

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 (~~is~~ **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.

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 that “[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

Contents

PROPOSED LEGISLATION	1
TITLE 4. FIREARMS	1
DIVISION 7. MANUFACTURE OF FIREARMS	1
CHAPTER 1. LICENSE REQUIREMENT FOR MANUFACTURE OF FIREARMS	1
§ 29010. Prohibition against unlicensed manufacture of firearms	1
CHAPTER 2. ISSUANCE, FORFEITURE, AND CONDITIONS OF LICENSE TO MANUFACTURE FIREARMS	2
Article 1. Licensing Process	2
§ 29050. Issuance of license to manufacture firearms	2
§ 29055. Fees and regulations	3
§ 29060. Centralized list of persons licensed to manufacture firearms	3
§ 29065. Revocation of license	3
§ 29070. Release of information about licensees	4
§ 29075. Information to be maintained and made available by Department of Justice	4
Article 2. Prohibitions and Requirements Applicable to Licensee	5
§ 29100. Compliance with prohibitions and requirements	5
§ 29105. Place of conducting business	5
§ 29110. Display of license	5
§ 29115. Lost or stolen firearm	5
§ 29120. Restrictions on employee access to firearms	5
§ 29125. Unique serial number on each firearm	6
§ 29130. Recordkeeping requirements	6
§ 29135. Inspections	6
§ 29140. Storage of firearms and barrels for firearms in secure facility	7
§ 29145. Notification requirement	7
DIVISION 8. MISCELLANEOUS RULES RELATING TO FIREARMS GENERALLY	7
CHAPTER 1. MISCELLANEOUS PROVISIONS	7
§ 29300. Firearm of any nature constitutes nuisance under specified circumstances	7
CHAPTER 2. ENTERTAINMENT FIREARMS PERMIT	9
§ 29500. Entertainment firearms permit	9
§ 29505. Application form	9
§ 29510. Application fee	10
§ 29515. No entertainment firearms permit for person prohibited from possessing or receiving firearms	10
§ 29520. Arrests and convictions of applicant	11
§ 29525. Furnishing fictitious name, knowingly furnishing incorrect information, or knowingly omitting required information on application	12
§ 29530. Duration of entertainment firearms permit	12
§ 29535. Exemption from Administrative Procedure Act	12
DIVISION 9. SPECIAL FIREARM RULES RELATING TO PARTICULAR PERSONS	12
CHAPTER 1. JUVENILE	13
Article 1. Possession of Handgun	13
§ 29610. Prohibition on possession of handgun by minor	13
§ 29615. Exceptions	13
Article 2. Possession of Live Ammunition	15
§ 29650. Prohibition on possession of live ammunition by minor	15
§ 29655. Exceptions	15
Article 3. Punishment	16
§ 29700. Punishment for violation of chapter	16

§ 29705. Compulsory participation in parenting education17

Article 4. Legislative Intent.....17

§ 29750. Intent of 1994 amendments17

CHAPTER 2. PERSON CONVICTED OF VIOLENT OFFENSE18

§ 29800. Firearm possession or control by person convicted of violent offense.....18

§ 29805. Violent offense19

CHAPTER 3. PERSON CONVICTED OF SPECIFIED OFFENSE, ADDICTED TO NARCOTIC,
OR SUBJECT TO COURT ORDER20

Article 1. Prohibitions on Firearm Access20

§ 29900. Firearm access by person convicted of felony, addicted to narcotic drug, or
convicted of other specified offense20

§ 29905. Firearm access by person convicted of misdemeanor violation of certain statutes
or other specified offense.....21

§ 29910. Notice to person who is subject to Section 29900 or 2990522

§ 29915. Firearm access by person subject to firearm restriction as express condition of
probation22

§ 29920. Firearm access by person adjudged ward of juvenile court, under specified
circumstances22

§ 29925. Firearm access by person subject to temporary restraining order, injunction, or
protective order.....23

Article 2. Exemption or Petition for Relief24

§ 29950. Justifiable violation of Section 29900, 29905, 29915, or 29920.....24

§ 29955. Petition by peace officer for relief from prohibition in Section 29905.....25

§ 29960. Petition by person who was convicted of offense before that offense was added to
Section 2990526

§ 29965. Immunity from liability for false arrest26

Article 3. Miscellaneous Provisions27

§ 29975. Protocol for implementation of Section 12021, to be completed by January 1,
2005.....27

CHAPTER 4. PROHIBITED ARMED PERSONS FILE27

§ 30000. Prohibited Armed Persons File.....27

§ 30005. Use of Prohibited Armed Persons File.....28

§ 30010. Assistance by Attorney General29

CHAPTER 5. FIREARMS ELIGIBILITY CHECK29

Article 1. Fingerprint Requirement and Firearms Eligibility Check29

§ 30100. Fingerprint requirement29

§ 30105. Firearms eligibility check29

Article 2. Exceptions Relating to Law Enforcement31

§ 30150. Exception for sale, delivery, or transfer to authorized law enforcement
representative of city, county, city and county, or state or federal government31

§ 30155. Exception for loan of firearm to peace officer employee for use in performing
official duties31

§ 30160. Exception for sale, delivery, or transfer by law enforcement agency to peace
officer pursuant to Public Contract Code32

§ 30165. Exception for sale, delivery, or transfer by law enforcement agency to retiring
peace officer authorized to carry concealed and loaded firearm.....32

DIVISION 10. SPECIAL RULES RELATING TO PARTICULAR TYPES OF FIREARMS OR
FIREARM EQUIPMENT33

CHAPTER 1. AMMUNITION33

Article 1. Flechette Dart Ammunition or Bullet Containing or Carrying an Explosive Agent33

§ 30210. Prohibition on manufacture, import, sale, gift, loan, or possession of flechette dart
ammunition or bullet with explosive agent33

§ 30215. Exemption for tracer ammunition manufactured for use in shotgun33

§ 30290. Flechette dart ammunition or bullet with explosive agent constituting nuisance33

Article 2. Other Restrictions Relating to Ammunition.....34

§ 30300. Sale of ammunition or reloaded ammunition to minor, or sale of handgun
ammunition or reloaded handgun ammunition to person under age 2134

§ 30305. Person prohibited from owning or possessing firearm35

§ 30310. No ammunition or reloaded ammunition on school grounds36

§ 30315. Knowing possession of handgun ammunition designed to penetrate metal or armor37

§ 30320. Manufacturing, importing, selling, offering to sell, or knowingly transporting
handgun ammunition designed to penetrate metal or armor38

§ 30325. Transporting handgun ammunition designed primarily to penetrate metal or armor
to law enforcement agency38

§ 30330. Effect of article on member of military, police agency, forensic laboratory, or
holder of permit for destructive device39

§ 30335. Effect of article on permanently deactivated ammunition.....39

§ 30340. Effect of article on ammunition manufactured under contract approved by
government agency39

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.

1 TITLE 4. FIREARMS

2

3 DIVISION 7. MANUFACTURE OF FIREARMS

4 **Staff Note.** This division is organized as follows:

- 5 • Chapter 1, entitled “License Requirement for Manufacture of Firearms,” contains the
6 material currently in Section 12085, except definitional material that would be in the
7 “Definitions” portion of new Part 6.
- 8 • Chapter 2, entitled “Issuance, Forfeiture, and Conditions of License to Manufacture
9 Firearms,” contains the material currently in Section 12086, except definitional material
10 that would be in the “Definitions” portion of new Part 6. The chapter is divided into two
11 articles: “Article 1. Licensing Process,” which contains the material currently in Section
12 12086(b) & (f)-(h), and “Article 2. Prohibitions and Requirements Applicable to
13 Licensee,” which contains the material currently in Section 12086(c).

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

16 CHAPTER 1. LICENSE REQUIREMENT FOR MANUFACTURE OF FIREARMS

17 **§ 29010. Prohibition against unlicensed manufacture of firearms**

18 29010. (a) Commencing July 1, 1999, no person, firm, or corporation licensed to
19 manufacture firearms pursuant to Chapter 44 (commencing with Section 921) of
20 Title 18 of the United States Code may manufacture firearms within this state
21 unless licensed pursuant to Chapter 2 (commencing with Section 29050).

1 (b) Subdivision (a) does not apply to a person licensed to manufacture firearms
2 pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United
3 States Code who manufactures fewer than 100 firearms in a calendar year within
4 this state.

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

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

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

13 See Section 16520 (“firearm”).

14 **☞ Staff Notes.**

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

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

24 (2) Proposed Section 29010 would continue existing Section 12085(a)-(d). The remainder of
25 Section 12085 relates to use of the term “firearm.” In drafting the definition of “firearm” for new
26 Part 6, the staff inadvertently failed to incorporate that material. As discussed in Memorandum
27 2008-58, the definition of “firearm” should be revised to continue existing Section 12085(e).

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

30 Article 1. Licensing Process

31 **§ 29050. Issuance of license to manufacture firearms**

32 29050. (a) The Department of Justice shall accept applications for, and shall
33 grant licenses permitting, the manufacture of firearms within this state.

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

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

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

40 (3) A valid seller’s permit or resale certificate issued by the State Board of
41 Equalization, if applicable.

1 (4) A certificate of eligibility issued by the Department of Justice pursuant to
2 Section 26710.

3 (c) A license granted by the department shall be valid for no more than one year
4 from the date of issuance and shall be in the form prescribed by the Attorney
5 General.

6 (d) The department shall inform applicants who are denied licenses of the
7 reasons for the denial in writing.

8 **Comment.** Subdivision (a) of Section 29050 continues the first sentence of former Section
9 12086(b)(1) without substantive change.

10 Subdivision (b) continues former Section 12086(b)(2) without substantive change.

11 Subdivision (c) continues former Section 12086(b)(4) without substantive change.

12 Subdivision (d) continues the second sentence of former Section 12086(b)(1) without
13 substantive change.

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

15 **§ 29055. Fees and regulations**

16 29055. (a) The department shall adopt regulations to administer this chapter and
17 Chapter 1 (commencing with Section 29010).

18 (b) The department shall recover the full costs of administering the program by
19 collecting fees from license applicants. Recoverable costs shall include, but not be
20 limited to, the costs of inspections and maintaining a centralized list of licensed
21 firearm manufacturers.

22 (c) The fee for licensed manufacturers who produce fewer than 500 firearms in a
23 calendar year within this state shall not exceed (i) two hundred fifty dollars (\$250)
24 per year or (ii) the actual costs of inspections and maintaining a centralized list of
25 firearm manufacturers and any other duties of the department required pursuant to
26 this chapter and Chapter 1 (commencing with Section 29010), whichever is less.

27 **Comment.** Section 29055 continues former Section 12086(b)(3) without substantive change.

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

29 **§ 29060. Centralized list of persons licensed to manufacture firearms**

30 29060. (a) Except as otherwise provided in subdivisions (a) and (b) of Section
31 20965, the Department of Justice shall maintain a centralized list of all persons
32 licensed pursuant to subdivision (b) of Section 29050.

33 (b) The centralized list shall be provided annually to each police department and
34 county sheriff within the state.

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

36 **§ 29065. Revocation of license**

37 29065. (a) Except as provided in subdivision (b), the license of any licensee who
38 violates this chapter may be revoked.

39 (b) The license of any licensee who knowingly or with gross negligence violates
40 this chapter or violates this chapter three times shall be revoked, and that person,

1 firm, or corporation shall become permanently ineligible to obtain a license
2 pursuant to this chapter.

3 (c) Upon the revocation of the license, notification shall be provided to local law
4 enforcement authorities in the jurisdiction where the licensee's business is located
5 and to the federal Bureau of Alcohol, Tobacco, and Firearms.

6 **Comment.** Subdivision (a) of Section 29065 continues former Section 12086(f)(2) without
7 substantive change.

8 Subdivision (b) continues former Section 12086(f)(3) without substantive change. For
9 guidance in applying this subdivision, see Section 16010 (continuation of existing law). See also
10 Section 16015 (determining existence of prior conviction).

11 Subdivision (c) continues former Section 12086(g)(1) without substantive change.

12 See Section 16820 ("licensee").

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

16 **§ 29070. Release of information about licensees**

17 29070. (a) The department shall make information concerning the location and
18 name of a licensee available, upon request, for the following purposes only:

19 (1) Law enforcement.

20 (2) When the information is requested by a person licensed pursuant to Chapter
21 44 (commencing with Section 921) of Title 18 of the United States Code for
22 determining the validity of the license for firearm shipments.

23 (b) Notwithstanding subdivision (a), the department shall make the name and
24 business address of a licensee available to any person upon written request.

25 **Comment.** Subdivision (a) of Section 29070 continues former Section 12086(g)(2) without
26 substantive change.

27 Subdivision (b) continues former Section 12086(g)(3) without substantive change.

28 See Sections 16450 ("department"), 16520 ("firearm"), 16820 ("licensee").

29 **§ 29075. Information to be maintained and made available by Department of Justice**

30 29075. The Department of Justice shall maintain and make available upon
31 request information concerning all of the following:

32 (a) The number of inspections conducted and the amount of fees collected
33 pursuant to Section 29055.

34 (b) The number of licensees removed from the centralized list described in
35 Sections 29060 and 29065.

36 (c) The number of licensees found to have violated this chapter.

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

38 See Section 16820 ("licensee").

1 Article 2. Prohibitions and Requirements Applicable to Licensee

2 **§ 29100. Compliance with prohibitions and requirements**

3 29100. A licensee shall comply with the prohibitions and requirements
4 described in this article.

5 **Comment.** Section 29100 continues the introductory clause of former Section 12086(c)
6 without substantive change.

7 See Section 16820 (“licensee”).

8 **§ 29105. Place of conducting business**

9 29105. The business of a licensee shall be conducted only in the buildings
10 designated in the license.

11 **Comment.** Section 29105 continues former Section 12086(c)(1) without substantive change.

12 See Section 16820 (“licensee”).

13 **§ 29110. Display of license**

14 29110. A licensee shall display the license or a copy thereof, certified by the
15 department, on the premises where it can easily be seen.

16 **Comment.** Section 29110 continues former Section 12086(c)(2) without substantive change.

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

18 **§ 29115. Lost or stolen firearm**

19 29115. (a) Whenever a licensee discovers that a firearm has been stolen or is
20 missing from the licensee’s premises, the licensee shall report the loss or theft
21 within 48 hours of the discovery to all of the following:

22 (1) The Department of Justice, in a manner prescribed by the department.

23 (2) The federal Bureau of Alcohol, Tobacco, and Firearms.

24 (3) The police department in the city or city and county where the building
25 designated in the license is located.

26 (4) If there is no police department in the city or city and county where the
27 building designated in the license is located, the sheriff of the county where the
28 building designated in the license is located.

29 (b) For at least 10 years, the licensee shall maintain records of all firearms that
30 are lost or stolen, as prescribed by the Department of Justice.

31 **Comment.** Subdivision (a) of Section 29115 continues former Section 12086(c)(3) without
32 substantive change.

33 Subdivision (b) continues former Section 12086(c)(10) without substantive change.

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

35 **§ 29120. Restrictions on employee access to firearms**

36 29120. (a) A licensee shall require that each employee obtain a certificate of
37 eligibility pursuant to Section 26710, which shall be renewed annually, before
38 being allowed to come into contact with any firearm.

1 (b) A licensee shall prohibit any employee who the licensee knows or
2 reasonably should know is prohibited by state or federal law from possessing,
3 receiving, owning, or purchasing a firearm from coming into contact with any
4 firearm.

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

7 **Staff Note.** The text of this provision reflects an amendment made by AB 837 (Feuer). See
8 2008 Cal. Stat. ch. 698.

9 **§ 29125. Unique serial number on each firearm**

10 29125. (a) Each firearm a licensee manufactures in this state shall be identified
11 with a unique serial number stamped onto the firearm utilizing the method of
12 compression stamping.

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

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

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

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

21 **§ 29130. Recordkeeping requirements**

22 29130. (a) A licensee shall record the type, model, caliber, or gauge, and serial
23 number of each firearm manufactured or acquired, and the date of the manufacture
24 or acquisition, within one business day of the manufacture or acquisition.

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

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

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

33 **§ 29135. Inspections**

34 29135. (a) A licensee shall allow the department to inspect the building
35 designated in the license to ensure compliance with the requirements of this
36 chapter.

37 (b) A licensee shall allow any peace officer, authorized law enforcement
38 employee, or Department of Justice employee designated by the Attorney General,
39 upon the presentation of proper identification, to inspect facilities and records
40 during business hours to ensure compliance with the requirements of this chapter.

1 **Comment.** Section 29135 continues former Section 12086(c)(7) without substantive change.
2 See Section 16820 (“licensee”).

3 **§ 29140. Storage of firearms and barrels for firearms in secure facility**

4 29140. A licensee shall store in a secure facility all firearms manufactured and
5 all barrels for firearms manufactured.

6 **Comment.** Section 29140 continues former Section 12086(c)(8) without substantive change.
7 See Sections 16520 (“firearm”), 17111 (“secure facility” for firearm storage by manufacturer),
8 17112 (special definition of “secure facility” for firearm storage by manufacturer producing fewer
9 than 500 firearms per calendar year).

10 **§ 29145. Notification requirement**

11 29145. (a) A licensee shall notify the chief of police or other head of the
12 municipal police department in the city or city and county where the building
13 designated in the license is located that the licensee is manufacturing firearms
14 within that city or city and county and the location of the licensed premises.

15 (b) If there is no police department in the city or city and county where the
16 building designated in the license is located, the licensee shall notify the sheriff of
17 the county where the building designated in the license is located that the licensee
18 is manufacturing firearms within that county and the location of the licensed
19 premises.

20 **Comment.** Section 29145 continues former Section 12086(c)(9) without substantive change.
21 See Sections 16520 (“firearm”), 16820 (“licensee”).

22 DIVISION 8. MISCELLANEOUS RULES RELATING
23 TO FIREARMS GENERALLY

24 CHAPTER 1. MISCELLANEOUS PROVISIONS

25 **§ 29300. Firearm of any nature constitutes nuisance under specified circumstances**

26 29300. (a) Except as provided in subdivision (c), a firearm of any nature owned
27 or possessed in violation of Chapter 1 (commencing with Section 29610), 2
28 (commencing with Section 29800), or 3 (commencing with Section 29900) of
29 Division 9 of this code, or Chapter 3 (commencing with Section 8100) of Division
30 5 of the Welfare and Institutions Code, or used in the commission of any
31 misdemeanor as provided in this code, any felony, or an attempt to commit any
32 misdemeanor as provided in this code or any felony, is, upon a conviction of the
33 defendant or upon a juvenile court finding that an offense which would be a
34 misdemeanor or felony if committed by an adult was committed or attempted by
35 the juvenile with the use of a firearm, a nuisance.

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

1 (c) A firearm is not a nuisance pursuant to this section if the firearm owner
2 disposes of the firearm pursuant to Section 29910.

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

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

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

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

9 **Comment.** Subdivision (a) of Section 29300 continues the first sentence of former Section
10 12028(b)(1) without substantive change.

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

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

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

16 See Section 16520 (“firearm”).

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

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

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

30 To ensure that this rule is continued without substantive change, it would not be sufficient for
31 the rule to apply to the provision that continues the first sentence of existing Section 12028(b)(1).
32 The rule must also apply to the provision that continues the first sentence of existing Section
33 12028(c), because that sentence also refers to convictions and juvenile court determinations. It
34 says:

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

42 (Emphasis added.)

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

46 **§ 18000. Surrender of specified weapons constituting nuisance**

47 18000. (a) Any weapon described in Section 19190, 21390, 21590, or 25700, or, upon
48 conviction of the defendant or upon a juvenile court finding that an offense that would be a

1 misdemeanor or felony if committed by an adult was committed or attempted by the juvenile
2 with the use of a firearm, any weapon described in Section 29400, shall be surrendered to one
3 of the following:

4 (1) The sheriff of a county.

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

7 (3) The chief of police of any campus of the University of California or the California State
8 University.

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

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

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

14 **Comment.** Subdivision (a) of Section 18000 continues the first sentence of former Section
15 12028(c) without substantive change.

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

18 In combination with Section 29300(b), subdivision (c) continues the second sentence of
19 former Section 12028(b)(1) without substantive change.

20 See Section 16520 (“firearm”).

21 In drafting the Comment to proposed Section 29300, the staff presumed that proposed Section
22 18000 will be revised as recommended above and further discussed in Memorandum 2008-58.

23 CHAPTER 2. ENTERTAINMENT FIREARMS PERMIT

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

25 § 29500. Entertainment firearms permit

26 29500. Any person who is at least 21 years of age may apply for an
27 entertainment firearms permit from the Department of Justice. An entertainment
28 firearms permit authorizes the permit holder to possess firearms loaned to the
29 permit holder for use solely as a prop in a motion picture, television, video,
30 theatrical, or other entertainment production or event.

31 **Comment.** Section 29500 continues the first sentence of former Section 12081(a) without
32 substantive change.

33 See Section 16520 (“firearm”).

34 § 29505. Application form

35 29505. (a) Requests for entertainment firearms permits shall be made on
36 application forms prescribed by the Department of Justice that require applicant
37 information, including, but not limited to, the following:

38 (1) Complete name.

39 (2) Residential and mailing address.

40 (3) Telephone number.

41 (4) Date of birth.

42 (5) Place of birth.

1 (6) Country of citizenship and, if other than United States, alien number or
2 admission number.

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

5 (8) Social security number.

6 (9) Signature.

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

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

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

12 **§ 29510. Application fee**

13 29510. (a) The Department of Justice shall recover the full costs of
14 administering the entertainment firearms permit program by assessing the
15 following application fees:

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

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

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

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

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

29 **Staff Note.** Existing Section 12081(c) twice refers to the "Dealer Record of Sale Account."
30 The staff preserved those references in proposed Section 29510. We presume, however, that the
31 "Dealer Record of Sale Account" referenced in existing Section 12081(c) is the same as the
32 "Dealers' Record of Sale Special Account" referenced in other existing provisions, particularly
33 existing Section 12076(g).

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

40 **§ 29515. No entertainment firearms permit for person prohibited from possessing or**
41 **receiving firearms**

42 29515. (a) Upon receipt of an initial or renewal application submitted as
43 specified in Sections 29505, 29520, and 29525, the department shall examine its

1 records, records the department is authorized to request from the State Department
2 of Mental Health pursuant to Section 8104 of the Welfare and Institutions Code,
3 and records of the National Instant Criminal Background Check System as
4 described in subsection (t) of Section 922 of Title 18 of the United States Code, in
5 order to determine if the applicant is prohibited from possessing or receiving
6 firearms.

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

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

12 See Section 16520 (“firearm”).

13 § 29520. Arrests and convictions of applicant

14 29520. (a) An initial application for an entertainment firearms permit shall
15 require the submission of fingerprint images and related information in a manner
16 prescribed by the department, for the purpose of obtaining information as to the
17 existence and nature of a record of state or federal level convictions and state or
18 federal level arrests for which the department establishes that the individual was
19 released on bail or on the individual’s own recognizance pending trial as needed to
20 determine whether the applicant may be issued the permit. Requests for federal
21 level criminal offender record information received by the Department of Justice
22 pursuant to this chapter shall be forwarded by the department to the Federal
23 Bureau of Investigation.

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

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

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

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

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

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

44 The correct reference appears to be existing Section 12081(f), which provides:

1 (f) An entertainment firearms permit issued by the Department of Justice shall be valid for
2 one year from the date of issuance. If at any time during that year the permitholder becomes
3 prohibited from possessing or receiving firearms pursuant to any federal, state, or local law,
4 his or her entertainment firearms permit shall be no longer valid.

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

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

15 **§ 29525. Furnishing fictitious name, knowingly furnishing incorrect information, or**
16 **knowingly omitting required information on application**

17 29525. Any person who furnishes a fictitious name or address or knowingly
18 furnishes any incorrect information or knowingly omits any information required
19 to be provided on an application for an entertainment firearms permit is guilty of a
20 misdemeanor.

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

22 **§ 29530. Duration of entertainment firearms permit**

23 29530. (a) An entertainment firearms permit issued by the Department of Justice
24 shall be valid for one year from the date of issuance.

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

28 **Comment.** Section 29530 continues former Section 12081(f) without substantive change.
29 See Section 16520 ("firearm").

30 **§ 29535. Exemption from Administrative Procedure Act**

31 29535. The implementation of Sections 29500, 29505, 29520, 29525, and
32 subdivision (a) of Section 29510 by the department is exempt from the
33 Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of
34 Part 1 of Division 3 of Title 2 of the Government Code).

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

36 **DIVISION 9. SPECIAL FIREARM RULES RELATING TO**
37 **PARTICULAR PERSONS**

38 **Staff Note.** This division is organized as follows:

- 39 • Chapter 1, entitled "Juvenile," contains the material currently in Section 12101, except a
40 definition that would be in the "Definitions" portion of new Part 6. The chapter would be
41 divided into several articles.

- 1 • Chapter 2, entitled “Person Convicted of Violent Felony,” contains the material currently
2 in Section 12021.1.
- 3 • Chapter 3, entitled “Person Convicted of Specified Offense, Addicted to Narcotic, or
4 Subject to Court Order,” contains the material currently in Section 12021. The chapter
5 would be divided into several articles.
- 6 • Chapter 4, entitled “Prohibited Armed Persons File,” contains the material currently in
7 Sections 12010, 12011, and 12012.
- 8 • Chapter 5, entitled “Firearms Eligibility Check,” contains the material currently in
9 Sections 12001(m) and 12077.5. As shown below, the chapter also contains four
10 exceptions currently stated in Section 12078, as they arguably pertain to Section 12077.5.
11 As discussed in the accompanying memorandum, the staff recommends that this material
12 be deleted.

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

15 CHAPTER 1. JUVENILE

16 Article 1. Possession of Handgun

17 § 29610. Prohibition on possession of handgun by minor

18 29610. A minor shall not possess a pistol, revolver, or other firearm capable of
19 being concealed upon the person.

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

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

24 For further guidance on firearm restrictions relating to minors and persons under age 21, see
25 Sections 27505 (person, corporation, or firm that sells, loans, or transfers firearm to minor or
26 handgun to person under age 21), 27510 (dealer that supplies, delivers, or gives possession or
27 control of firearm to minor or handgun to person under age 21), 27945 (exception for certain
28 situations involving minor), 29650 (prohibition on possession of live ammunition by minor),
29 29655 (exceptions).

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

32 § 29615. Exceptions

33 29615. Section 29610 shall not apply if one of the following circumstances
34 exists:

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

41 (b) The minor is accompanied by a responsible adult, the minor has the prior
42 written consent of a parent or legal guardian, and the minor is actively engaged in,

1 or is in direct transit to or from, a lawful, recreational sport, including, but not
2 limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a
3 motion picture, television, or video production, or entertainment or theatrical
4 event, the nature of which involves the use of a firearm.

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

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

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

20 **Staff Notes.**

21 (1) Existing Section 12101(a)(2)(A) refers to a minor who “is actively engaged in, or is in
22 direct transit to or from, a lawful, recreational sport, including, but not limited to, competitive
23 shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video
24 production, or entertainment or theatrical event, the nature of which involves *this* use of a
25 firearm.” (Emphasis added.) Existing Section 12101(a)(2)(B)-(D) contain similar language,
26 except they refer to an event “the nature of which involves *the* use of a firearm.”

27 The staff does not understand why subparagraph (A) refers to “*this* use of a firearm,” while
28 subparagraphs (B), (C), and (D) refer to “*the* use of a firearm.” We suspect the intent was to refer
29 to “*the* use of a firearm” in all four subparagraphs.

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

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

38 29615. Section 29610 shall not apply if the minor is actively engaged in, or is in direct
39 transit to or from, a lawful, recreational sport, including, but not limited to, competitive
40 shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or
41 video production, or entertainment or theatrical event, the nature of which involves the use of
42 a firearm, and one of the following circumstances exists:

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

46 (c) The minor is at least 16 years of age and the minor has the prior written consent of a
47 parent or legal guardian.

1 (d) The minor has the prior written consent of a parent or legal guardian and the minor is
2 on lands owned or lawfully possessed by the parent or legal guardian.

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

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

12 The staff suspects the prohibition is not intended to apply in that situation. If that is the intent, it
13 could be made more clear by stating that the prohibition “shall not apply if *any* of the following
14 circumstances exists” (Emphasis added.)

15 Again, however, the staff preserved the existing language in drafting proposed Section 29615,
16 rather than replacing “*one* of the following” with “*any* of the following.” But such a change might
17 be worth making in the future, in a different reform. Unless the Commission otherwise directs, we
18 will add this issue to the Commission’s list of “Minor Clean-up Issues for Possible Future
19 Legislative Attention.” See Memorandum 2008-61.

20 Article 2. Possession of Live Ammunition

21 § 29650. Prohibition on possession of live ammunition by minor

22 29650. A minor shall not possess live ammunition.

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

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

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

33 § 29655. Exceptions

34 29655. Section 29650 shall not apply if one of the following circumstances
35 exists:

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

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

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

43 **Comment.** Section 29655 continues former Section 12101(b)(2) without substantive change.
44 See Section 16520 (“firearm”).

1 (2) It may no longer be necessary to continue to include this statement of intent in the Penal
2 Code. Deleting it from the code would simplify the code, but would not change the intent of the
3 1994 amendments referenced, nor cause the statement of intent to disappear from the historical
4 record. That statement would just be more difficult to find than it is now.

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

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

14 CHAPTER 2. PERSON CONVICTED OF VIOLENT OFFENSE

15 **§ 29800. Firearm possession or control by person convicted of violent offense**

16 29800. (a)(1) Notwithstanding subdivision (a) of Section 29900, any person who
17 has been previously convicted of any of the offenses listed in Section 29805 and
18 who owns or has in possession or under custody or control any firearm is guilty of
19 a felony.

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

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

26 (b)(1) Any person previously convicted of any of the offenses listed in Section
27 29805 which conviction results from certification by the juvenile court for
28 prosecution as an adult in adult court under the provisions of Section 707 of the
29 Welfare and Institutions Code, who owns or has in possession or under custody or
30 control any firearm, is guilty of a felony.

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

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

42 **Comment.** Subdivision (a) of Section 29800 continues former Section 12021.1(a) without
43 substantive change.

1 Subdivision (b) continues former Section 12021.1(c) without substantive change.
2 Subdivision (c) continues former Section 12021.1(d) without substantive change.
3 See Section 16520 (“firearm”).

4 **§ 29805. Violent offense**

5 29805. (a) As used in this chapter, a violent offense includes any of the
6 following:

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

1 (b) As used in this chapter, a violent offense also includes any attempt to
2 commit a crime listed in subdivision (a) other than an assault.

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

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

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

15 Article 1. Prohibitions on Firearm Access

16 **§ 29900. Firearm access by person convicted of felony, addicted to narcotic drug, or**
17 **convicted of other specified offense**

18 29900. (a)(1) Any person who has been convicted of a felony under the laws of
19 the United States, the State of California, or any other state, government, or
20 country, or of an offense enumerated in subdivision (a), (b), or (d) of Section
21 23515, or who is addicted to the use of any narcotic drug, and who owns,
22 purchases, receives, or has in possession or under custody or control any firearm is
23 guilty of a felony.

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

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

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

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

37 (2) The defendant was sentenced to a federal correctional facility for more than
38 30 days, or received a fine of more than one thousand dollars (\$1,000), or received
39 both punishments.

40 **Comment.** Subdivision (a) of Section 29900 continues former Section 12021(a) without
41 substantive change.

1 Subdivision (b) continues former Section 12021(b) without substantive change.
2 For an exemption from the prohibitions in subdivisions (a) and (b), see Section 29950
3 (justifiable violation of Section 29900, 29905, 29915, or 29920). For a notice requirement
4 relating to those prohibitions, see Section 29910 (notice to person who is subject to Section 29900
5 or 29905).

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

7 See Section 16520 (“firearm”).

8 **§ 29905. Firearm access by person convicted of misdemeanor violation of certain statutes or**
9 **other specified offense**

10 29905. Except as provided in Section 29900 or 29955, any person who has been
11 convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140,
12 subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28, 240, 241, 242,
13 243, 243.4, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6, 417, 417.6, 422, 626.9,
14 646.9, or 830.95, subdivision (a) of former Section 12100, [Section 12220,
15 12320], 17500, 17510, 25300, or 25800, subdivision (b) or (d) of Section 26100,
16 or Section 27510, or Section 8100, 8101, or 8103 of the Welfare and Institutions
17 Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the
18 Welfare and Institutions Code, or of the conduct punished in subdivision (c) of
19 Section 27590, and who, within 10 years of the conviction, owns, purchases,
20 receives, or has in possession or under custody or control, any firearm is guilty of
21 a public offense, which shall be punishable by imprisonment in a county jail not
22 exceeding one year or in the state prison, by a fine not exceeding one thousand
23 dollars (\$1,000), or by both that imprisonment and fine. The court, on forms
24 prescribed by the Department of Justice, shall notify the department of persons
25 subject to this section. However, the prohibition in this section may be reduced,
26 eliminated, or conditioned as provided in Section 29955 or 29960.

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

28 For an exemption from this provision, see Section 29950 (justifiable violation of Section
29 29900, 29905, 29915, or 29920). For guidance on petitioning for relief from this provision, see
30 Sections 29955 (petition by peace officer for relief from prohibition in Section 29905) and 29960
31 (petition by person who was convicted of offense before that offense was added to Section
32 29905). For guidance on false arrest arising from enforcement of this provision, see Section
33 29965 (immunity from liability for false arrest). For a notice requirement relating to this
34 provision, see Section 29910 (notice to person who is subject to Section 29900 or 29905).

35 See Section 16520 (“firearm”).

36 **☞ Staff Notes.**

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

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

44 Because this is a strictly nonsubstantive study and the Commission is striving to minimize any
45 concern that the proposed legislation would have a substantive impact, the staff does not
46 recommend attempting to correct the apparent oversight in this study. That might be worth doing

1 in the future, in a different reform. Unless the Commission otherwise directs, we will add this
2 issue to the Commission’s list of “Minor Clean-up Issues for Possible Future Legislative
3 Attention.” See Memorandum 2008-61.

4 **§ 29910. Notice to person who is subject to Section 29900 or 29905**

5 29910. (a) For any person who is subject to Section 29900 or 29905, the court
6 shall, at the time judgment is imposed, provide on a form supplied by the
7 Department of Justice, a notice to the defendant prohibited by this chapter from
8 owning, purchasing, receiving, possessing or having under custody or control, any
9 firearm. The notice shall inform the defendant of the prohibition regarding
10 firearms and include a form to facilitate the transfer of firearms.

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

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

15 **§ 29915. Firearm access by person subject to firearm restriction as express condition of**
16 **probation**

17 29915. (a) Any person who, as an express condition of probation, is prohibited
18 or restricted from owning, possessing, controlling, receiving, or purchasing a
19 firearm and who owns, purchases, receives, or has in possession or under custody
20 or control, any firearm, but who is not subject to Section 29905 or subdivision (a)
21 of Section 29900, is guilty of a public offense, which shall be punishable by
22 imprisonment in a county jail not exceeding one year or in the state prison, by a
23 fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment
24 and fine.

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

29 **Comment.** Subdivision (a) of Section 29915 continues the first sentence of former Section
30 12021(d)(1) without substantive change. For an exemption from this provision, see Section 29950
31 (justifiable violation of Section 29900, 29905, 29915, or 29920).

32 Subdivision (b) continues the second and third sentences of former Section 12021(d)(1)
33 without substantive change.

34 See Section 16520 (“firearm”).

35 **§ 29920. Firearm access by person adjudged ward of juvenile court, under specified**
36 **circumstances**

37 29920. (a) This section applies to any person who satisfies both of the following
38 requirements:

39 (1) The person is alleged to have committed an offense listed in subdivision (b)
40 of Section 707 of the Welfare and Institutions Code, an offense described in
41 subdivision (b) of Section 1203.073, any offense enumerated in Section 29905, or

1 any offense described in Section 25850, subdivision (a) of Section 25400, or
2 subdivision (a) of Section 26100.

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

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

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

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

18 **Comment.** Subdivisions (a) and (b) of Section 29920 continue the first sentence of former
19 Section 12021(e) without substantive change.

20 Subdivision (c) continues the second sentence of former Section 12021(e) without substantive
21 change.

22 Subdivision (d) continues the third and fourth sentences of former Section 12021(e) without
23 substantive change.

24 For an exemption from this provision, see Section 29950 (justifiable violation of Section
25 29900, 29905, 29915, or 29920).

26 See Section 16520 (“firearm”).

27 **§ 29925. Firearm access by person subject to temporary restraining order, injunction, or**
28 **protective order**

29 29925. (a) Every person who purchases or receives, or attempts to purchase or
30 receive, a firearm knowing that the person is prohibited from doing so by a
31 temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8
32 of the Code of Civil Procedure, a protective order as defined in Section 6218 of
33 the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of
34 this code, or a protective order issued pursuant to Section 15657.03 of the Welfare
35 and Institutions Code, is guilty of a public offense, which shall be punishable by
36 imprisonment in a county jail not exceeding one year or in the state prison, by a
37 fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment
38 and fine.

39 (b) Every person who owns or possesses a firearm knowing that the person is
40 prohibited from doing so by a temporary restraining order or injunction issued
41 pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, a protective
42 order as defined in Section 6218 of the Family Code, a protective order issued
43 pursuant to Section 136.2 or 646.91 of this code, or a protective order issued

1 pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a
2 public offense, which shall be punishable by imprisonment in a county jail not
3 exceeding one year, by a fine not exceeding one thousand dollars (\$1,000), or by
4 both that imprisonment and fine.

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

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

15 **Comment.** Subdivision (a) of Section 29925 continues former Section 12021(g)(1) without
16 substantive change.

17 Subdivision (b) continues former Section 12021(g)(2) without substantive change.

18 Subdivision (c) continues former Section 12021(g)(4) without substantive change.

19 Subdivision (d) continues former Section 12021(g)(3) without substantive change.

20 See Sections 16520 (“firearm”), 26700 (“dealer,” “licensee,” or “person licensed pursuant to
21 Sections 26700 to 26915, inclusive”).

22 Article 2. Exemption or Petition for Relief

23 § 29950. Justifiable violation of Section 29900, 29905, 29915, or 29920

24 29950. (a) A violation of Section 29900, 29905, 29915, or 29920 is justifiable
25 where all of the following conditions are met:

26 (1) The person found the firearm or took the firearm from a person who was
27 committing a crime against the person who found or took the firearm.

28 (2) The person possessed the firearm no longer than was necessary to deliver or
29 transport the firearm to a law enforcement agency for that agency’s disposition
30 according to law.

31 (3) If the firearm was transported to a law enforcement agency, it was
32 transported in accordance with subdivision (b) of Section 25570.

33 (4) If the firearm is being transported to a law enforcement agency, the person
34 transporting the firearm has given prior notice to the law enforcement agency that
35 the person is transporting the firearm to the law enforcement agency for
36 disposition according to law.

37 (b) Upon the trial for violating Section 29900, 29905, 29915, or 29920, the trier
38 of fact shall determine whether the defendant was acting within the provisions of
39 the exemption created by this section.

40 (c) The defendant has the burden of proving by a preponderance of the evidence
41 that the defendant comes within the provisions of the exemption created by this
42 section.

1 **Comment.** Section 29950 continues former Section 12021(h) without substantive change.
2 See Section 16520 (“firearm”).

3 **§ 29955. Petition by peace officer for relief from prohibition in Section 29905**

4 29955. (a) Any person employed as a peace officer described in Section 830.1,
5 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment or livelihood is
6 dependent on the ability to legally possess a firearm, who is subject to the
7 prohibition imposed by Section 29905 because of a conviction under Section
8 273.5, 273.6, or 646.9, may petition the court only once for relief from this
9 prohibition.

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

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

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

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

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

25 (3) Finds that the petitioner does not have a previous conviction under Section
26 29905 no matter when the prior conviction occurred.

27 (e) In making its decision, the court shall consider the petitioner’s continued
28 employment, the interest of justice, any relevant evidence, and the totality of the
29 circumstances. The court shall require, as a condition of granting relief from the
30 prohibition under Section 29905, that the petitioner agree to participate in
31 counseling as deemed appropriate by the court. Relief from the prohibition shall
32 not relieve any other person or entity from any liability that might otherwise be
33 imposed. It is the intent of the Legislature that courts exercise broad discretion in
34 fashioning appropriate relief under this section in cases in which relief is
35 warranted. However, nothing in this section shall be construed to require courts to
36 grant relief to any particular petitioner. It is the intent of the Legislature to permit
37 persons who were convicted of an offense specified in Section 273.5, 273.6, or
38 646.9 to seek relief from the prohibition imposed by Section 29905.

39 **Comment.** Section 29955 continues former Section 12021(c)(2) without substantive change.
40 For guidance on false arrest arising from the enforcement of Section 29905, see Section 29965
41 (immunity from liability for false arrest).
42 See Section 16520 (“firearm”).

1 **§ 29960. Petition by person who was convicted of offense before that offense was added to**
2 **Section 29905**

3 29960. (a) Any person who is subject to the prohibition imposed by Section
4 29905 because of a conviction of an offense prior to that offense being added to
5 Section 29905 may petition the court only once for relief from this prohibition.

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

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

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

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

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

21 (3) Finds that the petitioner does not have a previous conviction under Section
22 29905, no matter when the prior conviction occurred.

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

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

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

32 See Section 16520 (“firearm”).

33 **§ 29965. Immunity from liability for false arrest**

34 29965. Law enforcement officials who enforce the prohibition specified in
35 Section 29905 against a person who has been granted relief pursuant to Section
36 29955 or 29960 shall be immune from any liability for false arrest arising from the
37 enforcement of Section 29905 unless the person has in possession a certified copy
38 of the court order that granted the person relief from the prohibition. This
39 immunity from liability shall not relieve any person or entity from any other
40 liability that might otherwise be imposed.

41 **Comment.** Section 29965 continues former Section 12021(c)(4) without substantive change.

1 **☞ Staff Note.** Existing Section 12021(c)(4) refers to “any person or entity.” Proposed Section
2 29965 would use the same phrase, so as not to raise any concerns about a possible substantive
3 change. However, “person” is often defined to include an entity. The possibility of standardizing
4 usage of the term “person” is already on the Commission’s list of “Minor Clean-up Issues for
5 Possible Future Legislative Attention.” See Memorandum 2008-61 (Item #4).

6 Article 3. Miscellaneous Provisions

7 **§ 29975. Protocol for implementation of Section 12021, to be completed by January 1, 2005**

8 29975. Subject to available funding, the Attorney General, working with the
9 Judicial Council, the California Alliance Against Domestic Violence, prosecutors,
10 and law enforcement, probation, and parole officers, shall develop a protocol for
11 the implementation of the provisions of former Section 12021, which is continued
12 in this chapter. The protocol shall be designed to facilitate the enforcement of
13 restrictions on firearm ownership, including provisions for giving notice to
14 defendants who are restricted, provisions for informing those defendants of the
15 procedures by which defendants shall dispose of firearms when required to do so,
16 provisions explaining how defendants shall provide proof of the lawful disposition
17 of firearms, and provisions explaining how defendants may obtain possession of
18 seized firearms when legally permitted to do so pursuant to any provision of law.
19 The protocol shall be completed on or before January 1, 2005.

20 **Comment.** Section 29975 continues former Section 12021(i) without substantive change.
21 See Section 16520 (“firearm”).

22 **☞ Staff Note.** Existing Section 12021(i) calls for development of a protocol for implementation
23 of Section 12021, “[s]ubject to available funding.” The provision further says that a protocol
24 “shall be completed on or before January 1, 2005.” (Emphasis added.)

25 If the protocol was completed on schedule, it may be unnecessary to continue the substance of
26 Section 12021(i) in the codes. The staff would appreciate input on whether the provision is
27 obsolete.

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

34 CHAPTER 4. PROHIBITED ARMED PERSONS FILE

35 **§ 30000. Prohibited Armed Persons File**

36 30000. (a) The Attorney General shall establish and maintain an online database
37 to be known as the Prohibited Armed Persons File. The purpose of the file is to
38 cross-reference persons who have ownership or possession of a firearm on or after
39 January 1, 1991, as indicated by a record in the Consolidated Firearms Information
40 System, and who, subsequent to the date of that ownership or possession of a

1 firearm, fall within a class of persons who are prohibited from owning or
2 possessing a firearm.

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

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

10 **§ 30005. Use of Prohibited Armed Persons File**

11 30005. The Prohibited Armed Persons File database shall function as follows:

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

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

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

33 (1) The subject’s name.

34 (2) The subject’s date of birth.

35 (3) The subject’s physical description.

36 (4) Any other identifying information regarding the subject that is deemed
37 necessary by the Attorney General.

38 (5) The basis of the firearms possession prohibition.

39 (6) A description of all firearms owned or possessed by the subject, as reflected
40 by the Consolidated Firearms Information System.

41 **Comment.** Section 30005 continues former Section 12011 without substantive change.
42 See Section 16520 (“firearm”).

1 **☞ Staff Note.** The text of this provision reflects an amendment made by AB 837 (Feuer). See
2 2008 Cal. Stat. ch. 698.

3 **§ 30010. Assistance by Attorney General**

4 30010. The Attorney General shall provide investigative assistance to local law
5 enforcement agencies to better ensure the investigation of individuals who are
6 armed and prohibited from possessing a firearm.

7 **Comment.** Section 30010 continues former Section 12012 without substantive change.
8 See Section 16520 (“firearm”).

9 CHAPTER 5. FIREARMS ELIGIBILITY CHECK

10 Article 1. Fingerprint Requirement and Firearms Eligibility Check

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

14 **§ 30100. Fingerprint requirement**

15 30100. Each application that requires any firearms eligibility determination
16 involving the issuance of any license, permit, or certificate pursuant to this part
17 shall include two copies of the applicant’s fingerprints on forms prescribed by the
18 Department of Justice. One copy of the fingerprints may be submitted to the
19 United States Federal Bureau of Investigation.

20 **Comment.** Section 30100 continues former Section 12001(m) without substantive change.
21 See Section 16520 (“firearm”).

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

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

35 **§ 30105. Firearms eligibility check**

36 30105. (a) An individual may request that the Department of Justice perform a
37 firearms eligibility check for that individual. The applicant requesting the
38 eligibility check shall provide the information required by Section 28165 to the
39 department, in an application specified by the department.

1 (b) The department shall charge a fee of twenty dollars (\$20) for performing the
2 eligibility check authorized by this section, but not to exceed the actual processing
3 costs of the department. After the department establishes fees sufficient to
4 reimburse the department for processing costs, fees charged may increase at a rate
5 not to exceed the legislatively approved cost-of-living adjustment for the
6 department's budget or as otherwise increased through the Budget Act.

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

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

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

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

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

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

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

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

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

38 "No person or agency may require or request another person to obtain a firearms
39 eligibility check or notification of firearms eligibility check pursuant to Section
40 30105 of the Penal Code. A violation of these provisions is a misdemeanor."

41 "If the applicant for a firearms eligibility check purchases, transfers, or receives
42 a firearm through a licensed dealer as required by law, a waiting period and
43 background check are both required."

1 (c) The loan is made for the carrying and use of that firearm by that peace
2 officer in the course and scope of the officer’s duties.

3 **Comment.** Section 30155 continues former Section 12078(a)(3) without substantive change, as
4 that provision applied to former Section 12077.5 (through its reference to “the preceding
5 provisions of this article”).

6 For other exceptions relating to law enforcement, see Sections 30150, 30160-30165.

7 See Section 16520 (“firearm”).

8 **§ 30160. Exception for sale, delivery, or transfer by law enforcement agency to peace officer**
9 **pursuant to Public Contract Code**

10 30160. (a) Section 30105 does not apply to the sale, delivery, or transfer of a
11 firearm by a law enforcement agency to a peace officer pursuant to Section 10334
12 of the Public Contract Code.

13 (b) Within 10 days of the date that a handgun is sold, delivered, or transferred
14 pursuant to Section 10334 of the Public Contract Code to that peace officer, the
15 name of the officer and the make, model, serial number, and other identifying
16 characteristics of the firearm being sold, delivered, or transferred shall be entered
17 into the Automated Firearms System (AFS) via the California Law Enforcement
18 Telecommunications System (CLETS) by the law enforcement or state agency that
19 sold, delivered, or transferred the firearm. Any agency without access to AFS shall
20 arrange with the sheriff of the county in which the agency is located to input this
21 information via this system.

22 **Comment.** Section 30105 continues former Section 12078(a)(4) without substantive change, as
23 that provision applied to former Section 12077.5 (through its reference to “the preceding
24 provisions of this article”).

25 For other exceptions relating to law enforcement, see Sections 30150-30155, 30165.

26 See Sections 16520 (“firearm”), 16640 (“handgun”).

27 **§ 30165. Exception for sale, delivery, or transfer by law enforcement agency to retiring**
28 **peace officer authorized to carry concealed and loaded firearm**

29 30165. (a) Section 30105 does not apply to the sale, delivery, or transfer of a
30 firearm by a law enforcement agency to a retiring peace officer who is authorized
31 to carry a firearm pursuant to Chapter 5 (commencing with Section 26300) of
32 Division 5.

33 (b) Within 10 days of the date that a handgun is sold, delivered, or transferred to
34 that retiring peace officer, the name of the officer and the make, model, serial
35 number, and other identifying characteristics of the firearm being sold, delivered,
36 or transferred shall be entered into the Automated Firearms System (AFS) via the
37 California Law Enforcement Telecommunications System (CLETS) by the law
38 enforcement or state agency that sold, delivered, or transferred the firearm. Any
39 agency without access to AFS shall arrange with the sheriff of the county in which
40 the agency is located to input this information via this system.

41 **Comment.** Section 30165 continues former Section 12078(a)(5) without substantive change, as
42 that provision applied to former Section 12077.5 (through its reference to “the preceding
43 provisions of this article”).

1 For other exceptions relating to law enforcement, see Sections 30150-30160.
2 See Sections 16520 (“firearm”), 16640 (“handgun”).

3 DIVISION 10. SPECIAL RULES RELATING TO PARTICULAR
4 TYPES OF FIREARMS OR FIREARM EQUIPMENT

5 CHAPTER 1. AMMUNITION

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

8 **§ 30210. Prohibition on manufacture, import, sale, gift, loan, or possession of flechette dart**
9 **ammunition or bullet with explosive agent**

10 30210. Except as provided in Section 30215 and Chapter 1 (commencing with
11 Section 17700) of Division 2 of Title 2, any person in this state who manufactures
12 or causes to be manufactured, imports into the state, keeps for sale, or offers or
13 exposes for sale, or who gives, lends, or possesses either of the following is
14 punishable by imprisonment in a county jail not exceeding one year or in the state
15 prison:

16 (a) Any ammunition that contains or consists of any flechette dart.

17 (b) Any bullet containing or carrying an explosive agent.

18 **Comment.** With respect to “any ammunition that contains or consists of any flechette dart”
19 and “any bullet containing or carrying an explosive agent,” Section 30210 continues former
20 Section 12020(a)(1) without substantive change.

21 For circumstances in which this section is inapplicable, see Sections 16590 (“generally
22 prohibited weapon”), 17700-17745 (exemptions relating to generally prohibited weapons), 30215
23 (exemption for tracer ammunition manufactured for use in shotgun).

24 See Section 16570 (“flechette dart”). See also Sections 16460(b) (bullet with explosive agent is
25 not destructive device), 17800 (distinct and separate offense), 30290 (flechette dart ammunition
26 or bullet with explosive agent constituting nuisance).

27 **§ 30215. Exemption for tracer ammunition manufactured for use in shotgun**

28 30215. Section 30210 does not apply to tracer ammunition manufactured for use
29 in a shotgun.

30 **Comment.** Section 30215 continues former Section 12020(b)(6) without substantive change.

31 For additional circumstances in which Section 30210 is inapplicable, see Sections 16590
32 (“generally prohibited weapon”), 17700-17745 (exemptions relating to generally prohibited
33 weapons).

34 See Section 17190 (“shotgun”).

35 **§ 30290. Flechette dart ammunition or bullet with explosive agent constituting nuisance**

36 30290. Except as provided in Section 30210 and in Chapter 1 (commencing with
37 Section 17700) of Division 2 of Title 2, any ammunition that contains or consists

1 of any flechette dart, or any bullet containing or carrying an explosive agent, is a
2 nuisance and is subject to Section 18010.

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

6 See Section 16570 (“flechette dart”).

7 Article 2. Other Restrictions Relating to Ammunition

8 § 30300. Sale of ammunition or reloaded ammunition to minor, or sale of handgun 9 ammunition or reloaded handgun ammunition to person under age 21

10 30300. (a) Any person, corporation, or dealer who does either of the following
11 shall be punished by imprisonment in a county jail for a term not to exceed six
12 months, or by a fine not to exceed one thousand dollars (\$1,000), or by both the
13 imprisonment and fine:

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

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

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

26 **Comment.** Subdivision (a) of Section 30300 continues former Section 12316(a)(1)(A) and the
27 first and third sentences of former Section 12316(a)(1)(B) without substantive change.

28 Subdivision (b) continues the first sentence of former Section 12316(a)(2) without substantive
29 change.

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

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

39 See Sections 16150 (“ammunition”), 16300 (“bona fide evidence of majority and identity”),
40 16640 (“handgun”), 16650 (“handgun ammunition”), 17090 (“rifle”).

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

43 Usually, however, the term “person” is defined to include a corporation or other entity, not just
44 an individual. For example, existing Section 7 says that in the Penal Code, “the word ‘person’
45 includes a corporation as well as a natural person.” No other definition of “person” applies to

1 Section 12316(a), and usage of the term in Title 2 of Part 4 of the Penal Code is not consistent.
2 See Memorandum 2008-17, Attachment pp. 37-38. The possibility of standardizing that usage is
3 already on the Commission’s list of “Minor Clean-up Issues for Possible Future Legislative
4 Attention.” See Memorandum 2008-61 (Item #4).

5 **§ 30305. Person prohibited from owning or possessing firearm**

6 30305. (a) No person prohibited from owning or possessing a firearm under
7 Chapter 2 (commencing with Section 29800) or 3 (commencing with Section
8 29900) of Division 9 of this code or Section 8100 or 8103 of the Welfare and
9 Institutions Code shall own, possess, or have under custody or control, any
10 ammunition or reloaded ammunition.

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

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

16 (1) The person found the ammunition or reloaded ammunition or took the
17 ammunition or reloaded ammunition from a person who was committing a crime
18 against the person who found or took the ammunition or reloaded ammunition.

19 (2) The person possessed the ammunition or reloaded ammunition no longer
20 than was necessary to deliver or transport the ammunition or reloaded ammunition
21 to a law enforcement agency for that agency’s disposition according to law.

22 (3) The person is prohibited from possessing any ammunition or reloaded
23 ammunition solely because that person is prohibited from owning or possessing a
24 firearm only by virtue of Chapter 3 (commencing with Section 29900) of Division
25 9.

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

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

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

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

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

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

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

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

44 Logically, the same definition of “ammunition” should apply to both subdivisions (b) and (d)
45 of existing Section 12316, and thus to the entirety of proposed Section 30305. Because this is a

1 strictly nonsubstantive study, however, we have simply preserved the existing situation. The
2 definition of “ammunition” would apply to proposed Section 30305(a)-(b); no definition of
3 “ammunition” would apply to proposed Section 30305(c)-(d). See Memorandum 2008-50,
4 Attachment p. 5 (proposed Section 16150(b)).

5 Extending the same definition of “ammunition” to the entire provision might be worth doing in
6 the future, in a different reform. Unless the Commission otherwise directs, we will add this issue
7 to the Commission’s list of “Minor Clean-up Issues for Possible Future Legislative Attention.”
8 See Memorandum 2008-61.

9 **§ 30310. No ammunition or reloaded ammunition on school grounds**

10 30310. (a) Unless it is with the written permission of the school district
11 superintendent, the superintendent’s designee, or equivalent school authority, no
12 person shall carry ammunition or reloaded ammunition onto school grounds,
13 except sworn law enforcement officers acting within the scope of their duties or
14 persons exempted under Section 25450.

15 (b) This section shall not apply to any of the following:

16 (1) A duly appointed peace officer as defined in Chapter 4.5 (commencing with
17 Section 830) of Title 3 of Part 2.

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

20 (3) Any person summoned by any of these officers to assist in making an arrest
21 or preserving the peace while that person is actually engaged in assisting the
22 officer.

23 (4) A member of the military forces of this state or of the United States who is
24 engaged in the performance of duties.

25 (5) A person holding a valid license to carry the firearm pursuant to Chapter 4
26 (commencing with Section 26150) of Division 5.

27 (6) An armored vehicle guard, who is engaged in the performance of duties, as
28 defined in subdivision (d) of Section 7582.1 of the Business and Professions Code.

29 (c) A violation of this section is punishable by imprisonment in a county jail for
30 a term not to exceed six months, a fine not to exceed one thousand dollars
31 (\$1,000), or both the imprisonment and fine.

32 **Comment.** Section 30310 continues former Section 12316(c) without substantive change. An
33 erroneous cross-reference to Business and Professions Code Section 7521(e) has been corrected
34 by replacing it with a cross-reference to Business and Professions Code Section 7582.1(d).

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

39 See Section 16520 (“firearm”).

40 **Staff Notes.**

41 (1) Proposed Section 30310 would continue the substance of existing Section 12316(c), which
42 prohibits most persons from carrying ammunition or reloaded ammunition onto school grounds. It
43 is debatable, however, whether that substance belongs in new Part 6.

44 Existing Section 12316(c) is located in a chapter entitled “Ammunition” within Title 2 of Part
45 4. In this draft, the entirety of that chapter would be reorganized in an article entitled “Other

1 Restrictions Relating to Ammunition” (proposed Sections 30300-30340). The substance of
2 Section 12316(c) would thus remain in proximity to the other ammunition restrictions currently
3 located nearby.

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

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

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

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

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

25 **§ 626.91. Ammunition on school grounds**

26 626.91. Possession of ammunition on school grounds is governed by Section 30310.

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

29 Alternatively, or perhaps in addition, the possibility of relocating the substance of Section
30 12316(c) to the chapter on “Schools” could be added to the Commission's list of “Minor Clean-up
31 Issues for Possible Future Legislative Attention.”

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

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

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

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

44 **§ 30315. Knowing possession of handgun ammunition designed to penetrate metal or armor**

45 30315. Any person, firm, or corporation who, within this state knowingly
46 possesses any handgun ammunition designed primarily to penetrate metal or armor
47 is guilty of a public offense and upon conviction thereof shall be punished by
48 imprisonment in the state prison, or in the county jail for a term not to exceed one

1 year, or by a fine not to exceed five thousand dollars (\$5,000), or by both such fine
2 and imprisonment.

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

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

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

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

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

14 **§ 30320. Manufacturing, importing, selling, offering to sell, or knowingly transporting**
15 **handgun ammunition designed to penetrate metal or armor**

16 30320. Any person, firm, or corporation who, within this state, manufactures,
17 imports, sells, offers to sell, or knowingly transports any handgun ammunition
18 designed primarily to penetrate metal or armor is guilty of a felony and upon
19 conviction thereof shall be punished by imprisonment in state prison, or by a fine
20 not to exceed five thousand dollars (\$5,000), or by both such fine and
21 imprisonment.

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

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

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

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

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

33 **§ 30325. Transporting handgun ammunition designed primarily to penetrate metal or**
34 **armor to law enforcement agency**

35 30325. Nothing in this article shall apply to or affect the possession of handgun
36 ammunition designed primarily to penetrate metal or armor by a person who found
37 the ammunition, if that person is not prohibited from possessing firearms or
38 ammunition pursuant to subdivision (a) of Section 30305, Chapter 2 (commencing
39 with Section 29800) or 3 (commencing with Section 29900) of Division 9 of this
40 code, or Section 8100 or 8103 of the Welfare and Institutions Code, and the person
41 is transporting the ammunition to a law enforcement agency for disposition
42 according to law.

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

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

1 **§ 30330. Effect of article on member of military, police agency, forensic laboratory, or**
2 **holder of permit for destructive device**

3 30330. Nothing in this article shall apply to or affect the sale to, purchase by,
4 possession of, or use of any ammunition by any member of the Army, Navy, Air
5 Force, or Marine Corps of the United States, or the National Guard, while on duty
6 and acting within the scope and course of employment, or any police agency or
7 forensic laboratory or any person who is the holder of a valid permit issued
8 pursuant to Article 3 (commencing with Section 18900) of Chapter 1 of Division 5
9 of Title 2.

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

11 **§ 30335. Effect of article on permanently deactivated ammunition**

12 30335. Nothing in this article shall prohibit the possession, importation, sale,
13 attempted sale, or transport of ammunition from which the propellant has been
14 removed and the primer has been permanently deactivated.

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

16 **§ 30340. Effect of article on ammunition manufactured under contract approved by**
17 **government agency**

18 30340. Nothing in this article shall prohibit the manufacture of ammunition
19 under contracts approved by agencies of the state or federal government.

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