

Memorandum 2008-61

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

In conducting its nonsubstantive study of the deadly weapon statutes, the Commission is maintaining a list of "Minor Clean-up Issues for Possible Future Legislative Attention." The list will be discussed in the preliminary part of the Commission's report, and included as an appendix. See Memorandum 2008-62, Attachment pp. 18-19.

A new version of the list is attached for review. It has been updated to reflect points covered in October. See Memorandum 2008-52; Minutes (October 2008), pp. 5-8. It also includes some possible new additions, which are discussed in the memoranda for the October meeting. These possible new additions are shown at the end of the list, under "Proposed Additions."

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

A few points relating to the list are discussed below.

DEFINITION OF ".50 BMG RIFLE"

Memorandum 2008-53, which was considered at the October meeting, related to sentence enhancements. At page 8 of the attachment to that memorandum, the staff wrote:

There is no definition of ".50 BMG Rifle" that is applicable to [Penal Code Section 12022.5]. That appears to have been an oversight. *Cf.* Section 12022(a)(2). *Unless the Commission otherwise directs, we will add this matter to the list of "Minor Clean-up Issues for Possible Future Legislative Attention."* See Memorandum 2008-52.

(Emphasis added.) Regrettably, the staff forgot to include this issue in another memorandum that was considered at the October meeting (Memorandum 2008-

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52), which compiled the proposed October additions to the list of “Minor Clean-up Issues for Possible Future Legislative Attention.” Nonetheless, **we have included the issue as Item #15** in the attached new version of that list. We assume that treatment is consistent with the Commission’s intent. **If not, please plan to raise this point at the December meeting.**

CHAPTERED OUT REVISIONS OF SECTION 12076

As passed by the Legislature and signed by the Governor, Senate Bill 1241 (Margett) made the following revision in subdivision (b)(3) of Penal Code Section 12076:

(3) Two copies of the original sheet of the register, on the date of the application to purchase, shall be placed in the mail, postage prepaid, and properly addressed to the Department of Justice ~~in Sacramento~~.

The bill also made a similar revision in subdivision (c)(2) of the same section:

(2) The record of applicant information shall be transmitted to the Department of Justice ~~in Sacramento~~ by electronic or telephonic transfer on the date of the application to purchase.

Although these revisions were enacted (2008 Cal. Stat. ch. 699, § 19), they were “chaptered out” by another bill amending the same section — Assembly Bill 837 (Feuer), 2008 Cal. Stat. ch. 698, § 18. Due to a subordination clause in SB 1241, the revisions made by it to Section 12076 did not become effective, even though that bill was chaptered after AB 837. See 2008 Cal. Stat. ch. 699, § 33; Gov’t Code § 9605.

This chaptering out problem might be fixed (or close to being fixed) by the time the Commission submits its report in July 2009. If not, **the problem should perhaps be included on the Commission’s list of “Minor Clean-up Issues for Possible Future Legislative Attention.”**

We have included it with the “Proposed Additions” at the end of the list.

AUTHORITY TO STUDY THE CLEAN-UP ISSUES

The staff draft of the preliminary part discusses the list of “Minor Clean-up Issues for Possible Future Legislative Attention.” See Memorandum 2008-62, Attachment pp. 18-19. As drafted, the preliminary part would say that the proposed law “includes an uncodified provision that would authorize the

Commission to study the problems noted in the list and recommend legislation to correct them." *Id.* at 19.

Without such a provision or other grant of authority, the Commission could not study the issues on the list, except very minor ones. See Gov't Code §§ 8293, 8298. The staff believes that the Commission is well-suited to study those clean-up issues, because it has some familiarity with the issues and it is neutral on gun control.

Does the Commission wish to seek authority to study the issues on its list of "Minor Clean-up Issues for Possible Future Legislative Attention"? If so, would it like to propose a provision that *directs* the Commission to study the issues, or a provision that only *authorizes* the Commission to study them?

The staff will raise this matter for discussion at the December meeting.

Respectfully submitted,

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MINOR CLEAN-UP ISSUES FOR POSSIBLE FUTURE
LEGISLATIVE ATTENTION (12/8/08)

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

This updated version of the list incorporates points covered in October. See Memorandum 2008-52; Minutes (Oct. 2008), pp. 5-8.

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

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

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

- and (3) furnishing a BB device to a minor. See Memorandum 2007-33, Attachment p. 31.
- (15) Consider whether and, if so, how to define “.50 BMG Rifle” for purposes of Penal Code Section 12022.5. See Memorandum 2008-53, Attachment p. 8.
 - (16) Read literally, Penal Code Section 12028.5(c) only requires delivery of a firearm, not other deadly weapons. Consider whether this is due to an oversight that should be corrected. See Memorandum 2007-21, Attachment p. 14.
 - (17) The second sentence of Penal Code Section 12028.5(g) refers to a “family violence incident,” not a “domestic violence incident.” Consider whether to replace “family violence incident” with “domestic violence incident.” See Memorandum 2007-21, Attachment p. 17.
 - (18) Article 8 of Chapter 6 of Title 2 of Part 4 (i.e., Penal Code §§ 12800-12809) is sloppy in referring to instructors. See Memorandum 2007-33, Attachment p. 16. Consider whether to address this problem.
 - (19) In Title 2 of Part 4 of the Penal Code, the usage of “dealer,” “licensee,” and similar terms is potentially confusing. See Memorandum 2007-33, Attachment p. 20. Consider whether to address this problem.
 - (20) Consider whether to revise the language now found in Penal Code Section 12301(a)(3). See Memorandum 2007-33, Attachment pp. 22-23.
 - (21) Consider which exemptions listed in Penal Code Section 12020 apply to which weapons and equipment, and then consider whether to place each of those exemptions in proximity to the provisions governing the weapons or equipment to which it applies. See Memorandum 2007-33, Attachment p. 48.
 - (22) Consider, on a case-by-case basis, whether references to “pistol, revolver, or firearm capable of being concealed upon the person” should be replaced with the term “handgun.” See, e.g., Memorandum 2008-17, Attachment pp. 21-22 (proposed §§ 16650, 16660), 24-25 (proposed § 16730), 52-53 (proposed § 17260), 54-57 (proposed § 17300), 60-61 (proposed § 17510).
 - (23) In some places, Penal Code Section 12028.5 refers to “the owner or person who possessed the firearm” or to “the owner or person who was in lawful possession.” In other places, the provision refers only to “the owner” or to “the lawful owner.” These references should be reviewed to determine whether they are appropriate as is, or should be revised to achieve greater consistency. See Memorandum 2007-21, Attachment p. 13.
 - (24) Consider whether to revise the language now found in Penal Code Section 12001.1(b). See Memorandum 2008-25, Attachment p. 8.

- (25) Consider whether the references to “person, parent, or guardian” now found in Penal Code Section 12403.8(c) should be replaced with “parent, guardian, or other person.” See Memorandum 2008-25, Attachment p. 24.
- (26) Consider whether to revise the definition of “agent.” See Memorandum 2008-27, pp. 1-2.
- (27) Penal Code Section 12088.1 addresses three distinct subjects: (a) the firearm safety device requirement and exemptions from that requirement, (b) the warning requirement for a long-gun safe that does not comply with the standards for gun safes, and (c) the warning requirement of Penal Code Section 12088.3. Consider the possibility of dividing this material into several code sections. See Memorandum 2008-26, Attachment pp. 5-8.
- (28) Consider whether the language now found in Penal Code Section 12088.5 should be reworded as discussed in Memorandum 2008-26, Attachment pp. 12-13.
- (29) Penal Code Section 12020.3 criminalizes possession of a bright orange or bright green gun. Consider whether the scope of this provision should be expanded, as discussed in Memorandum 2008-26, Attachment p. 14.
- (30) It is unclear which definition of “imitation firearm” applies in Penal Code Section 12553(b). See Memorandum 2008-26, Attachment p. 18. Consider how to eliminate this ambiguity.
- (31) It is unclear whether the definition of “imitation firearm” in Penal Code Section 12550(c) is meant to apply to Penal Code Section 12555 to any extent. See Memorandum 2008-42, pp. 15-19. Consider how to eliminate this ambiguity.
- (32) Consider whether the language now in Penal Code Section 12035(h) is unnecessary and redundant. See Memorandum 2008-39, Attachment p. 9.
- (33) The first clause of Penal Code Section 12027(a)(1)(C) states a general rule. The remainder of Penal Code Section 12027(a)(1)(C) states an exception to that general rule. Consider whether the exception is obsolete. See Memorandum 2008-39, Attachment p. 19.
- (34) The first clause of the third paragraph of Penal Code Section 12031(b)(1) states a general rule. The remainder of that paragraph states an exception to the general rule. Consider whether the exception is obsolete. See Memorandum 2008-39, Attachment p. 38.
- (35) Penal Code Section 12027(c) refers to “those weapons.” Consider whether to replace that phrase with a more precise phrase. See Memorandum 2008-39, Attachment p. 29.
- (36) Consider whether any of the provisions in new Part 6 of the Penal Code should be redrafted to use the singular form instead of the plural form. See Memorandum 2008-39, pp. 1-2.

- (37) Consider whether the language now in Penal Code Section 12050(f)(4)(B) should be revised. See Memorandum 2008-39, Attachment pp. 54-55.
- (38) Consider whether to reorganize the provisions relating to identification certificates for retired peace officers and endorsements on those certificates authorizing officers to carry a concealed firearm, carry a loaded firearm, or carry a concealed and loaded firearm. See Memorandum 2008-39, Attachment pp. 17, 35-36, 57.
- (39) Consider whether the cross-reference to Penal Code Section 12025 in Penal Code Section 12031(j)(2) is incorrect and should be fixed. See Memorandum 2008-39, Attachment p. 45.
- (40) Consider whether to clarify which definition of “licensee” applies to Penal Code Section 12086. See Memorandum 2008-49, Attachment p. 4.
- (41) Consider whether Penal Code Sections 12070(b)(2) and 12078(b)(8) are unnecessarily redundant to some extent. See Memorandum 2008-49, Attachment pp. 6-7.
- (42) Consider whether Penal Code Sections 12070(b)(13) and 12070(b)(14) are unnecessarily redundant to some extent. See Memorandum 2008-49, Attachment p. 10.
- (43) Consider whether it is necessary to refer to the “successor” of 27 C.F.R. § 478.11 in Penal Code Section 12078(t)(1) & (2). See Memorandum 2008-49, Attachment pp. 38, 77, 84-85.
- (44) Consider whether it is necessary to refer to the “successor” of 27 C.F.R. § 478.100 in Penal Code Sections 12071(e)(3)(C) and 12071(b)(1)(B). See Memorandum 2008-49, Attachment pp. 16-17, 20.
- (45) Consider whether the language now in Penal Code Section 12071(e)(1) should be revised. See Memorandum 2008-49, Attachment p. 17.
- (46) Consider whether the language now in the first sentence of Penal Code Section 12071(b)(14) should be revised. See Memorandum 2008-49, Attachment p. 30.
- (47) Consider whether to clarify the intended scope of the definition of “secured” now found in Penal Code Section 12071(b)(20)(G)(ii). See Memorandum 2008-49, Attachment pp. 30-32.
- (48) Consider whether the reference in Penal Code Section 12071(h) to “Paragraph (14) *or* (15) of subdivision (b)” should be replaced with a reference to “Paragraphs (14) *and* (15) of subdivision (b).” See Memorandum 2008-49, Attachment p. 32.
- (49) Consider why the first sentence of Penal Code Section 12078(t) refers to a “loan,” while the second sentence does not. See Memorandum 2008-49, Attachment p. 38, 77.

- (50) Consider whether to rename the “certificate of eligibility” referred to in Penal Code Section 12071.1 and the “certificate of eligibility” referred to in Penal Code Section 12071(a), to prevent confusion. See Memorandum 2008-49, Attachment p. 47.
- (51) Consider whether to standardize the references to “facilities manager” and “facility’s manager” in Penal Code Section 12071.1. See Memorandum 2008-49, Attachment p. 49.
- (52) Consider whether to revise the references to “gun show producer license” and “producer’s certificate of eligibility” now found in Penal Code Section 12071.1(e). See Memorandum 2008-49, Attachment pp. 51-52.
- (53) Consider why the first sentence of Penal Code Section 12071.4(h) refers to the grandparent of a person under age 18, but the second sentence does not. See Memorandum 2008-49, Attachment p. 54.
- (54) Consider whether the language now found in Penal Code Section 12071.4(i)-(j) should be revised. See Memorandum 2008-49, Attachment p. 55.
- (55) Consider whether the references to “this paragraph” and “this section” in Penal Code Section 12072(f)(2)(C) are correct, or should be made parallel. See Memorandum 2008-49, Attachment pp. 69-70.
- (56) Consider whether Penal Code Section 12078(a)(8) should refer to an “authorized law enforcement representative” instead of “an authorized law enforcement agency.” See Memorandum 2008-49, Attachment p. 87.
- (57) Consider whether Penal Code Section 12078(i)(2)(A) should refer to “report forms” instead of “reports.” See Memorandum 2008-49, Attachment p. 92.
- (58) Consider whether the statutes governing the recordkeeping process for a firearm transaction should be revised to delete, segregate, or otherwise modify material relating to recordkeeping methods that are no longer in use. See Memorandum 2008-49, Attachment pp. 99-100.
- (59) Consider whether to conform the references to “magnetic strip” and “magnetic stripe” in Penal Code Section 12077(f). See Memorandum 2008-49, Attachment p. 107.
- (60) Consider whether to revise the language now found in Penal Code Section 12076(d)(2), which relates to use of the NICS system. See Memorandum 2008-49, Attachment p. 112.
- (61) Consider how to correct the erroneous cross-reference to Family Code Section 6385(a) in Penal Code Section 12076(e). See Memorandum 2008-49, Attachment pp. 113-14; Minutes (Oct. 2008), p. 8; 2002 Cal. Stat. ch. 265 (SB 1627 (Kuehl)).

PROPOSED ADDITIONS

- (62) Penal Code Section 12071(b)(3)(D) refers to a person “prohibited by state or federal law from processing, owning, purchasing, or receiving a firearm.” Consider whether the phrase “processing, owning, purchasing, or receiving” should be replaced with “possessing, receiving, owning, or purchasing.” See Memorandum 2008-58, Attachment p. 20.
- (63) Consider whether statutory references to “Dealer Record of Sale Account” and “Dealers’ Record of Sale Special Account” should be conformed. See Memorandum 2008-59, Attachment p. 10.
- (64) Consider whether Penal Code Section 12101(a)(2)(A) should refer to “the use of a firearm” instead of “this use of a firearm.” Also consider whether to simplify Penal Code Section 12101(a)(2)(A)-(D) along the lines discussed in Memorandum 2008-59, Attachment pp. 14-15.
- (65) Consider whether Penal Code Sections 12101(a)(2), (b)(2), and (c)(1) should be revised to replace “one of the following” with “any of the following.” See Memorandum 2008-59, Attachment pp. 15, 16.
- (66) Consider whether Penal Code Section 12101(f) is obsolete and can be deleted from the codes. See Memorandum 2008-59, Attachment pp. 17-18.
- (67) Penal Code Section 12101(c)(1) says: “*Except as provided in subdivision (a) or paragraph (2) of this subdivision, any person who has been convicted of a misdemeanor violation of*” (Emphasis added.) Consider whether the italicized clause should refer to paragraph (3) in addition to paragraph (2). See Memorandum 2008-59, Attachment pp. 21-22.
- (68) Consider whether Penal Code Section 12021(i) is obsolete and can be deleted from the codes. See Memorandum 2008-59, Attachment p. 27.
- (69) Consider whether the definition of “ammunition” in Penal Code Section 12316(b)(2) should be extended to apply to Penal Code Section 12316(d), and perhaps elsewhere. See Memorandum 2008-59, Attachment pp. 35-36.
- (70) Consider whether to delete “in Sacramento” from Penal Code Section 12076(b)(3) & (c)(2), to fix a chaptering out problem. See Memorandum 2008-61, p. 2.