

Memorandum 2009-6

**Nonsubstantive Reorganization of Deadly Weapon Statutes:
Large-Capacity Magazines, Machineguns, and Multiburst Trigger Activators
(Chapters 5, 6, and 7 of Division 10 of Title 4 of New Part 6)**

The Commission is preparing a tentative recommendation that would reorganize most of the substance of 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, without making any substantive change. To that end, attached is a draft of Chapters 5 (Large-Capacity Magazines), 6 (Machineguns), and 7 (Multiburst Trigger Activators) of Division 10 of Title 4 of new Part 6.

The staff encountered no difficult drafting issues in preparing the attached draft. Staff Notes (~~see~~ **Staff Note**) in the draft raise a few points to consider. **The staff does not plan to discuss each of these points 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.

Respectfully submitted,

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PROPOSED LEGISLATION

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

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

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

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

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

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TITLE 4. FIREARMS

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

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CHAPTER 5. LARGE-CAPACITY MAGAZINE

Article 1. Rules Governing Large-Capacity Magazines

§ 32310. Prohibition on manufacture, import, sale, gift, loan, or possession of large-capacity magazine

32310. Except as provided in Article 2 (commencing with Section 32400) of this chapter and in Chapter 1 (commencing with Section 17700) of Division 2 of Title 2, any person in this state who manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, lends, or possesses any large-capacity magazine is punishable by imprisonment in a county jail not exceeding one year or in the state prison.

Comment. With respect to a large-capacity magazine, Section 32310 continues former Section 12020(a)(1) without substantive change.

For circumstances in which this section is inapplicable, see Sections 16590 (“generally prohibited weapon”), 17700-17745 (exemptions relating to generally prohibited weapons), 32400-32450 (exceptions relating specifically to large-capacity magazines).

1 See Section 16740 (“large-capacity magazine”). See also Sections 17800 (distinct and separate
2 offense), 32315 (permit for possession, transportation, or sale of large-capacity magazines
3 between dealer and out-of-state client), 32390 (large-capacity magazine constituting nuisance).

4 **§ 32315. Permit for possession, transportation, or sale of large-capacity magazines between**
5 **dealer and out-of-state client**

6 32315. Upon a showing that good cause exists, the Department of Justice may
7 issue permits for the possession, transportation, or sale between a person licensed
8 pursuant to Sections 26700 to 26915, inclusive, and an out-of-state client, of large
9 capacity magazines.

10 **Comment.** Section 32315 continues former Section 12079(a) without substantive change.

11 See Sections 16740 (“large-capacity magazine”), 26700 (“dealer,” “licensee,” or “person
12 licensed pursuant to Sections 26700 to 26915, inclusive”). See also Section 32430 (exception for
13 importation or sale of large-capacity magazine by person with permit).

14 **Staff Note.** Existing Section 12079(a) says:

15 (a) Upon a showing that good cause exists, the Department of Justice may issue permits for
16 the possession, transportation, or sale between a person licensed pursuant to Section 12071
17 and an out-of-state client, of large capacity magazines.

18 The staff preserved the existing language in drafting proposed Section 32315 (except for
19 conforming the cross-reference to Section 12071).

20 That provision might be more clear if revised as follows:

21 32315. Upon a showing that good cause exists, the Department of Justice may issue
22 ~~permits for the possession, transportation, or sale between a person licensed pursuant to~~
23 ~~Sections 26700 to 26915, inclusive, and an out of state client, of large capacity magazines a~~
24 permit for any of the following:

25 (a) The possession of large-capacity magazines.

26 (b) The transportation of large-capacity magazines.

27 (c) The sale of large-capacity magazines between a person licensed pursuant to Sections
28 26700 to 26915, inclusive, and an out-of-state client.

29 Because this is a strictly nonsubstantive study and the Commission is striving to minimize any
30 concern that the proposed legislation would have a substantive impact, we do not recommend
31 making such revisions in the context of this study. That might be worth considering in the future,
32 in a different study. Unless the Commission otherwise directs, we will add this issue to the
33 Commission’s list of “Minor Clean-up Issues for Possible Future Legislative Attention.”

34 **§ 32390. Large-capacity magazine constituting nuisance**

35 32390. Except as provided in Article 2 (commencing with Section 32400) of this
36 chapter and in Chapter 1 (commencing with Section 17700) of Division 2 of Title
37 2, any large-capacity magazine is a nuisance and is subject to Section 18010.

38 **Comment.** With respect to a large-capacity magazine, Section 32390 continues the first part of
39 the first sentence of former Section 12029 without substantive change.

40 See Section 16740 (“large-capacity magazine”).

1 Article 2. Exceptions Relating Specifically to Large-
2 Capacity Magazines

3 **§ 32400. Exception for sale, gift, loan, importation, or purchase of large-capacity magazine**
4 **by law enforcement agency for use in law enforcement**

5 32400. Section 32310 does not apply to the sale of, giving of, lending of,
6 importation into this state of, or purchase of, any large-capacity magazine to or by
7 any federal, state, county, city and county, or city agency that is charged with the
8 enforcement of any law, for use by agency employees in the discharge of their
9 official duties, whether on or off duty, and where the use is authorized by the
10 agency and is within the course and scope of their duties.

11 **Comment.** Section 32400 continues former Section 12020(b)(19) without substantive change.
12 See Section 16740 (“large-capacity magazine”).

13 **§ 32405. Exception for sale, loan, or transfer of large-capacity magazine to peace officer, or**
14 **purchase, receipt, or importation of large-capacity magazine by peace officer**

15 32405. Section 32310 does not apply to the sale to, lending to, transfer to,
16 purchase by, receipt of, or importation into this state of, a large-capacity magazine
17 by a sworn peace officer, as defined in Chapter 4.5 (commencing with Section
18 830) of Title 3 of Part 2, who is authorized to carry a firearm in the course and
19 scope of that officer’s duties.

20 **Comment.** Section 32405 continues former Section 12020(b)(20) without substantive change.
21 See Sections 16520 (“firearm”), 16740 (“large-capacity magazine”).

22 **§ 32410. Exception for sale or purchase of large-capacity magazine by dealer**

23 32410. Section 32310 does not apply to the sale or purchase of any large-
24 capacity magazine to or by a person licensed pursuant to Sections 26700 to 26915,
25 inclusive.

26 **Comment.** Section 32410 continues former Section 12020(b)(21) without substantive change.
27 See Sections 16740 (“large-capacity magazine”), 26700 (“dealer,” “licensee,” or “person
28 licensed pursuant to Sections 26700 to 26915, inclusive”).

29 **§ 32415. Exception for loan of lawfully possessed large-capacity magazine between two**
30 **individuals, under specified conditions**

31 32415. Section 32310 does not apply to the loan of a lawfully possessed large-
32 capacity magazine between two individuals if all of the following conditions are
33 met:

34 (a) The person being loaned the large-capacity magazine is not prohibited by
35 Chapter 1 (commencing with Section 29610), 2 (commencing with Section
36 29800), or 3 (commencing with Section 29900) of Division 9 of this title or
37 Section 8100 or 8103 of the Welfare and Institutions Code from possessing
38 firearms or ammunition.

39 (b) The loan of the large-capacity magazine occurs at a place or location where
40 the possession of the large-capacity magazine is not otherwise prohibited, and the

1 person who lends the large-capacity magazine remains in the accessible vicinity of
2 the person to whom the large-capacity magazine is loaned.

3 **Comment.** Section 32415 continues former Section 12020(b)(22) without substantive change.
4 See Sections 16520 (“firearm”), 16740 (“large-capacity magazine”).

5 **§ 32420. Exception for importation of large-capacity magazine by person who lawfully**
6 **possessed it in this state before January 1, 2000**

7 32420. Section 32310 does not apply to the importation of a large-capacity
8 magazine by a person who lawfully possessed the large-capacity magazine in the
9 state prior to January 1, 2000, lawfully took it out of the state, and is returning to
10 the state with the same large-capacity magazine.

11 **Comment.** Section 32420 continues former Section 12020(b)(23) without substantive change.
12 See Section 16740 (“large-capacity magazine”).

13 **§ 32425. Exception for loan or gift to dealer or gunsmith for maintenance, repair, or**
14 **modification, or return of large-capacity magazine by dealer or gunsmith**

15 32425. Section 32310 does not apply to either of the following:

16 (a) The lending or giving of any large-capacity magazine to a person licensed
17 pursuant to Sections 26700 to 26915, inclusive, or to a gunsmith, for the purposes
18 of maintenance, repair, or modification of that large-capacity magazine.

19 (b) The return to its owner of any large-capacity magazine by a person specified
20 in subdivision (a).

21 **Comment.** Subdivision (a) of Section 32425 continues former Section 12020(b)(24) without
22 substantive change.

23 Subdivision (b) continues former Section 12020(b)(25) without substantive change.

24 See Sections 16630 (“gunsmith”), 16740 (“large-capacity magazine”), 26700 (“dealer,”
25 “licensee,” or “person licensed pursuant to Sections 26700 to 26915, inclusive”).

26 **§ 32430. Exception for importation or sale of large-capacity magazine by person with**
27 **permit**

28 32430. Section 32310 does not apply to the importation into this state of, or sale
29 of, any large-capacity magazine by a person who has been issued a permit to
30 engage in those activities pursuant to Section 32315, when those activities are in
31 accordance with the terms and conditions of that permit.

32 **Comment.** Section 32430 continues former Section 12020(b)(26) without substantive change.
33 See Section 16740 (“large-capacity magazine”).

34 **§ 32435. Exceptions relating to entities that operate armored vehicle businesses**

35 32435. Section 32310 does not apply to any of the following:

36 (a) The sale of, giving of, lending of, importation into this state of, or purchase
37 of, any large-capacity magazine, to or by any entity that operates an armored
38 vehicle business pursuant to the laws of this state.

39 (b) The lending of large-capacity magazines by an entity specified in
40 subdivision (a) to its authorized employees, while in the course and scope of
41 employment for purposes that pertain to the entity’s armored vehicle business.

1 (c) The return of those large-capacity magazines to the entity specified in
2 subdivision (a) by those employees specified in subdivision (b).

3 **Comment.** Subdivision (a) of Section 32435 continues former Section 12020(b)(27) without
4 substantive change.

5 Subdivision (b) continues former Section 12020(b)(28) without substantive change.

6 Subdivision (c) continues former Section 12020(b)(29) without substantive change.

7 See Section 16740 (“large-capacity magazine”).

8 **§ 32440. Exceptions relating to manufacture of large-capacity magazines**

9 32440. Section 32310 does not apply to any of the following:

10 (a) The manufacture of a large-capacity magazine for any federal, state, county,
11 city and county, or city agency that is charged with the enforcement of any law,
12 for use by agency employees in the discharge of their official duties, whether on or
13 off duty, and where the use is authorized by the agency and is within the course
14 and scope of their duties.

15 (b) The manufacture of a large-capacity magazine for use by a sworn peace
16 officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part
17 2, who is authorized to carry a firearm in the course and scope of that officer’s
18 duties.

19 (c) The manufacture of a large-capacity magazine for export or for sale to
20 government agencies or the military pursuant to applicable federal regulations.

21 **Comment.** Section 32440 continues former Section 12020(b)(30) without substantive change.

22 See Sections 16520 (“firearm”), 16740 (“large-capacity magazine”).

23 **§ 32445. Exception for large-capacity magazine used solely as prop in motion picture,
24 television, or video production**

25 32445. Section 32310 does not apply to the loan of a large-capacity magazine
26 for use solely as a prop for a motion picture, television, or video production.

27 **Comment.** Section 32445 continues former Section 12020(b)(31) without substantive change.

28 See Section 16740 (“large-capacity magazine”).

29 **§ 32450. Exception for purchase of large-capacity magazine by holder of special weapons
30 permit, for certain purposes**

31 32450. Section 32310 does not apply to the purchase of a large-capacity
32 magazine by the holder of a special weapons permit issued pursuant to [Section
33 12095], 31000, or 32650, or pursuant to Article 4 (commencing with Section
34 32700) of Chapter 6 of this division, or Article 3 (commencing with Section
35 18900) of Chapter 1 of Division 5 of Title 2, for any of the following purposes:

36 (a) For use solely as a prop for a motion picture, television, or video production.

37 (b) For export pursuant to federal regulations.

38 (c) For resale to law enforcement agencies, government agencies, or the
39 military, pursuant to applicable federal regulations.

40 **Comment.** Section 32450 continues former Section 12020(b)(32) without substantive change.

41 See Section 16740 (“large-capacity magazine”).

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CHAPTER 6. MACHINEGUNS

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☞ Staff Note. Several of the existing provisions relating to machineguns use the phrase “person, firm, or corporation.” The proposed legislation below would continue those phrases without change.

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

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Article 1. General Provisions

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§ 32610. Acquisition and use of machineguns by law enforcement

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32610. Nothing in this chapter shall affect or apply to any of the following:

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(a) The sale to, purchase by, or possession of machineguns by a police department, a sheriff’s office, a marshal’s office, a district attorney’s office, the California Highway Patrol, the Department of Justice, the Department of Corrections for use by the department’s Special Emergency Response Teams and Law Enforcement Liaison/Investigations Unit, or the military or naval forces of this state or of the United States for use in the discharge of their official duties, provided, however, that any sale to these entities be transacted by a person who is permitted pursuant to Section 32650 and licensed pursuant to Article 4 (commencing with Section 32700).

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(b) The possession of machineguns by regular, salaried, full-time peace officer members of a police department, sheriff’s office, marshal’s office, district attorney’s office, the California Highway Patrol, the Department of Justice, or the Department of Corrections for use by the department’s Special Emergency Response Teams and Law Enforcement Liaison/Investigations Unit, when on duty and if the use is within the scope of their duties.

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Comment. Section 32610 continues former Section 12201 without substantive change.

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See Section 16880 (“machinegun”).

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Article 2. Unlawful Acts Relating to Machineguns

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§ 32625. Unlawful acts relating to machineguns

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32625. (a) Any person, firm, or corporation, who within this state possesses or knowingly transports a machinegun, except as authorized by this chapter, is guilty of a public offense and upon conviction thereof shall be punished by imprisonment in the state prison, or by a fine not to exceed ten thousand dollars (\$10,000), or by both that fine and imprisonment.

(b) Any person, firm, or corporation who within this state intentionally converts a firearm into a machinegun, or who sells, or offers for sale, or knowingly

1 manufactures a machinegun, except as authorized by this chapter, is punishable by
2 imprisonment in the state prison for four, six, or eight years.

3 **Comment.** Section 32625 continues former Section 12220 without substantive change.
4 See Sections 16520 (“firearm”), 16880 (“machinegun”).

5 Article 3. Permits

6 § 32650. Permit for possession, manufacture, or transportation of machineguns

7 32650. The Department of Justice may issue permits for the possession,
8 manufacture, and transportation or possession, manufacture, or transportation of
9 machineguns, upon a satisfactory showing that good cause exists for the issuance
10 of the permit to the applicant. No permit shall be issued to a person who is under
11 18 years of age.

12 **Comment.** Section 32650 continues former Section 12230 without substantive change.
13 See Section 16880 (“machinegun”).

14 § 32655. Application and renewal process

15 32655. (a) An application for a permit under this article shall satisfy all of the
16 following conditions:

17 (1) It shall be filed in writing.

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

20 (3) It shall state the applicant’s name.

21 (4) It shall state the business in which the applicant is engaged.

22 (5) It shall state the applicant’s business address.

23 (6) It shall include a full description of the use to which the firearms are to be
24 put.

25 (b) Applications and permits shall be uniform throughout the state on forms
26 prescribed by the Department of Justice.

27 (c) Each applicant for a permit shall pay at the time of filing the application a fee
28 determined by the Department of Justice. The fee shall not exceed the application
29 processing costs of the Department of Justice.

30 (d) A permit granted pursuant to this article may be renewed one year from the
31 date of issuance, and annually thereafter, upon the filing of a renewal application
32 and the payment of a permit renewal fee, which shall not exceed the application
33 processing costs of the Department of Justice.

34 (e) After the department establishes fees sufficient to reimburse the department
35 for processing costs, fees charged shall increase at a rate not to exceed the
36 legislatively approved annual cost-of-living adjustments for the department’s
37 budget.

38 **Comment.** Section 32655 continues former Section 12231 without substantive change.
39 See Section 16520 (“firearm”).

1 purchaser's permit, if any, and the signature of the purchaser or purchasing agent.
2 This record shall be open to the inspection of any peace officer or other person
3 designated by the Attorney General.

4 **Comment.** Section 32700 continues former Section 12250(a)(1)-(4) without substantive
5 change. In combination with Sections 32710 and 32720, Section 32700 also continues the
6 introductory clause of former Section 12250(a) without substantive change.

7 See Section 16880 ("machinegun").

8 **§ 32705. Application for license to sell machineguns**

9 32705. An application for a license under this article shall satisfy all of the
10 following conditions:

11 (a) It shall be filed in writing.

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

14 (c) It shall state the applicant's name.

15 (d) It shall state the business in which the applicant is engaged.

16 (e) It shall state the applicant's business address.

17 (f) It shall include a full description of the use to which the firearms are to be
18 put.

19 **Comment.** Section 32705 continues the first paragraph of former Section 12250(b) without
20 substantive change.

21 See Section 16520 ("firearm").

22 **§ 32710. Form of applications and licenses**

23 32710. (a) Applications and licenses under this article shall be uniform
24 throughout the state, on forms prescribed by the Department of Justice.

25 (b) A license under this article shall be effective for not more than one year from
26 the date of issuance.

27 **Comment.** Subdivision (a) of Section 32710 continues the second paragraph of former Section
28 12250(b) without substantive change. Subdivision (a) also continues part of the introductory
29 clause of former Section 12250(a) without substantive change.

30 Subdivision (b) continues part of the introductory clause of former Section 12250(a) without
31 substantive change.

32 **§ 32715. Fees and renewal process**

33 32715. (a) Each applicant for a license under this article shall pay at the time of
34 filing the application a fee determined by the Department of Justice. The fee shall
35 not exceed the application processing costs of the Department of Justice.

36 (b) A license granted pursuant to this article may be renewed one year from the
37 date of issuance, and annually thereafter, upon the filing of a renewal application
38 and the payment of a license renewal fee, which shall not exceed the application
39 processing costs of the Department of Justice.

40 (c) After the department establishes fees sufficient to reimburse the department
41 for processing costs, fees charged shall increase at a rate not to exceed the

1 legislatively approved annual cost-of-living adjustments for the department's
2 budget.

3 **Comment.** Section 32715 continues the third paragraph of former Section 12250(b) without
4 substantive change.

5 **§ 32720. Revocation of license to sell machineguns**

6 32720. Upon breach of any of the conditions stated in Section 32700, a license
7 under this article shall be revoked.

8 **Comment.** Section 32720 continues part of the introductory clause of former Section 12250(a)
9 without substantive change.

10 **Article 5. Machinegun Constituting Nuisance**

11 **§ 32750. Machinegun constituting public nuisance**

12 32750. (a) It shall be a public nuisance to possess any machinegun in violation
13 of this chapter.

14 (b) The Attorney General, any district attorney, or any city attorney may bring
15 an action before the superior court to enjoin the possession of any machinegun in
16 violation of this chapter.

17 (c) Any machinegun found to be in violation of this chapter shall be surrendered
18 to the Department of Justice. The department shall destroy the machinegun so as
19 to render it unusable and unrepairable as a machinegun, except upon the filing of a
20 certificate with the department by a judge or district attorney stating that the
21 preservation of the machinegun is necessary to serve the ends of justice.

22 **Comment.** Section 32750 continues former Section 12251 without substantive change.
23 See Section 16880 ("machinegun").

24 **CHAPTER 7. MULTIBURST TRIGGER ACTIVATOR**

25 **§ 32900. Prohibition on manufacture, import, sale, gift, loan, or possession of multiburst**
26 **trigger activator**

27 32900. Except as provided in Chapter 1 (commencing with Section 17700) of
28 Division 2 of Title 2, any person in this state who manufactures or causes to be
29 manufactured, imports into the state, keeps for sale, or offers or exposes for sale,
30 or who gives, lends, or possesses any multiburst trigger activator is punishable by
31 imprisonment in a county jail not exceeding one year or in the state prison.

32 **Comment.** With respect to a multiburst trigger activator, Section 32900 continues former
33 Section 12020(a)(1) without substantive change.

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

36 See Section 16930 ("multiburst trigger activator"). See also Sections 17800 (distinct and
37 separate offense), 32990 (multiburst trigger activator constituting nuisance).

1 **§ 32990. Multiburst trigger activator constituting nuisance**

2 32990. Except as provided in Chapter 1 (commencing with Section 17700) of
3 Division 2 of Title 2, any multiburst trigger activator is a nuisance and is subject to
4 Section 18010.

5 **Comment.** With respect to a multiburst trigger activator, Section 32990 continues the first part
6 of the first sentence of former Section 12029 without substantive change.

7 See Section 16930 (“multiburst trigger activator”).
