all firearms manufactured and all barrels for firearms manufactured.
Comment. Section 29140 continues former Section 12086(c)(8) without substantive change.
See Sections 16520 (“firearm”), 17111 (“secure facility” for firearm storage by manufacturer), 17112 (special definition of “secure facility” for firearm storage by manufacturer producing fewer than 500 firearms per calendar year).

§ 29145. Notification requirement
29145. (a) A licensee shall notify the chief of police or other head of the municipal police department in the city or city and county where the building designated in the license is located that the licensee is manufacturing firearms within that city or city and county and the location of the licensed premises.
(b) If there is no police department in the city or city and county where the building designated in the license is located, the licensee shall notify the sheriff of the county where the building designated in the license is located that the licensee is manufacturing firearms within that county and the location of the licensed premises.
Comment. Section 29145 continues former Section 12086(c)(9) without substantive change.
See Sections 16520 (“firearm”), 16820 (“licensee”).

DIVISION 8. MISCELLANEOUS RULES RELATING TO FIREARMS GENERALLY

CHAPTER 1. MISCELLANEOUS PROVISIONS

§ 29300. Firearm of any nature constitutes nuisance under specified circumstances
29300. (a) Except as provided in subdivision (c), a firearm of any nature owned or possessed in violation of Chapter 1 (commencing with Section 29610), 2 (commencing with Section 29800), or 3 (commencing with Section 29900) of Division 9 of this code, or Chapter 3 (commencing with Section 8100) of Division 5 of the Welfare and Institutions Code, or used in the commission of any misdemeanor as provided in this code, any felony, or an attempt to commit any misdemeanor as provided in this code or any felony, is, upon a conviction of the defendant or upon a juvenile court finding that an offense which would be a misdemeanor or felony if committed by an adult was committed or attempted by the juvenile with the use of a firearm, a nuisance.
(b) A finding that the defendant was guilty of the offense but was insane at the time the offense was committed is a conviction for the purposes of this section.
(c) A firearm is not a nuisance pursuant to this section if the firearm owner disposes of the firearm pursuant to Section 29910.

(d) This section does not apply to any of the following:

(1) Any firearm in the possession of the Department of Fish and Game.

(2) Any firearm that was used in the violation of any provision of the Fish and Game Code or any regulation adopted pursuant thereto.

(3) Any firearm that is forfeited pursuant to Section 5008.6 of the Public Resources Code.

Comment. Subdivision (a) of Section 29300 continues the first sentence of former Section 12028(b)(1) without substantive change.

In combination with Section 18000(c), subdivision (b) continues the second sentence of former Section 12028(b)(1) without substantive change.

Subdivision (c) continues former Section 12028(b)(2) without substantive change.

In combination with Section 25700, subdivision (d) continues former Section 12028(e) without substantive change.

See Section 16520 (“firearm”).

☞ Staff Note. Existing Section 12028(b)(1) says:

(b)(1) Except as provided in paragraph (2), a firearm of any nature owned or possessed in violation of Section 12021, 12021.1, or 12101 of this code, or Chapter 3 (commencing with Section 8100) of Division 5 of the Welfare and Institutions Code, or used in the commission of any misdemeanor as provided in this code, any felony, or an attempt to commit any misdemeanor as provided in this code or any felony, is, upon a conviction of the defendant or upon a juvenile court finding that an offense which would be a misdemeanor or felony if committed by an adult was committed or attempted by the juvenile with the use of a firearm, a nuisance. A finding that the defendant was guilty of the offense but was insane at the time the offense was committed is a conviction for the purposes of this section.

The last sentence clarifies how to treat a finding that the defendant was guilty but insane. The rule stated in that sentence applies not just for purposes of subdivision (b), but instead “for the purposes of this section.” (Emphasis added.)

To ensure that this rule is continued without substantive change, it would not be sufficient for the rule to apply to the provision that continues the first sentence of existing Section 12028(b)(1).

The rule must also apply to the provision that continues the first sentence of existing Section 12028(c), because that sentence also refers to convictions and juvenile court determinations. It says:

(c) Any weapon described in subdivision (a), or, upon conviction of the defendant or upon a juvenile court finding that an offense which would be a misdemeanor or felony if committed by an adult was committed or attempted by the juvenile with the use of a firearm, any weapon described in subdivision (b) shall be surrendered to the sheriff of a county or the chief of police or other head of a municipal police department of any city or city and county or the chief of police of any campus of the University of California or the California State University or the Commissioner of the California Highway Patrol. ....

(Emphasis added.)

The first sentence of Section 12028(c) would be continued in proposed Section 18000. To address the point discussed above, proposed Section 18000 should be revised as shown in underscore below:

§ 18000. Surrender of specified weapons constituting nuisance

18000. (a) Any weapon described in Section 19190, 21390, 21590, or 25700, or, upon conviction of the defendant or upon a juvenile court finding that an offense that would be a
misdemeanor or felony if committed by an adult was committed or attempted by the juvenile with the use of a firearm, any weapon described in Section 29400, shall be surrendered to one of the following:

1. The sheriff of a county.
2. The chief of police or other head of a municipal police department of any city or city and county.
3. The chief of police of any campus of the University of California or the California State University.
4. The Commissioner of the California Highway Patrol.

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

(c) A finding that the defendant was guilty of the offense but was insane at the time the offense was committed is a conviction for the purposes of this section.

Comment. Subdivision (a) of Section 18000 continues the first sentence of former Section 12028(c) without substantive change. Subdivision (b) continues the second sentence of former Section 12028(c) without substantive change. In combination with Section 29300(b), subdivision (c) continues the second sentence of former Section 12028(b)(1) without substantive change.

See Section 16520 (“firearm”).

In drafting the Comment to proposed Section 29300, the staff presumed that proposed Section 18000 will be revised as recommended above and further discussed in Memorandum 2008-58.

CHAPTER 2. ENTERTAINMENT FIREARMS PERMIT

Staff Note. This chapter contains the material currently in Section 12081.

§ 29500. Entertainment firearms permit

29500. Any person who is at least 21 years of age may apply for an entertainment firearms permit from the Department of Justice. An entertainment firearms permit authorizes the permitholder to possess firearms loaned to the permitholder for use solely as a prop in a motion picture, television, video, theatrical, or other entertainment production or event.

Comment. Section 29500 continues the first sentence of former Section 12081(a) without substantive change. See Section 16520 (“firearm”).

§ 29505. Application form

29505. (a) Requests for entertainment firearms permits shall be made on application forms prescribed by the Department of Justice that require applicant information, including, but not limited to, the following:

1. Complete name.
2. Residential and mailing address.
3. Telephone number.
4. Date of birth.
5. Place of birth.
(6) Country of citizenship and, if other than United States, alien number or admission number.

(7) Valid driver’s license number or valid identification card number issued by the California Department of Motor Vehicles.

(8) Social security number.

(9) Signature.

(b) All applications must be submitted with the appropriate fee as specified in Section 29510.

Comment. Subdivision (a) of Section 29505 continues former Section 12081(b)(1) without substantive change.

Subdivision (b) continues former Section 12081(b)(2) without substantive change.

§ 29510. Application fee

29510. (a) The Department of Justice shall recover the full costs of administering the entertainment firearms permit program by assessing the following application fees:

(1) For the initial application: one hundred four dollars ($104). Of this sum, fifty-six dollars ($56) shall be deposited into the Fingerprint Fee Account, and forty-eight dollars ($48) shall be deposited into the Dealer Record of Sale Account.

(2) For each annual renewal application: twenty-nine dollars ($29), which shall be deposited into the Dealer Record of Sale Account.

(b) The department shall annually review and shall adjust the fees specified in subdivision (a), if necessary, to fully fund, but not to exceed the actual costs of, the permit program provided for by this chapter, including enforcement of the program.

Comment. Subdivision (a) of Section 29510 continues former Section 12081(c) without substantive change.

Subdivision (b) continues former Section 12081(e) without substantive change.

Staff Note. Existing Section 12081(c) twice refers to the “Dealer Record of Sale Account.” The staff preserved those references in proposed Section 29510. We presume, however, that the “Dealer Record of Sale Account” referenced in existing Section 12081(c) is the same as the “Dealers’ Record of Sale Special Account” referenced in other existing provisions, particularly existing Section 12076(g).

Because this is a strictly nonsubstantive study and the Commission is striving to minimize any concern that the proposed legislation would have a substantive impact, the staff does not recommend attempting to conform the terminology in this study. That might be worth doing in the future, in a different reform. Unless the Commission otherwise directs, we will add this issue to the Commission’s list of “Minor Clean-up Issues for Possible Future Legislative Attention.” See Memorandum 2008-61.

§ 29515. No entertainment firearms permit for person prohibited from possessing or receiving firearms

29515. (a) Upon receipt of an initial or renewal application submitted as specified in Sections 29505, 29520, and 29525, the department shall examine its
records, records the department is authorized to request from the State Department of Mental Health pursuant to Section 8104 of the Welfare and Institutions Code, and records of the National Instant Criminal Background Check System as described in subsection (t) of Section 922 of Title 18 of the United States Code, in order to determine if the applicant is prohibited from possessing or receiving firearms.

(b) The department shall issue an entertainment firearms permit only if the records indicate that the applicant is not prohibited from possessing or receiving firearms pursuant to any federal, state, or local law.

Comment. Section 29515 continues the second and third sentences of former Section 12081(a) without substantive change.

§ 29520. Arrests and convictions of applicant

29520. (a) An initial application for an entertainment firearms permit shall require the submission of fingerprint images and related information in a manner prescribed by the department, for the purpose of obtaining information as to the existence and nature of a record of state or federal level convictions and state or federal level arrests for which the department establishes that the individual was released on bail or on the individual’s own recognizance pending trial as needed to determine whether the applicant may be issued the permit. Requests for federal level criminal offender record information received by the Department of Justice pursuant to this chapter shall be forwarded by the department to the Federal Bureau of Investigation.

(b) The Department of Justice shall review the criminal offender record information specified in subdivision (I) of Section 11105 for entertainment firearms permit applicants.

(c) The Department of Justice shall review subsequent arrests, pursuant to Section 11105.2, to determine the continuing validity of the permit as specified in Section 29530 for all entertainment firearms permitholders.

Comment. Subdivision (a) of Section 29520 continues former Section 12081(b)(3) without substantive change.

Subdivision (b) continues former Section 12081(b)(4) without substantive change.

Subdivision (c) continues former Section 12081(b)(5) without substantive change. An erroneous cross-reference to former Section 12081(d) has been replaced with a cross-reference to Section 29530, which continues the substance of former Section 12081(f).

☞ Staff Note. Existing Section 12081(b)(5) says: “The Department of Justice shall review subsequent arrests, pursuant to Section 11105.2, to determine the continuing validity of the permit as specified in subdivision (d) for all entertainment firearms permitholders.” (Emphasis added.) The reference to subdivision (d) appears to be incorrect. Subdivision (d) does not relate to continuing validity of an entertainment firearms permit. It simply says that “[t]he implementation of subdivisions (a), (b), and (c) by the department is exempt from the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).”

The correct reference appears to be existing Section 12081(f), which provides:
(f) An entertainment firearms permit issued by the Department of Justice shall be valid for one year from the date of issuance. If at any time during that year the permitholder becomes prohibited from possessing or receiving firearms pursuant to any federal, state, or local law, his or her entertainment firearms permit shall be no longer valid.

In the bill enacting Section 12081, the substance of subdivision (f) was originally labeled as subdivision (d), and subdivision (b)(5) cross-referred to subdivision (d). See SB 231 (Scott & Murray), as amended Aug. 9, 2004. Apparently due to inadvertence, the cross-reference was not adjusted when the bill was amended and the above-quoted material became subdivision (f) instead of subdivision (d).

The staff has corrected the cross-reference in drafting proposed Section 29520. This approach seems more reasonable than perpetuating an obviously incorrect reference. Although this is a strictly nonsubstantive study, some degree of commonsense is appropriate in interpreting existing law. We would exercise such commonsense here and note the situation in the preliminary part of the Commission’s report.

§ 29525. Furnishing fictitious name, knowingly furnishing incorrect information, or knowingly omitting required information on application

29525. Any person who furnishes a fictitious name or address or knowingly furnishes any incorrect information or knowingly omits any information required to be provided on an application for an entertainment firearms permit is guilty of a misdemeanor.

Comment. Section 29525 continues former Section 12081(b)(6) without substantive change.

§ 29530. Duration of entertainment firearms permit

29530. (a) An entertainment firearms permit issued by the Department of Justice shall be valid for one year from the date of issuance.

(b) If at any time during that year the permitholder becomes prohibited from possessing or receiving firearms pursuant to any federal, state, or local law, the entertainment firearms permit shall be no longer valid.

Comment. Section 29530 continues former Section 12081(f) without substantive change. See Section 16520 (“firearm”).

§ 29535. Exemption from Administrative Procedure Act

29535. The implementation of Sections 29500, 29505, 29520, 29525, and subdivision (a) of Section 29510 by the department is exempt from the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

Comment. Section 29535 continues former Section 12081(d) without substantive change.

DIVISION 9. SPECIAL FIREARM RULES RELATING TO PARTICULAR PERSONS

☞ Staff Note. This division is organized as follows:

• Chapter 1, entitled “Juvenile,” contains the material currently in Section 12101, except a definition that would be in the “Definitions” portion of new Part 6. The chapter would be divided into several articles.
• Chapter 2, entitled “Person Convicted of Violent Felony,” contains the material currently in Section 12021.1.

• Chapter 3, entitled “Person Convicted of Specified Offense, Addicted to Narcotic, or Subject to Court Order,” contains the material currently in Section 12021. The chapter would be divided into several articles.

• Chapter 4, entitled “Prohibited Armed Persons File,” contains the material currently in Sections 12010, 12011, and 12012.

• Chapter 5, entitled “Firearms Eligibility Check,” contains the material currently in Sections 12001(m) and 12077.5. As shown below, the chapter also contains four exceptions currently stated in Section 12078, as they arguably pertain to Section 12077.5. As discussed in the accompanying memorandum, the staff recommends that this material be deleted.

This approach is intended to be user-friendly, but will also facilitate conforming of cross-references.

CHAPTER 1. JUVENILE

Article 1. Possession of Handgun

§ 29610. Prohibition on possession of handgun by minor

29610. A minor shall not possess a pistol, revolver, or other firearm capable of being concealed upon the person.

Comment. Section 29610 continues former Section 12101(a)(1) without substantive change.

For exceptions to this provision, see Section 29615 (exceptions). For the consequences of violating this provision, see Sections 29700 (punishment for violation of chapter), 29705 (compulsory participation in parenting education).

For further guidance on firearm restrictions relating to minors and persons under age 21, see Sections 27505 (person, corporation, or firm that sells, loans, or transfers firearm to minor or handgun to person under age 21), 27510 (dealer that supplies, delivers, or gives possession or control of firearm to minor or handgun to person under age 21), 27945 (exception for certain situations involving minor), 29650 (prohibition on possession of live ammunition by minor), 29655 (exceptions).

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

§ 29615. Exceptions

29615. Section 29610 shall not apply if one of the following circumstances exists:

(a) The minor is accompanied by a parent or legal guardian, and the minor is actively engaged in, or is in direct transit to or from, a lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves this use of a firearm.

(b) The minor is accompanied by a responsible adult, the minor has the prior written consent of a parent or legal guardian, and the minor is actively engaged in,
or is in direct transit to or from, a lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(c) The minor is at least 16 years of age, the minor has the prior written consent of a parent or legal guardian and the minor is actively engaged in, or is in direct transit to or from, a lawful recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(d) The minor has the prior written consent of a parent or legal guardian, the minor is on lands owned or lawfully possessed by the parent or legal guardian, and the minor is actively engaged in, or is in direct transit to or from, a lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

Comment. Section 29615 continues former Section 12101(a)(2) without substantive change. See Sections 16520 (“firearm”), 17070 (“responsible adult”).

Staff Notes.

(1) Existing Section 12101(a)(2)(A) refers to a minor who “is actively engaged in, or is in direct transit to or from, a lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves this use of a firearm.” (Emphasis added.) Existing Section 12101(a)(2)(B)-(D) contain similar language, except they refer to an event “the nature of which involves the use of a firearm.” The staff does not understand why subparagraph (A) refers to “this use of a firearm,” while subparagraphs (B), (C), and (D) refer to “the use of a firearm.” We suspect the intent was to refer to “the use of a firearm” in all four subparagraphs.

In drafting proposed Section 29615, however, we preserved the existing language, so as to minimize any concern that the Commission’s proposed reorganization would have a substantive impact. The point might be worth addressing in the future, in a different reform. Unless the Commission otherwise directs, we will add this issue to the Commission’s list of “Minor Clean-up Issues for Possible Future Legislative Attention.” See Memorandum 2008-61.

(2) Existing Section 12101(a)(2)(A)-(D) are unnecessarily repetitive, obscuring the key differences between the provisions. If Section 12101(a)(2)(A) is meant to refer to “the use of a firearm,” proposed Section 29615 could be simplified to read:

29615. Section 29610 shall not apply if the minor is actively engaged in, or is in direct transit to or from, a lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm, and one of the following circumstances exists:

(a) The minor is accompanied by a parent or legal guardian.

(b) The minor is accompanied by a responsible adult and the minor has the prior written consent of a parent or legal guardian.

(c) The minor is at least 16 years of age and the minor has the prior written consent of a parent or legal guardian.
(d) The minor has the prior written consent of a parent or legal guardian and the minor is on lands owned or lawfully possessed by the parent or legal guardian.

Because the Commission is striving to minimize any concern that its proposed reorganization would have a substantive impact, the staff has not taken that approach in drafting proposed Section 29615. The approach might be worth pursuing in the future, in a different reform. Unless the Commission otherwise directs, we will add this issue to the Commission’s list of “Minor Clean-up Issues for Possible Future Legislative Attention.” See Memorandum 2008-61.

(3) Existing Section 12101(a)(2) says that the prohibition on possession of a handgun by a minor “shall not apply if one of the following circumstances exists ....” (Emphasis added.) That language arguably leaves unclear whether the prohibition would apply if more than one of the enumerated circumstances exists.

The staff suspects the prohibition is not intended to apply in that situation. If that is the intent, it could be made more clear by stating that the prohibition “shall not apply if any of the following circumstances exists ....” (Emphasis added.) Again, however, the staff preserved the existing language in drafting proposed Section 29615, rather than replacing “one of the following” with “any of the following.” But such a change might be worth making in the future, in a different reform. Unless the Commission otherwise directs, we will add this issue to the Commission’s list of “Minor Clean-up Issues for Possible Future Legislative Attention.” See Memorandum 2008-61.

Article 2. Possession of Live Ammunition

§ 29650. Prohibition on possession of live ammunition by minor

29650. A minor shall not possess live ammunition.

Comment. Section 29650 continues former Section 12101(b)(1) without substantive change.

For exceptions to this provision, see Section 29655 (exceptions). For the consequences of violating this provision, see Sections 29700 (punishment for violation of chapter), 29705 (compulsory participation in parenting education).

For further guidance on firearm restrictions relating to minors and persons under age 21, see Sections 27505 (person, corporation, or firm that sells, loans, or transfers firearm to minor or handgun to person under age 21), 27510 (dealer that supplies, delivers, or gives possession or control of firearm to minor or handgun to person under age 21), 27945 (exception for certain situations involving minor), 29610 (prohibition on possession of handgun by minor), 29615 (exceptions).

§ 29655. Exceptions

29655. Section 29650 shall not apply if one of the following circumstances exists:

(a) The minor has the written consent of a parent or legal guardian to possess live ammunition.

(b) The minor is accompanied by a parent or legal guardian.

(c) The minor is actively engaged in, or is going to or from, a lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, the nature of which involves the use of a firearm.

Comment. Section 29655 continues former Section 12101(b)(2) without substantive change.

See Section 16520 (“firearm”).
☞ Staff Note. Existing Section 12101(b)(2) says that the prohibition on possession of live ammunition by a minor “shall not apply if one of the following circumstances exists ....” (Emphasis added.) As with Section 12101(a)(2), that language arguably leaves unclear whether the prohibition would apply if more than one of the enumerated circumstances exists.

Because the Commission is striving to minimize any concern that its proposed reorganization would have a substantive impact, the staff preserved the existing language in drafting proposed Section 29655, rather than replacing “one of the following” with “any of the following.” But such a change might be worth making in the future, in a different reform. Unless the Commission otherwise directs, we will add this issue to the Commission’s list of “Minor Clean-up Issues for Possible Future Legislative Attention.” See Memorandum 2008-61.

Article 3. Punishment

§ 29700. Punishment for violation of chapter

29700. Every minor who violates this chapter shall be punished as follows:

(a) By imprisonment in the state prison or in a county jail if one of the following applies:

(1) The minor has been found guilty previously of violating this chapter.

(2) The minor has been found guilty previously of an offense specified in [Section 12220, 12520], or 29805, or an offense specified in any provision listed in Section 16590.

(3) The minor has been found guilty of a violation of Section 29610.

(b) Violations of this chapter other than those violations specified in subdivision (a) shall be punishable as a misdemeanor.

Comment. Section 29700 continues former Section 12101(c) without substantive change. A cross-reference to former Section 12560 has not been continued, because that provision was repealed in 1990. See 1990 Cal. Stat. ch. 9, § 14.

For guidance in applying paragraphs (a)(1) and (a)(2), see Section 16015 (determining existence of prior conviction). For requirements a court may impose on a parent or guardian of a minor who violates this chapter, see Section 29705 (compulsory participation in parenting education).

☞ Staff Notes.

(1) Under existing Section 12101(c)(1), a minor who violates that section shall be punished by imprisonment in the state prison or in a county jail “if one of the following applies ....” (Emphasis added.) That language arguably leaves unclear whether the prohibition would apply if more than one of the enumerated circumstances applies.

Because the Commission is striving to minimize any concern that its proposed reorganization would have a substantive impact, the staff preserved the existing language in drafting proposed Section 29600, rather than replacing “one of the following” with “any of the following.” But such a change might be worth making in the future, in a different reform. Unless the Commission otherwise directs, we will add this issue to the Commission’s list of “Minor Clean-up Issues for Possible Future Legislative Attention.” See Memorandum 2008-61.

(2) Existing Section 12101(c)(1)(B) cross-refers to Section 12560. That provision existed when Section 12101 was added to the codes in 1988, but it has since been repealed. See 1990 Cal. Stat. ch. 9, § 14. Consequently, there is no need to continue the cross-reference in proposed Section 29700. It might be helpful to mention this point in the preliminary part of the Commission’s report.
§ 29705. Compulsory participation in parenting education

29705. In a proceeding to enforce this chapter brought pursuant to Article 14 (commencing with Section 601) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, the court may require the custodial parent or legal guardian of a minor who violates this chapter to participate in classes on parenting education that meet the requirements established in Section 16507.7 of the Welfare and Institutions Code.

Comment. Section 29705 continues former Section 12101(d) without substantive change. An incomplete cross-reference to an article in the Welfare and Institutions Code has been corrected. For guidance on punishment of a minor who violates this chapter, see Section 29700 (punishment).

Staff Note. Existing Section 12101(d) cross-refers to “Article 14 (commencing with Section 601) of Chapter 2 of Part 1 of the Welfare and Institutions Code.” That cross-reference is incorrect. The correct cross-reference is to “Article 14 (commencing with Section 601) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code.” (Emphasis added.) The staff has corrected the cross-reference in drafting proposed Section 29705. This approach seems more reasonable than perpetuating an obviously incomplete reference. Although this is a strictly nonsubstantive study, some degree of commonsense is appropriate in interpreting existing law. We would exercise such commonsense here and note the situation in the preliminary part of the Commission’s report.

Article 4. Legislative Intent

§ 29750. Intent of 1994 amendments

29750. In enacting the amendments to former Sections 12078 and 12101 by Section 10 of Chapter 33 of the Statutes of 1994, First Extraordinary Session, it was not the intent of the Legislature to expand or narrow the application of the then-existing statutory and judicial authority as to the rights of minors to be loaned or to possess live ammunition or a firearm for the purpose of self-defense or the defense of others.

Comment. Section 29750 continues former Section 12101(f) without substantive change. See Section 16520 (“firearm”).

Staff Notes.

(1) Existing Section 12101(f) says:

(f) It is not the intent of the Legislature in enacting the amendments to this section or to Section 12078 to expand or narrow the application of current statutory or judicial authority as to the rights of minors to be loaned or to possess live ammunition or a firearm for the purpose of self-defense or the defense of others.

(Emphasis added.) To determine how to continue this statement of intent without changing its substance, the staff researched the history of Section 12101. We found that subdivision (f) was added to Section 12101 by 1994 Cal. Stat. ch. 33, § 10 (1st Ex. Sess.). Several other bills amending Section 12101 were passed the same year, but did not become effective. For explanation, see the Historical and Statutory Note on Penal Code § 12101 in West’s Annotated California Codes; see also Gov’t Code § 9605. Consistent with the historical record, proposed Section 29750 would refer to 1994 Cal. Stat. ch. 33, § 10 (1st Ex. Sess.).
(2) It may no longer be necessary to continue to include this statement of intent in the Penal Code. Deleting it from the code would simplify the code, but would not change the intent of the 1994 amendments referenced, nor cause the statement of intent to disappear from the historical record. That statement would just be more difficult to find than it is now.

Whether that drawback outweighs the potential benefit of simplifying the code depends on how often it would be necessary to assess the intent of the amendments in question. The staff suspects that this would not occur often enough to justify retaining the statement of intent in the Penal Code.

We are not sure of this, however, so we have preserved the statement of intent as shown in proposed Section 29750 above. The possibility of deleting it might be worth pursuing in the future, in a different reform. Unless the Commission otherwise directs, we will add this issue to the Commission’s list of “Minor Clean-up Issues for Possible Future Legislative Attention.” See Memorandum 2008-61.

CHAPTER 2. PERSON CONVICTED OF VIOLENT OFFENSE

§ 29800. Firearm possession or control by person convicted of violent offense

29800. (a)(1) Notwithstanding subdivision (a) of Section 29900, any person who has been previously convicted of any of the offenses listed in Section 29805 and who owns or has in possession or under custody or control any firearm is guilty of a felony.

(2) A dismissal of an accusatory pleading pursuant to Section 1203.4a involving an offense set forth in Section 29805 does not affect the finding of a previous conviction.

(3) If probation is granted, or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the defendant serve at least six months in a county jail.

(b)(1) Any person previously convicted of any of the offenses listed in Section 29805 which conviction results from certification by the juvenile court for prosecution as an adult in adult court under the provisions of Section 707 of the Welfare and Institutions Code, who owns or has in possession or under custody or control any firearm, is guilty of a felony.

(2) If probation is granted, or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the defendant serve at least six months in a county jail.

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

Comment. Subdivision (a) of Section 29800 continues former Section 12021.1(a) without substantive change.
Subdivision (b) continues former Section 12021.1(c) without substantive change.
Subdivision (c) continues former Section 12021.1(d) without substantive change.

See Section 16520 ("firearm").

§ 29805. Violent offense

29805. (a) As used in this chapter, a violent offense includes any of the following:
   (1) Murder or voluntary manslaughter.
   (2) Mayhem.
   (3) Rape.
   (4) Sodomy by force, violence, duress, menace, or threat of great bodily harm.
   (5) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.
   (6) Lewd acts on a child under the age of 14 years.
   (7) Any felony punishable by death or imprisonment in the state prison for life.
   (8) Any other felony in which the defendant inflicts great bodily injury on any person, other than an accomplice, that has been charged and proven, or any felony in which the defendant uses a firearm which use has been charged and proven.
   (9) Attempted murder.
   (10) Assault with intent to commit rape or robbery.
   (11) Assault with a deadly weapon or instrument on a peace officer.
   (12) Assault by a life prisoner on a noninmate.
   (13) Assault with a deadly weapon by an inmate.
   (14) Arson.
   (15) Exploding a destructive device or any explosive with intent to injure.
   (16) Exploding a destructive device or any explosive causing great bodily injury.
   (17) Exploding a destructive device or any explosive with intent to murder.
   (18) Robbery.
   (19) Kidnapping.
   (20) Taking of a hostage by an inmate of a state prison.
   (21) Attempt to commit a felony punishable by death or imprisonment in the state prison for life.
   (22) Any felony in which the defendant personally used a dangerous or deadly weapon.
   (23) Escape from a state prison by use of force or violence.
   (24) Assault with a deadly weapon or force likely to produce great bodily injury.
   (25) Any felony violation of Section 186.22.
   (26) Any offense enumerated in subdivision (a), (b), or (d) of Section 23515.
   (27) Carjacking.
   (28) Any offense enumerated in subdivision (c) of Section 23515 if the person has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417.
(b) As used in this chapter, a violent offense also includes any attempt to
commit a crime listed in subdivision (a) other than an assault.

Comment. Section 29805 continues former Section 12021.1(b) without substantive change.
See Section 16520 (“firearm”).

Staff Note. For discussion of existing Section 12021.1(b) and a few provisions with
potentially confusing similarities, see Memorandum 2008-26, Attachment pp. 2-3 (Staff Note on
proposed Section 23515); Memorandum 2008-17, Attachment pp. 58-59 (Staff Note on proposed
Section 17320). It is possible that some clean-up and standardization relating to use of the term
“violent felony” and categorization of crimes as “violent offenses” would be useful. The staff
suspects, however, that any such reform would be controversial and complicated. Consequently,
we do not recommend including this issue on the Commission’s list of “Minor Clean-up Issues
for Possible Future Legislative Attention.”

CHAPTER 3. PERSON CONVICTED OF SPECIFIED OFFENSE, ADDICTED TO
NARCOTIC, OR SUBJECT TO COURT ORDER

Article 1. Prohibitions on Firearm Access

§ 29900. Firearm access by person convicted of felony, addicted to narcotic drug, or
convicted of other specified offense

29900. (a)(1) Any person who has been convicted of a felony under the laws of
the United States, the State of California, or any other state, government, or
country, or of an offense enumerated in subdivision (a), (b), or (d) of Section
23515, or who is addicted to the use of any narcotic drug, and who owns,
purchases, receives, or has in possession or under custody or control any firearm is
guilty of a felony.

(2) Any person who has two or more convictions for violating paragraph (2) of
subdivision (a) of Section 417 and who owns, purchases, receives, or has in
possession or under custody or control any firearm is guilty of a felony.

(b) Notwithstanding subdivision (a), any person who has been convicted of a
felony or of an offense enumerated in Section 23515, when that conviction results
from certification by the juvenile court for prosecution as an adult in an adult court
under Section 707 of the Welfare and Institutions Code, and who owns or has in
possession or under custody or control any firearm is guilty of a felony.

(c) Subdivision (a) shall not apply to a person who has been convicted of a
felony under the laws of the United States unless either of the following criteria is
satisfied:

(1) Conviction of a like offense under California law can only result in
imposition of felony punishment.

(2) The defendant was sentenced to a federal correctional facility for more than
30 days, or received a fine of more than one thousand dollars ($1,000), or received
both punishments.

Comment. Subdivision (a) of Section 29900 continues former Section 12021(a) without
substantive change.
Subdivision (b) continues former Section 12021(b) without substantive change.

For an exemption from the prohibitions in subdivisions (a) and (b), see Section 29950 (justifiable violation of Section 29900, 29905, 29915, or 29920). For a notice requirement relating to those prohibitions, see Section 29910 (notice to person who is subject to Section 29900 or 29905).

Subdivision (c) continues former Section 12021(f) without substantive change.

§ 29905. Firearm access by person convicted of misdemeanor violation of certain statutes or other specified offense

29905. Except as provided in Section 29900 or 29955, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 243.4, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6, 417, 417.6, 422, 626.9, 646.9, or 830.95, subdivision (a) of former Section 12100, [Section 12220, 12320], 17500, 17510, 25300, or 25800, subdivision (b) or (d) of Section 26100, or Section 27510, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, or of the conduct punished in subdivision (c) of Section 27590, and who, within 10 years of the conviction, owns, purchases, receives, or has in possession or under custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this section. However, the prohibition in this section may be reduced, eliminated, or conditioned as provided in Section 29955 or 29960.

Comment. Section 29905 continues former Section 12021(c)(1) without substantive change.

For an exemption from this provision, see Section 29950 (justifiable violation of Section 29900, 29905, 29915, or 29920). For guidance on petitioning for relief from this provision, see Sections 29955 (petition by peace officer for relief from prohibition in Section 29905) and 29960 (petition by person who was convicted of offense before that offense was added to Section 29905). For guidance on false arrest arising from enforcement of this provision, see Section 29965 (immunity from liability for false arrest). For a notice requirement relating to this provision, see Section 29910 (notice to person who is subject to Section 29900 or 29905).

See Section 16520 ("firearm").

Staff Notes.

(1) The text of this provision reflects an amendment made by SB 1302 (Cogdill). See 2008 Cal. Stat. ch. 599.

(2) Existing Section 12021(c)(1) says: “Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a misdemeanor violation of ....” (Emphasis added.) Notably, the italicized clause does not refer to paragraph (3) of subdivision (c), which establishes an exception similar to the one in paragraph (2). The staff suspects that this omission is due to an oversight.

Because this is a strictly nonsubstantive study and the Commission is striving to minimize any concern that the proposed legislation would have a substantive impact, the staff does not recommend attempting to correct the apparent oversight in this study. That might be worth doing
in the future, in a different reform. Unless the Commission otherwise directs, we will add this
issue to the Commission’s list of “Minor Clean-up Issues for Possible Future Legislative
Attention.” See Memorandum 2008-61.

§ 29910. Notice to person who is subject to Section 29900 or 29905

29910. (a) For any person who is subject to Section 29900 or 29905, the court
shall, at the time judgment is imposed, provide on a form supplied by the
Department of Justice, a notice to the defendant prohibited by this chapter from
owning, purchasing, possessing or having under custody or control, any
firearm. The notice shall inform the defendant of the prohibition regarding
firearms and include a form to facilitate the transfer of firearms.

(b) Failure to provide the notice described in subdivision (a) shall not be a
defense to a violation of this chapter.

Comment. Section 29910 continues former Section 12020(d)(2) without substantive change.
See Section 16520 (“firearm”).

§ 29915. Firearm access by person subject to firearm restriction as express condition of
probation

29915. (a) Any person who, as an express condition of probation, is prohibited
or restricted from owning, possessing, controlling, receiving, or purchasing a
firearm and who owns, purchases, receives, or has in possession or under custody
or control, any firearm, but who is not subject to Section 29905 or subdivision (a)
of Section 29900, is guilty of a public offense, which shall be punishable by
imprisonment in a county jail not exceeding one year or in the state prison, by a
fine not exceeding one thousand dollars ($1,000), or by both that imprisonment
and fine.

(b) The court, on forms provided by the Department of Justice, shall notify the
department of persons subject to this section. The notice shall include a copy of
the order of probation and a copy of any minute order or abstract reflecting the
order and conditions of probation.

Comment. Subdivision (a) of Section 29915 continues the first sentence of former Section
12021(d)(1) without substantive change. For an exemption from this provision, see Section 29950
(justifiable violation of Section 29900, 29905, 29915, or 29920).
Subdivision (b) continues the second and third sentences of former Section 12021(d)(1)
without substantive change.
See Section 16520 (“firearm”).

§ 29920. Firearm access by person adjudged ward of juvenile court, under specified
circumstances

29920. (a) This section applies to any person who satisfies both of the following
requirements:
(1) The person is alleged to have committed an offense listed in subdivision (b)
of Section 707 of the Welfare and Institutions Code, an offense described in
subdivision (b) of Section 1203.073, any offense enumerated in Section 29905, or
any offense described in Section 25850, subdivision (a) of Section 25400, or subdivision (a) of Section 26100.

(2) The person is subsequently adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, an offense described in subdivision (b) of Section 1203.073, any offense enumerated in Section 29905, or any offense described in Section 25850, subdivision (a) of Section 25400, or subdivision (a) of Section 26100.

(b) Any person described in subdivision (a) shall not own, or have in possession or under custody or control, any firearm until the age of 30 years.

(c) A violation of this section shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(d) The juvenile court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this section. Notwithstanding any other law, the forms required to be submitted to the department pursuant to this section may be used to determine eligibility to acquire a firearm.

Comment. Subdivisions (a) and (b) of Section 29920 continue the first sentence of former Section 12021(e) without substantive change.
Subdivision (c) continues the second sentence of former Section 12021(e) without substantive change.
Subdivision (d) continues the third and fourth sentences of former Section 12021(e) without substantive change.
For an exemption from this provision, see Section 29950 (justifiable violation of Section 29900, 29905, 29915, or 29920).
See Section 16520 (“firearm”).

§ 29925. Firearm access by person subject to temporary restraining order, injunction, or protective order
29925. (a) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that the person is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(b) Every person who owns or possesses a firearm knowing that the person is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or a protective order issued
pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

(c) If probation is granted upon conviction of a violation of this section, the court shall impose probation consistent with Section 1203.097.

(d) The Judicial Council shall provide notice on all protective orders that the respondent is prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive a firearm while the protective order is in effect. The order shall also state that the firearm shall be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale shall be filed within a specified time of receipt of the order. The order shall state the penalties for a violation of the prohibition. The order shall also state on its face the expiration date for relinquishment.

Comment. Subdivision (a) of Section 29925 continues former Section 12021(g)(1) without substantive change.
Subdivision (b) continues former Section 12021(g)(2) without substantive change.
Subdivision (c) continues former Section 12021(g)(4) without substantive change.
Subdivision (d) continues former Section 12021(g)(3) without substantive change.
See Sections 16520 (“firearm”), 26700 (“dealer,” “licensee,” or “person licensed pursuant to Sections 26700 to 26915, inclusive”).

Article 2. Exemption or Petition for Relief

§ 29950. Justifiable violation of Section 29900, 29905, 29915, or 29920

29950. (a) A violation of Section 29900, 29905, 29915, or 29920 is justifiable where all of the following conditions are met:
(1) The person found the firearm or took the firearm from a person who was committing a crime against the person who found or took the firearm.
(2) The person possessed the firearm no longer than was necessary to deliver or transport the firearm to a law enforcement agency for that agency’s disposition according to law.
(3) If the firearm was transported to a law enforcement agency, it was transported in accordance with subdivision (b) of Section 25570.
(4) If the firearm is being transported to a law enforcement agency, the person transporting the firearm has given prior notice to the law enforcement agency that the person is transporting the firearm to the law enforcement agency for disposition according to law.
(b) Upon the trial for violating Section 29900, 29905, 29915, or 29920, the trier of fact shall determine whether the defendant was acting within the provisions of the exemption created by this section.
(c) The defendant has the burden of proving by a preponderance of the evidence that the defendant comes within the provisions of the exemption created by this section.
Comment. Section 29950 continues former Section 12021(h) without substantive change.

See Section 16520 ("firearm").

§ 29955. Petition by peace officer for relief from prohibition in Section 29905

29955. (a) Any person employed as a peace officer described in Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment or livelihood is dependent on the ability to legally possess a firearm, who is subject to the prohibition imposed by Section 29905 because of a conviction under Section 273.5, 273.6, or 646.9, may petition the court only once for relief from this prohibition.

(b) The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge who sentenced the petitioner.

(c) Upon filing the petition, the clerk of the court shall set the hearing date and shall notify the petitioner and the prosecuting attorney of the date of the hearing.

(d) Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(1) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(2) Finds that the petitioner is not within a prohibited class as specified in Section 29800, 29915, 29920, or 29925, or subdivision (a) or (b) of Section 29900, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(3) Finds that the petitioner does not have a previous conviction under Section 29905 no matter when the prior conviction occurred.

(e) In making its decision, the court shall consider the petitioner’s continued employment, the interest of justice, any relevant evidence, and the totality of the circumstances. The court shall require, as a condition of granting relief from the prohibition under Section 29905, that the petitioner agree to participate in counseling as deemed appropriate by the court. Relief from the prohibition shall not relieve any other person or entity from any liability that might otherwise be imposed. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this section in cases in which relief is warranted. However, nothing in this section shall be construed to require courts to grant relief to any particular petitioner. It is the intent of the Legislature to permit persons who were convicted of an offense specified in Section 273.5, 273.6, or 646.9 to seek relief from the prohibition imposed by Section 29905.

Comment. Section 29955 continues former Section 12021(c)(2) without substantive change.

For guidance on false arrest arising from the enforcement of Section 29905, see Section 29965 (immunity from liability for false arrest).

See Section 16520 ("firearm").
§ 29960. Petition by person who was convicted of offense before that offense was added to Section 29905

29960. (a) Any person who is subject to the prohibition imposed by Section 29905 because of a conviction of an offense prior to that offense being added to Section 29905 may petition the court only once for relief from this prohibition.

(b) The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge that sentenced the petitioner.

(c) Upon filing the petition, the clerk of the court shall set the hearing date and notify the petitioner and the prosecuting attorney of the date of the hearing.

(d) Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(1) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(2) Finds that the petitioner is not within a prohibited class as specified in Section 29800, 29915, 29920, or 29925, or subdivision (a) or (b) of Section 29900, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(3) Finds that the petitioner does not have a previous conviction under Section 29905, no matter when the prior conviction occurred.

(e) In making its decision, the court may consider the interest of justice, any relevant evidence, and the totality of the circumstances. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this section in cases in which relief is warranted. However, nothing in this section shall be construed to require courts to grant relief to any particular petitioner.

Comment. Section 29960 continues former Section 12021(c)(3) without substantive change.

For guidance on false arrest arising from enforcement of Section 29905, see Section 29965 (immunity from liability for false arrest).

See Section 16520 (“firearm”).

§ 29965. Immunity from liability for false arrest

29965. Law enforcement officials who enforce the prohibition specified in Section 29905 against a person who has been granted relief pursuant to Section 29955 or 29960 shall be immune from any liability for false arrest arising from the enforcement of Section 29905 unless the person has in possession a certified copy of the court order that granted the person relief from the prohibition. This immunity from liability shall not relieve any person or entity from any other liability that might otherwise be imposed.

Comment. Section 29965 continues former Section 12021(c)(4) without substantive change.
☞ Staff Note. Existing Section 12021(c)(4) refers to “any person or entity.” Proposed Section 29965 would use the same phrase, so as not to raise any concerns about a possible substantive change. However, “person” is often defined to include an entity. The possibility of standardizing usage of the term “person” is already on the Commission’s list of “Minor Clean-up Issues for Possible Future Legislative Attention.” See Memorandum 2008-61 (Item #4).


§ 29975. Protocol for implementation of Section 12021, to be completed by January 1, 2005

29975. Subject to available funding, the Attorney General, working with the Judicial Council, the California Alliance Against Domestic Violence, prosecutors, and law enforcement, probation, and parole officers, shall develop a protocol for the implementation of the provisions of former Section 12021, which is continued in this chapter. The protocol shall be designed to facilitate the enforcement of restrictions on firearm ownership, including provisions for giving notice to defendants who are restricted, provisions for informing those defendants of the procedures by which defendants shall dispose of firearms when required to do so, provisions explaining how defendants shall provide proof of the lawful disposition of firearms, and provisions explaining how defendants may obtain possession of seized firearms when legally permitted to do so pursuant to any provision of law. The protocol shall be completed on or before January 1, 2005.

Comment. Section 29975 continues former Section 12021(i) without substantive change.

☞ Staff Note. Existing Section 12021(i) calls for development of a protocol for implementation of Section 12021, “[s]ubject to available funding.” The provision further says that a protocol “shall be completed on or before January 1, 2005.” (Emphasis added.) If the protocol was completed on schedule, it may be unnecessary to continue the substance of Section 12021(i) in the codes. The staff would appreciate input on whether the provision is obsolete.

Because this is a strictly nonsubstantive study and the Commission is striving to minimize any concern that the proposed legislation would have a substantive impact, the staff does not recommend deleting the provision as obsolete in this study. That might be worth doing in the future, in a different reform. Unless the Commission otherwise directs, we will add this issue to the Commission’s list of “Minor Clean-up Issues for Possible Future Legislative Attention.” See Memorandum 2008-61.

CHAPTER 4. PROHIBITED ARMED PERSONS FILE

§ 30000. Prohibited Armed Persons File

30000. (a) The Attorney General shall establish and maintain an online database to be known as the Prohibited Armed Persons File. The purpose of the file is to cross-reference persons who have ownership or possession of a firearm on or after January 1, 1991, as indicated by a record in the Consolidated Firearms Information System, and who, subsequent to the date of that ownership or possession of a
firearm, fall within a class of persons who are prohibited from owning or
possessing a firearm.

(b) The information contained in the Prohibited Armed Persons File shall only
be available to those entities specified in, and pursuant to, subdivision (b) or (c) of
Section 11105, through the California Law Enforcement Telecommunications
System, for the purpose of determining if persons are armed and prohibited from
possessing firearms.

Comment. Section 30000 continues former Section 12010 without substantive change.
See Section 16520 (“firearm”).

§ 30005. Use of Prohibited Armed Persons File

30005. The Prohibited Armed Persons File database shall function as follows:

(a) Upon entry into the Automated Criminal History System of a disposition for
a conviction of any felony, a conviction for an offense described in Chapter 2
(commencing with Section 29800), a conviction for any firearms-prohibiting
charge specified in Chapter 3 (commencing with Section 29900), a firearms
prohibition pursuant to Section 8100 or 8103 of the Welfare and Institutions Code,
or any firearms possession prohibition identified by the federal National Instant
Check System, the Department of Justice shall determine if the subject has an
entry in the Consolidated Firearms Information System indicating possession or
ownership of a firearm on or after January 1, 1991, or an assault weapon
registration, or a .50 BMG rifle registration.

(b) Upon an entry into any department automated information system that is
used for the identification of persons who are prohibited by state or federal law
from acquiring, owning, or possessing firearms, the department shall determine if
the subject has an entry in the Consolidated Firearms Information System
indicating ownership or possession of a firearm on or after January 1, 1991, or an
assault weapon registration, or a .50 BMG rifle registration.

(c) If the department determines that, pursuant to subdivision (a) or (b), the
subject has an entry in the Consolidated Firearms Information System indicating
possession or ownership of a firearm on or after January 1, 1991, or an assault
weapon registration, or a .50 BMG rifle registration, the following information
shall be entered into the Prohibited Armed Persons File:

(1) The subject’s name.
(2) The subject’s date of birth.
(3) The subject’s physical description.
(4) Any other identifying information regarding the subject that is deemed
necessary by the Attorney General.
(5) The basis of the firearms possession prohibition.
(6) A description of all firearms owned or possessed by the subject, as reflected
by the Consolidated Firearms Information System.

Comment. Section 30005 continues former Section 12011 without substantive change.
See Section 16520 (“firearm”).
\textbf{Staff Note.} The text of this provision reflects an amendment made by AB 837 (Feuer). See 2008 Cal. Stat. ch. 698.

\section*{§ 30010. Assistance by Attorney General}

30010. The Attorney General shall provide investigative assistance to local law enforcement agencies to better ensure the investigation of individuals who are armed and prohibited from possessing a firearm.

\textbf{Comment.} Section 30010 continues former Section 12012 without substantive change. See Section 16520 ("firearm").

\section*{CHAPTER 5. FIREARMS ELIGIBILITY CHECK}

\section*{Article 1. Fingerprint Requirement and Firearms Eligibility Check}

\textbf{Staff Note.} As discussed in the accompanying memorandum, the staff believes that this article heading and the entirety of Article 2 (proposed Sections 30150-30165) should be deleted. They are included here for purposes of illustration.

\section*{§ 30100. Fingerprint requirement}

30100. Each application that requires any firearms eligibility determination involving the issuance of any license, permit, or certificate pursuant to this part shall include two copies of the applicant’s fingerprints on forms prescribed by the Department of Justice. One copy of the fingerprints may be submitted to the United States Federal Bureau of Investigation.

\textbf{Comment.} Section 30100 continues former Section 12001(m) without substantive change. See Section 16520 ("firearm").

\textbf{Staff Note.} Existing Section 12001(m) says that “[e]ach application that requires any firearms eligibility determination involving the issuance of any license, permit, or certificate pursuant to this title shall include ...” (Emphasis added.) The cross-referenced title (Title 2 of Part 4) consists of Sections 12000-12809. Almost all of those sections will be reorganized in new Part 6 (together with the substance of Section 653k, which relates to switchblade knives). The sentence enhancement provisions will be left in place, and a provision on picketing in the uniform of a peace officer will be recodified as Section 830.95.

Because new Part 6 will contain all of the Title 2 provisions “involving the issuance of any license, permit, or certificate,” the staff replaced the cross-reference to “this title” with a cross-reference to “this part” in drafting proposed Section 30100. We believe that conforming the cross-reference in this manner will preserve the substance of existing Section 12001(m) without change. If there appears to be any problem with this approach, please bring it to the Commission’s attention.

\section*{§ 30105. Firearms eligibility check}

30105. (a) An individual may request that the Department of Justice perform a firearms eligibility check for that individual. The applicant requesting the eligibility check shall provide the information required by Section 28165 to the department, in an application specified by the department.
(b) The department shall charge a fee of twenty dollars ($20) for performing the eligibility check authorized by this section, but not to exceed the actual processing costs of the department. After the department establishes fees sufficient to reimburse the department for processing costs, fees charged may increase at a rate not to exceed the legislatively approved cost-of-living adjustment for the department’s budget or as otherwise increased through the Budget Act.

(c) An applicant for the eligibility check pursuant to subdivision (a) shall complete the application, have it notarized by any licensed California Notary Public, and submit it by mail to the department.

(d) Upon receipt of a notarized application and fee, the department shall do all of the following:

(1) Examine its records, and the records it is authorized to request from the State Department of Mental Health pursuant to Section 8104 of the Welfare and Institutions Code, to determine if the purchaser is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm.

(2) Notify the applicant by mail of its determination of whether the applicant is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm. The department’s notification shall state either “eligible to possess firearms as of the date the check was completed” or “ineligible to possess firearms as of the date the check was completed.”

(e) If the department determines that the information submitted to it in the application contains any blank spaces, or inaccurate, illegible, or incomplete information, preventing identification of the applicant, or if the required fee is not submitted, the department shall not be required to perform the firearms eligibility check.

(f) The department shall make applications to conduct a firearms eligibility check as described in this section available to licensed firearms dealers and on the department’s Web site.

(g) The department shall be immune from any liability arising out of the performance of the firearms eligibility check, or any reliance upon the firearms eligibility check.

(h) No person or agency may require or request another person to obtain a firearms eligibility check or notification of a firearms eligibility check pursuant to this section. A violation of this subdivision is a misdemeanor.

(i) The department shall include on the application specified in subdivision (a) and the notification of eligibility specified in subdivision (d) the following statements:

“No person or agency may require or request another person to obtain a firearms eligibility check or notification of firearms eligibility check pursuant to Section 30105 of the Penal Code. A violation of these provisions is a misdemeanor.”

“If the applicant for a firearms eligibility check purchases, transfers, or receives a firearm through a licensed dealer as required by law, a waiting period and background check are both required.”
Comment. Section 30105 continues former Section 12077.5 without substantive change.

See Sections 16520 ("firearm"), 26700 ("dealer," "licensee," or "person licensed pursuant to Sections 26700 to 26915, inclusive").

Staff Note. The text of this provision reflects an amendment made by AB 837 (Feuer). See 2008 Cal. Stat. ch. 698.

Article 2. Exceptions Relating to Law Enforcement

Staff Note. As discussed in the accompanying memorandum, the staff believes that the entirety of this article and the heading of Article 1 should be deleted. They are included here for purposes of illustration.

§ 30150. Exception for sale, delivery, or transfer to authorized law enforcement representative of city, county, city and county, or state or federal government

30150. (a) Section 30105 does not apply to any sale, delivery, or transfer of firearms made to an authorized law enforcement representative of any city, county, city and county, or state, or of the federal government, for exclusive use by that governmental agency if, prior to the sale, delivery, or transfer of these firearms, written authorization from the head of the agency authorizing the transaction is presented to the person from whom the purchase, delivery, or transfer is being made.

(b) Proper written authorization is defined as verifiable written certification from the head of the agency by which the purchaser or transferee is employed, identifying the employee as an individual authorized to conduct the transaction, and authorizing the transaction for the exclusive use of the agency by which that person is employed.

(c) Within 10 days of the date a handgun is acquired by the agency, a record of the same shall be entered as an institutional weapon into the Automated Firearms System (AFS) via the California Law Enforcement Telecommunications System (CLETS) by the law enforcement or state agency. Any agency without access to AFS shall arrange with the sheriff of the county in which the agency is located to input this information via this system.

Comment. Section 30150 continues former Section 12078(a)(2) without substantive change, as that provision applied to former Section 12077.5 (through its reference to "the preceding provisions of this article").

For other exceptions relating to law enforcement, see Sections 30155-30165.

See Sections 16520 ("firearm"), 16640 ("handgun").

§ 30155. Exception for loan of firearm to peace officer employee for use in performing official duties

30155. Section 30105 does not apply to the loan of a firearm if all of the following conditions are satisfied:

(a) The loan is made by an authorized law enforcement representative of a city, county, or city and county, or of the state or federal government.

(b) The loan is made to a peace officer employed by that agency and authorized to carry a firearm.
(c) The loan is made for the carrying and use of that firearm by that peace
officer in the course and scope of the officer’s duties.

Comment. Section 30155 continues former Section 12078(a)(3) without substantive change, as
that provision applied to former Section 12077.5 (through its reference to “the preceding
provisions of this article”).
For other exceptions relating to law enforcement, see Sections 30150, 30160-30165.
See Section 16520 (“firearm”).

§ 30160. Exception for sale, delivery, or transfer by law enforcement agency to peace officer
pursuant to Public Contract Code
30160. (a) Section 30105 does not apply to the sale, delivery, or transfer of a
firearm by a law enforcement agency to a peace officer pursuant to Section 10334
of the Public Contract Code.
(b) Within 10 days of the date that a handgun is sold, delivered, or transferred
pursuant to Section 10334 of the Public Contract Code to that peace officer, the
name of the officer and the make, model, serial number, and other identifying
characteristics of the firearm being sold, delivered, or transferred shall be entered
into the Automated Firearms System (AFS) via the California Law Enforcement
Telecommunications System (CLETS) by the law enforcement or state agency that
sold, delivered, or transferred the firearm. Any agency without access to AFS shall
arrange with the sheriff of the county in which the agency is located to input this
information via this system.

Comment. Section 30105 continues former Section 12078(a)(4) without substantive change, as
that provision applied to former Section 12077.5 (through its reference to “the preceding
provisions of this article”).
For other exceptions relating to law enforcement, see Sections 30150-30155, 30165.
See Sections 16520 (“firearm”), 16640 (“handgun”).

§ 30165. Exception for sale, delivery, or transfer by law enforcement agency to retiring
peace officer authorized to carry concealed and loaded firearm
30165. (a) Section 30105 does not apply to the sale, delivery, or transfer of a
firearm by a law enforcement agency to a retiring peace officer who is authorized
to carry a firearm pursuant to Chapter 5 (commencing with Section 26300) of
Division 5.
(b) Within 10 days of the date that a handgun is sold, delivered, or transferred to
that retiring peace officer, the name of the officer and the make, model, serial
number, and other identifying characteristics of the firearm being sold, delivered,
or transferred shall be entered into the Automated Firearms System (AFS) via the
California Law Enforcement Telecommunications System (CLETS) by the law
enforcement or state agency that sold, delivered, or transferred the firearm. Any
agency without access to AFS shall arrange with the sheriff of the county in which the
agency is located to input this information via this system.

Comment. Section 30165 continues former Section 12078(a)(5) without substantive change, as
that provision applied to former Section 12077.5 (through its reference to “the preceding
provisions of this article”).
For other exceptions relating to law enforcement, see Sections 30150-30160.
See Sections 16520 (“firearm”), 16640 (“handgun”).

DIVISION 10. SPECIAL RULES RELATING TO PARTicular
TYPES OF FIREARMS OR FIREARm EQUIPMENT

CHAPTER 1. AMMUNITION

Article 1. Flechette Dart Ammunition or Bullet Containing or
Carrying an Explosive Agent

§ 30210. Prohibition on manufacture, import, sale, gift, loan, or possession of flechette dart
ammunition or bullet with explosive agent

30210. Except as provided in Section 30215 and 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 either of the following is
punishable by imprisonment in a county jail not exceeding one year or in the state
prison:
(a) Any ammunition that contains or consists of any flechette dart.
(b) Any bullet containing or carrying an explosive agent.

Comment. With respect to “any ammunition that contains or consists of any flechette dart”
and “any bullet containing or carrying an explosive agent,” Section 30210 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), 30215
(exemption for tracer ammunition manufactured for use in shotgun).
See Section 16570 (“flechette dart”). See also Sections 16460(b) (bullet with explosive agent is
not destructive device), 17800 (distinct and separate offense), 30290 (flechette dart ammunition
or bullet with explosive agent constituting nuisance).

§ 30215. Exemption for tracer ammunition manufactured for use in shotgun

30215. Section 30210 does not apply to tracer ammunition manufactured for use
in a shotgun.

Comment. Section 30215 continues former Section 12020(b)(6) without substantive change.
For additional circumstances in which Section 30210 is inapplicable, see Sections 16590
(“generally prohibited weapon”), 17700-17745 (exemptions relating to generally prohibited
weapons).
See Section 17190 (“shotgun”).

§ 30290. Flechette dart ammunition or bullet with explosive agent constituting nuisance

30290. Except as provided in Section 30210 and in Chapter 1 (commencing with
Section 17700) of Division 2 of Title 2, any ammunition that contains or consists
of any flechette dart, or any bullet containing or carrying an explosive agent, is a
nuisance and is subject to Section 18010.

Comment. With respect to “any ammunition that contains or consists of any flechette dart”
and “any bullet containing or carrying an explosive agent,” Section 30290 continues the first part
of the first sentence of former Section 12029 without substantive change.
See Section 16570 (“flechette dart”).

Article 2. Other Restrictions Relating to Ammunition

§ 30300. Sale of ammunition or reloaded ammunition to minor, or sale of handgun
ammunition or reloaded handgun ammunition to person under age 21

30300. (a) Any person, corporation, or dealer who does either of the following
shall be punished by imprisonment in a 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 the
imprisonment and fine:

(1) Sells any ammunition or reloaded ammunition to a person under 18 years of
age.

(2) Sells any ammunition or reloaded ammunition designed and intended for use
in a handgun to a person under 21 years of age. Where ammunition or reloaded
ammunition may be used in both a rifle and a handgun, it may be sold to a person
who is at least 18 years of age, but less than 21 years of age, if the vendor
reasonably believes that the ammunition is being acquired for use in a rifle and not
a handgun.

(b) Proof that a person, corporation, or dealer, or his or her agent or employee,
demanded, was shown, and acted in reasonable reliance upon, bona fide evidence
of majority and identity shall be a defense to any criminal prosecution under this
section.

Comment. Subdivision (a) of Section 30300 continues former Section 12316(a)(1)(A) and the
first and third sentences of former Section 12316(a)(1)(B) without substantive change.
Subdivision (b) continues the first sentence of former Section 12316(a)(2) without substantive
change.

For limitations on the effect of this article, see Sections 30330 (effect of article on member of
military, police agency, forensic laboratory, or holder of permit for destructive device), 30335
effect of article on permanently deactivated ammunition), 30340 (effect of article on ammunition
manufactured under contract approved by government agency).

For further guidance on firearm restrictions relating to minors and persons under age 21, see
Sections 27505 (person, corporation, or firm that sells, loans, or transfers firearm to minor or
handgun to person under age 21), 27510 (dealer that supplies, delivers, or gives possession or
control of firearm to minor or handgun to person under age 21), 27945 (exception for certain
situations involving minor), and 29610-29705 (juvenile).

See Sections 16150 (“ammunition”), 16300 (“bona fide evidence of majority and identity”),
16640 (“handgun”), 16650 (“handgun ammunition”), 17090 (“rifle”).

☞ Staff Note. Existing Section 12316(a) uses the phrase “person, corporation, or dealer” in two
places. Proposed Section 30300 would continue those phrases without change.

Usually, however, the term “person” is defined to include a corporation or other entity, not just
an individual. For example, existing Section 7 says that in the Penal Code, “the word ‘person’
includes a corporation as well as a natural person.” No other definition of “person” applies to
Section 12316(a), and usage of the term in Title 2 of Part 4 of the Penal Code is not consistent. See Memorandum 2008-17, Attachment pp. 37-38. The possibility of standardizing that usage is already on the Commission’s list of “Minor Clean-up Issues for Possible Future Legislative Attention.” See Memorandum 2008-61 (Item #4).

§ 30305. Person prohibited from owning or possessing firearm

30305. (a) No person prohibited from owning or possessing a firearm under Chapter 2 (commencing with Section 29800) or 3 (commencing with Section 29900) of Division 9 of this code or Section 8100 or 8103 of the Welfare and Institutions Code shall own, possess, or have under custody or control, any ammunition or reloaded ammunition.

(b) A violation of this section is punishable by imprisonment in a county jail not to exceed one year or in the state prison, by a fine not to exceed one thousand dollars ($1,000), or by both the fine and imprisonment.

(c) A violation of subdivision (a) is justifiable where all of the following conditions are met:

1. The person found the ammunition or reloaded ammunition or took the ammunition or reloaded ammunition from a person who was committing a crime against the person who found or took the ammunition or reloaded ammunition.
2. The person possessed the ammunition or reloaded ammunition no longer than was necessary to deliver or transport the ammunition or reloaded ammunition to a law enforcement agency for that agency’s disposition according to law.
3. The person is prohibited from possessing any ammunition or reloaded ammunition solely because that person is prohibited from owning or possessing a firearm only by virtue of Chapter 3 (commencing with Section 29900) of Division 9.

(d) Upon the trial for violating subdivision (a), the trier of fact shall determine whether the defendant is subject to the exemption created by subdivision (c). The defendant has the burden of proving by a preponderance of the evidence that the defendant is subject to the exemption provided by subdivision (c).

Comment. Subdivision (a) of Section 30305 continues former Section 12316(b)(1) without substantive change.

Subdivision (b) continues former Section 12316(b)(3) without substantive change.

Subdivision (c) continues former Section 12316(d)(1) without substantive change.

Subdivision (d) continues former Section 12316(d)(2)-(3) without substantive change.

For limitations on the effect of this article, see Sections 30330 (effect of article on member of military, police agency, forensic laboratory, or holder of permit for destructive device), 30335 (effect of article on permanently deactivated ammunition), 30340 (effect of article on ammunition manufactured under contract approved by government agency).

See Sections 16150 (“ammunition”), 16520 (“firearm”).

Staff Note. Existing Section 12316(b)(2) defines “ammunition” for purposes of subdivision (b) of that section, which would be continued in proposed Section 30305(a)-(b). But there is no definition of “ammunition” for purposes of subdivision (d) of Section 12316. That provision states an exception to subdivision (b), so it would be continued in proposed Section 30305(c)-(d).

Logically, the same definition of “ammunition” should apply to both subdivisions (b) and (d) of existing Section 12316, and thus to the entirety of proposed Section 30305. Because this is a
strictly nonsubstantive study, however, we have simply preserved the existing situation. The
definition of “ammunition” would apply to proposed Section 30305(a)-(b); no definition of
“ammunition” would apply to proposed Section 30305(c)-(d). See Memorandum 2008-50,
Attachment p. 5 (proposed Section 16150(b)).
Extending the same definition of “ammunition” to the entire provision might be worth doing in
the future, in a different reform. Unless the Commission otherwise directs, we will add this issue
to the Commission’s list of “Minor Clean-up Issues for Possible Future Legislative Attention.”
See Memorandum 2008-61.

§ 30310. No ammunition or reloaded ammunition on school grounds
30310. (a) Unless it is with the written permission of the school district superintendent, the superintendent’s designee, or equivalent school authority, no person shall carry ammunition or reloaded ammunition onto school grounds, except sworn law enforcement officers acting within the scope of their duties or persons exempted under Section 25450.
(b) This section shall not apply to any of the following:
(1) A duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.
(2) A full-time paid peace officer of another state or the federal government who is carrying out official duties while in California.
(3) Any person summoned by any of these officers to assist in making an arrest or preserving the peace while that person is actually engaged in assisting the officer.
(4) A member of the military forces of this state or of the United States who is engaged in the performance of duties.
(5) A person holding a valid license to carry the firearm pursuant to Chapter 4 (commencing with Section 26150) of Division 5.
(6) An armored vehicle guard, who is engaged in the performance of duties, as defined in subdivision (d) of Section 7582.1 of the Business and Professions Code.
(c) A violation of this section is punishable by imprisonment in a county jail for a term not to exceed six months, a fine not to exceed one thousand dollars ($1,000), or both the imprisonment and fine.

Comment. Section 30310 continues former Section 12316(c) without substantive change. An erroneous cross-reference to Business and Professions Code Section 7521(e) has been corrected by replacing it with a cross-reference to Business and Professions Code Section 7582.1(d).
For limitations on the effect of this article, see Sections 30330 (effect of article on member of military, police agency, forensic laboratory, or holder of permit for destructive device), 30335 (effect of article on permanently deactivated ammunition), 30340 (effect of article on ammunition manufactured under contract approved by government agency).
See Section 16520 (“firearm”).

Staff Notes.
(1) Proposed Section 30310 would continue the substance of existing Section 12316(c), which prohibits most persons from carrying ammunition or reloaded ammunition onto school grounds. It is debatable, however, whether that substance belongs in new Part 6.
Existing Section 12316(c) is located in a chapter entitled “Ammunition” within Title 2 of Part 4. In this draft, the entirety of that chapter would be reorganized in an article entitled “Other
Restrictions Relating to Ammunition” (proposed Sections 30300-30340). The substance of Section 12316(c) would thus remain in proximity to the other ammunition restrictions currently located nearby.

But the Penal Code also contains a chapter entitled “Schools” (Sections 626-626.11), which defines various crimes relating to conduct on school grounds. In particular, that chapter contains the “Gun-Free School Zone Act” (Section 626.9), which generally prohibits a person from possessing a firearm “in a place that the person knows, or reasonably should know, is a school zone ....” The chapter also contains other provisions restricting possession of guns and other deadly weapons on school grounds. See Sections 626.95, 626.10.

It seems anomalous and potentially confusing to place these provisions in the chapter on “Schools,” while placing the restriction relating to ammunition on school grounds elsewhere. The staff does not know why the code takes that approach. Ideally, we believe that the substance of Section 12316(c) should be relocated to the chapter on “Schools.”

However, such relocation would be problematic in the context of this study. The chapter on “Schools” includes a chapter-wide definition of “school” (Section 626(a)(4)), yet “school” is not defined for purposes of Section 12316(c). Further, the chapter that now contains Section 12316(c) includes some general rules that restrict the scope of that provision. See Sections 12322, 12324. Consequently, relocating the substance of Section 12316(c) to the chapter on “Schools” would be tricky to achieve without making a substantive change.

It seems unwise to attempt such a reform in this strictly nonsubstantive study. Instead, the staff recommends that the substance of Section 12316(c) remain with the other provisions relating to ammunition. We have taken that approach in this draft.

To make the code more user-friendly, however, we suggest adding the following guidepost provision to the chapter on “Schools”:

§ 626.91. Ammunition on school grounds

626.91. Possession of ammunition on school grounds is governed by Section 30310.

Comment. Section 626.91 is new. It is intended to help persons locate the rules relating to possession on ammunition on school grounds.

Alternatively, or perhaps in addition, the possibility of relocating the substance of Section 12316(c) to the chapter on “Schools” could be added to the Commission's list of “Minor Clean-up Issues for Possible Future Legislative Attention.”

How would the Commission like to proceed? Comments on this point would be helpful.

(2) Existing Section 12316(c) refers to “an armored vehicle guard, who is engaged in the performance of his or her duties, as defined in subdivision (e) of Section 7521 of the Business and Professions Code.” (Emphasis added.) The italicized cross-reference appears to be incorrect.

Business and Professions Code Section 7521(e) used to define “armored vehicle guard,” but now it only defines “private investigator.” The definition of “armored vehicle guard” has been relocated to Business and Professions Code Section 7582.1(d).

The staff has corrected the cross-reference in drafting proposed Section 30310. This approach seems more reasonable than perpetuating an obviously incorrect reference. Although this is a strictly nonsubstantive study, some degree of commonsense is appropriate in interpreting existing law. We would exercise such commonsense here and note the situation in the preliminary part of the Commission’s report.

§ 30315. Knowing possession of handgun ammunition designed to penetrate metal or armor

30315. Any person, firm, or corporation who, within this state knowingly possesses any handgun ammunition designed primarily to penetrate metal or armor is guilty of a public offense and upon conviction thereof shall be punished by imprisonment in the state prison, or in the county jail for a term not to exceed one
year, or by a fine not to exceed five thousand dollars ($5,000), or by both such fine and imprisonment.

Comment. Section 30315 continues former Section 12320 without substantive change.

For an exception to this provision, see Section 30325 (transporting handgun ammunition designed primarily to penetrate metal or armor to law enforcement agency).

For other limitations on the effect of this article, see Sections 30330 (effect of article on member of military, police agency, forensic laboratory, or holder of permit for destructive device), 30335 (effect of article on permanently deactivated ammunition), 30340 (effect of article on ammunition manufactured under contract approved by government agency).

See Section 16660 (“handgun ammunition designed primarily to penetrate metal or armor”).

☞ Staff Note. Existing Section 12320 uses the phrase “person, firm, or corporation.” Proposed Section 30315 would continue that phrase without change. For further discussion relating to this phrase, see the Staff Note on proposed Section 29010.

§ 30320. Manufacturing, importing, selling, offering to sell, or knowingly transporting handgun ammunition designed to penetrate metal or armor

30320. Any person, firm, or corporation who, within this state, manufactures, imports, sells, offers to sell, or knowingly transports any handgun ammunition designed primarily to penetrate metal or armor is guilty of a felony and upon conviction thereof shall be punished by imprisonment in state prison, or by a fine not to exceed five thousand dollars ($5,000), or by both such fine and imprisonment.

Comment. Section 30320 continues former Section 12321 without substantive change.

For an exception to this provision, see Section 30325 (transporting handgun ammunition designed primarily to penetrate metal or armor to law enforcement agency).

For other limitations on the effect of this article, see Sections 30330 (effect of article on member of military, police agency, forensic laboratory, or holder of permit for destructive device), 30335 (effect of article on permanently deactivated ammunition), 30340 (effect of article on ammunition manufactured under contract approved by government agency).

See Section 16660 (“handgun ammunition designed primarily to penetrate metal or armor”).

☞ Staff Note. Existing Section 12321 uses the phrase “person, firm, or corporation.” Proposed Section 30320 would continue that phrase without change. For further discussion relating to this phrase, see the Staff Note on proposed Section 29010.

§ 30325. Transporting handgun ammunition designed primarily to penetrate metal or armor to law enforcement agency

30325. Nothing in this article shall apply to or affect the possession of handgun ammunition designed primarily to penetrate metal or armor by a person who found the ammunition, if that person is not prohibited from possessing firearms or ammunition pursuant to subdivision (a) of Section 30305, Chapter 2 (commencing with Section 29800) or 3 (commencing with Section 29900) of Division 9 of this code, or Section 8100 or 8103 of the Welfare and Institutions Code, and the person is transporting the ammunition to a law enforcement agency for disposition according to law.

Comment. Section 30325 continues former Section 12322(b) without substantive change.

See Section 16660 (“handgun ammunition designed primarily to penetrate metal or armor”).
§ 30330. Effect of article on member of military, police agency, forensic laboratory, or holder of permit for destructive device

30330. Nothing in this article shall apply to or affect the sale to, purchase by, possession of, or use of any ammunition by 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, or any police agency or forensic laboratory or any person who is the holder of a valid permit issued pursuant to Article 3 (commencing with Section 18900) of Chapter 1 of Division 5 of Title 2.

Comment. Section 30330 continues former Section 12322(a) without substantive change.

§ 30335. Effect of article on permanently deactivated ammunition

30335. Nothing in this article shall prohibit the possession, importation, sale, attempted sale, or transport of ammunition from which the propellant has been removed and the primer has been permanently deactivated.

Comment. Section 30335 continues former Section 12324 without substantive change.

§ 30340. Effect of article on ammunition manufactured under contract approved by government agency

30340. Nothing in this article shall prohibit the manufacture of ammunition under contracts approved by agencies of the state or federal government.

Comment. Section 30340 continues former Section 12325 without substantive change.