

Memorandum 2009-7

**Nonsubstantive Reorganization of Deadly Weapon Statutes:
Short-Barreled Rifles and Short-Barreled Shotguns, Silencers, and Zip Guns
(Chapters 8, 9, and 10 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 8 (Short-Barreled Rifles and Short-Barreled Shotguns), 9 (Silencers), and 10 (Zip Guns) of Division 10 of Title 4 of new Part 6.

The attached draft completes Division 10. After the staff prepares Divisions 11 and 12, the Commission will have a full draft of new Part 6.

Staff Notes (~~is~~ **Staff Note**) in the attached 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.

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. 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 8. SHORT-BARRELED RIFLE OR SHORT-BARRELED SHOTGUN

Article 1. Restrictions Relating to Short-Barreled Rifle
or Short-Barreled Shotgun

§ 33210. Prohibition on manufacture, import, sale, gift, loan, or possession of short-barreled rifle or short-barreled shotgun

33210. Except as expressly provided in Sections 33215 to 33225, inclusive, and in Chapter 1 (commencing with Section 17700) of Division 2 of Title 2, and solely in accordance with those provisions, no person may manufacture, import into this state, keep for sale, offer for sale, give, lend, or possess any short-barreled rifle or short-barreled shotgun. Nothing else in any provision listed in Section 16580 shall be construed as authorizing the manufacture, importation into the state, keeping for sale, offering for sale, or giving, lending, or possession of any short-barreled rifle or short-barreled shotgun.

Comment. Section 33210 continues former Section 12001.5 without substantive change. See Sections 17170 (“short-barreled rifle”), 17180 (“short-barreled shotgun”).

Staff Note. Existing Section 12001.5 twice refers to “any short-barreled shotgun or short-barreled rifle, *as defined in Section 12020*” (Emphasis added.) In proposed Section 33210, we have (1) replaced those references with “any short-barreled rifle or short-barreled shotgun,” and (2) referred to the definitions of “short-barreled rifle” and “short-barreled shotgun” in the

1 Comment, which also states that “Section 33210 continues former Section 12001.5 without
2 substantive change.”

3 We chose this approach because it would further the Legislature’s directive to “[a]void
4 unnecessary use of cross-references” while “[n]either expand[ing] nor contract[ing] the scope of
5 criminal liability under current provisions.” 2006 Cal. Stat. res. ch. 128. Because courts give great
6 weight to the Commission’s comments, we think this would be sufficient to preserve the
7 substance of Section 12001.5. See 2007-2008 Annual Report, 37 Cal. L. Revision Comm’n
8 Reports 1, 17-23 (2007).

9 **§ 33215. Penalty for unlawful manufacture, import, sale, gift, loan, or possession of short-**
10 **barreled rifle or short-barreled shotgun**

11 33215. Except as provided in Sections 33220 and 33225 and in Chapter 1
12 (commencing with Section 17700) of Division 2 of Title 2, any person in this state
13 who manufactures or causes to be manufactured, imports into the state, keeps for
14 sale, or offers or exposes for sale, or who gives, lends, or possesses any short-
15 barreled rifle or short-barreled shotgun is punishable by imprisonment in a county
16 jail not exceeding one year or in the state prison.

17 **Comment.** With respect to short-barreled rifles and short-barreled shotguns, Section 33215
18 continues former Section 12020(a)(1) without substantive change.

19 For circumstances in which this section is inapplicable, see Sections 16590 (“generally
20 prohibited weapon”), 17700-17745 (exemptions relating to generally prohibited weapons), 33220
21 (exceptions relating to law enforcement), 33225 (exception for use authorized by permit).

22 See Sections 17170 (“short-barreled rifle”), 17180 (“short-barreled shotgun”). See also
23 Sections 17800 (distinct and separate offense), 33290 (short-barreled rifle or short-barreled
24 shotgun constituting nuisance).

25 **§ 33220. Exceptions relating to law enforcement**

26 33220. Section 33215 does not apply to either of the following:

27 (a) The sale to, purchase by, or possession of short-barreled rifles or short-
28 barreled shotguns by a police department, sheriff’s office, marshal’s office, the
29 California Highway Patrol, the Department of Justice, the Department of
30 Corrections and Rehabilitation, or the military or naval forces of this state or of the
31 United States, for use in the discharge of their official duties.

32 (b) The possession of short-barreled rifles and short-barreled shotguns by peace
33 officer members of a police department, sheriff’s office, marshal’s office, the
34 California Highway Patrol, the Department of Justice, or the Department of
35 Corrections and Rehabilitation, when on duty and the use is authorized by the
36 agency and is within the course and scope of their duties, and the officers have
37 completed a training course in the use of these weapons certified by the
38 Commission on Peace Officer Standards and Training.

39 **Comment.** Section 33220 continues former Section 12020(b)(1) without substantive change.

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

41 **§ 33225. Exception for use authorized by permit**

42 33225. Section 33215 does not apply to the manufacture, possession,
43 transportation, or sale of a short-barreled rifle or short-barreled shotgun, when

1 authorized by the Department of Justice pursuant to Article 2 (commencing with
2 Section 33300) and not in violation of federal law.

3 **Comment.** Section 33225 continues former Section 12020(b)(2) without substantive change.
4 See Sections 17170 (“short-barreled rifle”), 17180 (“short-barreled shotgun”).

5 **§ 33290. Short-barreled rifle or short-barreled shotgun constituting nuisance**

6 33290. Except as provided in Sections 33220 and 33225 and in Chapter 1
7 (commencing with Section 17700) of Division 2 of Title 2, any short-barreled rifle
8 or short-barreled shotgun is a nuisance and is subject to Section 18010.

9 **Comment.** With respect to short-barreled rifles and short-barreled shotguns, Section 33290
10 continues the first part of the first sentence of former Section 12029 without substantive change.
11 See Sections 17170 (“short-barreled rifle”), 17180 (“short-barreled shotgun”).

12 **Article 2. Permit for Short-Barreled Rifle**
13 **or Short-Barreled Shotgun**

14 **Staff Note.** Several of the existing provisions governing permits for a short-barreled rifle or
15 short-barreled shotgun use the phrase “person, firm, or corporation.” The proposed legislation
16 below 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 the
20 provisions that would be continued in this article, and usage of the term in Title 2 of Part 4 of the
21 Penal Code is not consistent. See Memorandum 2008-17, Attachment pp. 37-38. The possibility
22 of standardizing that usage is already on the Commission’s list of “Minor Clean-up Issues for
23 Possible Future Legislative Attention.”

24 **§ 33300. Permit for short-barreled rifle or short-barreled shotgun**

25 33300. (a) Upon a showing that good cause exists for issuance of a permit to the
26 applicant, and if the Department of Justice finds that issuance of the permit does
27 not endanger the public safety, the department may issue a permit for the
28 manufacture, possession, transportation, or sale of short-barreled rifles or short-
29 barreled shotguns. The permit shall be initially valid for a period of one year, and
30 renewable annually thereafter. No permit shall be issued to a person who is under
31 18 years of age.

32 (b) Good cause, for the purposes of this section, shall be limited to only the
33 following:

34 (1) The permit is sought for the manufacture, possession, or use with blank
35 cartridges, of a short-barreled rifle or short-barreled shotgun, solely as a prop for a
36 motion picture, television, or video production or entertainment event.

37 (2) The permit is sought for the manufacture of, exposing for sale, keeping for
38 sale, sale of, importation or lending of short-barreled rifles or short-barreled
39 shotguns to the entities listed in Section 33220 by persons who are licensed as
40 dealers or manufacturers under the provisions of Chapter 53 (commencing with
41 Section 5801) of Title 26 of the United States Code, as amended, and the
42 regulations issued pursuant thereto.

1 **Comment.** Section 33300 continues former Section 12095 without substantive change.
2 See Sections 17170 (“short-barreled rifle”), 17180 (“short-barreled shotgun”).

3 ☞ **Staff Note.** Existing Section 12095 refers to “the provisions of Chapter 53 (commencing with
4 Section 5801) of Title 26 of the United States Code, *as amended*, and the regulations issued
5 pursuant thereto.” (Emphasis added.) The phrase “as amended” might be surplusage. As a general
6 rule, a cross-reference to a statute encompasses any amendments of that statute. There is no need
7 to expressly refer to those amendment(s) in the cross-reference.

8 Nonetheless, to minimize any concern that the proposed legislation would have a substantive
9 impact, the staff retained the phrase “as amended” in drafting proposed Section 33300. We would
10 appreciate input on whether the phrase remains useful, and whether it would be appropriate to add
11 this matter to the Commission’s list of “Minor Clean-up Issues for Possible Future Legislative
12 Attention.”

13 **§ 33305. Application and renewal process**

14 33305. (a) An application for a permit under this article shall satisfy all of the
15 following conditions:

16 (1) It shall be filed in writing.

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

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

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

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

22 (6) It shall include a full description of the use to which the short-barreled rifles
23 or short-barreled shotguns are to be put.

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

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

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

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

37 **Comment.** Section 33305 continues former Section 12096 without substantive change.
38 See Sections 17170 (“short-barreled rifle”), 17180 (“short-barreled shotgun”).

39 **§ 33310. Storage of permit and affixation of identifying number**

40 33310. (a) Every person, firm, or corporation to whom a permit is issued under
41 this article shall keep it on the person or at the place where the short-barreled rifles
42 or short-barreled shotguns are kept. The permit shall be open to inspection by any
43 peace officer or any other person designated by the authority issuing the permit.

1 (b) Every short-barreled rifle or short-barreled shotgun possessed pursuant to the
2 provisions of this article shall bear a unique identifying number. If a weapon does
3 not bear a unique identifying number, the Department of Justice shall assign a
4 number which shall be placed or stamped on that weapon.

5 **Comment.** Section 33310 continues former Section 12097 without substantive change.
6 See Sections 17170 (“short-barreled rifle”), 17180 (“short-barreled shotgun”).

7 **§ 33315. Revocation of permit**

8 33315. A permit issued in accordance with this article may be revoked by the
9 issuing authority at any time, when it appears that the need for the short-barreled
10 rifles or short-barreled shotguns has ceased or that the holder of the permit has
11 used the short-barreled rifles or short-barreled shotguns for purposes other than
12 those allowed by the permit or that the holder of the permit has not exercised great
13 care in retaining custody of any weapons possessed under the permit.

14 **Comment.** Section 33315 continues former Section 12098 without substantive change.
15 See Sections 17170 (“short-barreled rifle”), 17180 (“short-barreled shotgun”).

16 **§ 33320. Inspection conducted by Department of Justice**

17 33320. (a) Except as provided in subdivision (b), the Department of Justice
18 shall, for every person, firm, or corporation to whom a permit is issued pursuant to
19 this article, annually conduct an inspection for security and safe storage purposes,
20 and to reconcile the inventory of short-barreled rifles and short-barreled shotguns.

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

25 **Comment.** Section 33320 continues former Section 12099 without substantive change.
26 See Sections 17170 (“short-barreled rifle”), 17180 (“short-barreled shotgun”).

27 **CHAPTER 9. SILENCERS**

28 **§ 33410. Unlawful possession of silencer**

29 33410. Any person, firm, or corporation who within this state possesses a
30 silencer is guilty of a felony and upon conviction thereof shall be punished by
31 imprisonment in the state prison or by a fine not to exceed ten thousand dollars
32 (\$10,000) or by both.

33 **Comment.** Section 33410 continues former Section 12520 without substantive change.
34 See Section 17210 (“silencer”).

35 **☞ Staff Note.** Existing Section 12520 uses the phrase “person, firm, or corporation.” Proposed
36 Section 33410 would continue that phrase without change.

37 Usually, however, the term “person” is defined to include a corporation or other entity, not just
38 an individual. For example, existing Section 7 says that in the Penal Code, “the word ‘person’
39 includes a corporation as well as a natural person.” No other definition of “person” applies to
40 Section 12520, and usage of the term in Title 2 of Part 4 of the Penal Code is not consistent. See

1 Memorandum 2008-17, Attachment pp. 37-38. The possibility of standardizing that usage is
2 already on the Commission’s list of “Minor Clean-up Issues for Possible Future Legislative
3 Attention.”

4 **§ 33415. Exceptions**

5 33415. Section 33410 shall not apply to, or affect, any of the following:

6 (a) The sale to, purchase by, or possession of silencers by agencies listed in
7 Section 830.1, or the military or naval forces of this state or of the United States,
8 for use in the discharge of their official duties.

9 (b) The possession of silencers by regular, salaried, full-time peace officers who
10 are employed by an agency listed in Section 830.1, or by the military or naval
11 forces of this state or of the United States, when on duty and when the use of
12 silencers is authorized by the agency and is within the course and scope of their
13 duties.

14 (c) The manufacture, possession, transportation, or sale or other transfer of
15 silencers to an entity described in subdivision (a) by dealers or manufacturers
16 registered under Chapter 53 (commencing with Section 5801) of Title 26 of the
17 United States Code and the regulations issued pursuant thereto.

18 **Comment.** Section 33415 continues former Section 12501 without substantive change.
19 See Section 17210 (“silencer”).

20 **CHAPTER 10. ZIP GUNS**

21 **§ 33600. Prohibition on manufacture, import, sale, gift, loan, or possession of zip gun**

22 33600. Except as provided in Chapter 1 (commencing with Section 17700) of
23 Division 2 of Title 2, any person in this state who manufactures or causes to be
24 manufactured, imports into the state, keeps for sale, or offers or exposes for sale,
25 or who gives, lends, or possesses any zip gun is punishable by imprisonment in a
26 county jail not exceeding one year or in the state prison.

27 **Comment.** With respect to a zip gun, Section 33600 continues former Section 12020(a)(1)
28 without substantive change.

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

31 See Section 17360 (“zip gun”). See also Sections 17800 (distinct and separate offense), 32990
32 (zip gun constituting nuisance).

33 **§ 33690. Zip gun constituting nuisance**

34 33690. Except as provided in Chapter 1 (commencing with Section 17700) of
35 Division 2 of Title 2, any zip gun is a nuisance and is subject to Section 18010.

36 **Comment.** With respect to a zip gun, Section 33690 continues the first part of the first
37 sentence of former Section 12029 without substantive change.

38 See Section 17360 (“zip gun”).