

Memorandum 2009-8

**Nonsubstantive Reorganization of Deadly Weapon Statutes:
Firearm in Custody of Court or Law Enforcement Agency or Similar Situation
(Division 11 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 Division 11 of Title 4 of new Part 6.

Division 11 would contain provisions relating to firearms that are taken into custody by a law enforcement agency, court, or similar entity. In particular, it would contain the substance of existing Penal Code Sections 12021.3, 12028.7, 12030, and 12032, except a definition that would be located in the "Definitions" portion of new Part 6.

A number of other provisions are potentially relevant to a firearm that is taken into custody, including:

- **Penal Code Section 12028.** This provision says that certain weapons constitute a nuisance, and then specifies procedures for surrender and disposal of those weapons. Because those procedures for surrender and disposal apply to both firearms and non-firearms, they would be continued in "Title 2. Weapons Generally," instead of "Title 4. Firearms." See proposed Sections 18000, 18005. The portions of Section 12028 stating that certain weapons constitute a nuisance would be divided up according to the type of weapon addressed. For example, Section 12028 provides that "a firearm of any nature" constitutes a nuisance under specified circumstances. That portion of Section 12028 would be continued in proposed Section 29300, which would be in "Division 8. Miscellaneous Rules Relating to Firearms Generally" of "Title 4. Firearms."
- **Penal Code Section 12028.5.** This provision governs seizure of a deadly weapon at the scene of domestic violence. Because the provision pertains to both firearms and non-firearms, it would be continued in "Title 2. Weapons Generally," instead of "Title 4.

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Firearms” (except some definitions that would be placed in the “Definitions” portion of new Part 6). See proposed Sections 18250-18500.

- **Penal Code Section 12029.** This provision is similar to Section 12028 except it pertains to different weapons and provides less detailed procedures for surrender and disposal of those weapons. Because those procedures for surrender and disposal apply to both firearms and non-firearms, they would be continued in “Title 2. Weapons Generally,” instead of “Title 4. Firearms.” See proposed Section 18010. The portions of Section 12029 stating that certain weapons constitute a nuisance would be divided up according to the type of weapon addressed. For example, Section 12029 provides that “short-barreled shotguns or short-barreled rifles” constitute a nuisance under specified circumstances. That portion of Section 12029 would be continued in proposed Section 33290, which would be in “Chapter 8. Short-Barreled Rifle or Short-Barreled Shotgun” of “Division 10. Special Rules Relating to Particular Types of Firearms or Firearm Equipment” of “Title 4. Firearms.

To make Division 11 user-friendly, some of the Comments in it would cross-refer to these other provisions. See Comments to proposed Sections 33800, 33850, 34005. In addition, two existing cross-references to Section 12028 would be preserved, but conformed to the numbering scheme of new Part 6. See proposed Sections 34000(a) (cross-referring to proposed Sections 18000 and 18005), 34010 (same).

Just as Division 11 would contain cross-references alerting readers to the provisions continuing Sections 12028, 12028.5, and 12029 (in particular, proposed Sections 18000-18010, 18250-18500), the reverse should also be true. **There should be cross-references to Division 11 in the Comments to the provisions that would continue Sections 12028, 12028.5, and 12029.** The staff plans to draft revisions along these lines, and to present the suggested revisions to the Commission in Memorandum 2009-10, which will be distributed before the upcoming meeting. We encourage input on this matter, including in particular any other suggestions for coordinating the statutory material in question.

Staff Notes (☞ **Staff Note**) in the draft raise other 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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Chief Deputy Counsel

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PROPOSED LEGISLATION

Staff Note. This is a work in progress. The material shown below may be changed.
The material shown below is new. Commissioners and other interested persons should review it carefully and determine whether any changes are necessary before it is incorporated into a tentative recommendation.
Staff Notes (**Staff Note**) in the attached draft raise matters for Commissioners and interested persons to consider. We do not plan to discuss each of these matters at the upcoming meeting. Rather, persons should review the draft, identify any issues of concern, and then raise those issues for discussion at the meeting or express their concerns in writing before the meeting, or both.
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 11. FIREARM IN CUSTODY OF COURT OR LAW

4

ENFORCEMENT AGENCY OR SIMILAR SITUATION

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Staff Note. This division is organized as follows:

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• Chapter 1, entitled “Procedure for Taking Firearm into Custody,” contains the material currently in Section 12028.7.

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• Chapter 2, entitled “Return or Transfer of Firearm in Custody or Control of Court or Law Enforcement Agency,” contains the material currently in Section 12021.3

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• Chapter 3, entitled “Firearms that are Unclaimed, Abandoned, or Subject to Destruction,” contains the material currently in Sections 12030 and 12032, except a definition that would be located in the “Definitions” portion of new Part 6 (see proposed Section 16520(e), which would continue the fourth sentence of Section 12030(d)).

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This approach is intended to be user-friendly, but will also facilitate conforming of cross-references (particularly cross-references to Section 12021.3).

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CHAPTER 1. PROCEDURE FOR TAKING FIREARM INTO CUSTODY

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§ 33800. Receipt for firearm taken into custody by law enforcement officer

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33800. (a) When a firearm is taken into custody by a law enforcement officer, the officer shall issue the person who possessed the firearm a receipt describing the firearm, and listing any serial number or other identification on the firearm.

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(b) The receipt shall indicate where the firearm may be recovered, any applicable time limit for recovery, and the date after which the owner or possessor may recover the firearm pursuant to Chapter 2 (commencing with Section 33850).

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(c) Nothing in this section is intended to displace any existing law regarding the seizure or return of firearms.

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1 **Comment.** Section 33800 continues former Section 12028.7 without substantive change.
2 For other provisions specifying procedures for taking a firearm into custody, see Sections
3 18000 (surrender of specified weapons constituting nuisance), 18010 (treatment of other weapons
4 constituting nuisance), 18250-18500 (seizure of firearm or other deadly weapon at scene of
5 domestic violence), 29300 (firearm of any nature constitutes nuisance under specified
6 circumstances). For rules relating to return or transfer of a firearm that is in the custody or control
7 of a court or law enforcement agency, see Sections 33850-33900. For rules governing disposal of
8 unclaimed, abandoned, or subject to destruction, see Sections 34000-34010.
9 See Section 16520 (“firearm”).

10 CHAPTER 2. RETURN OR TRANSFER OF FIREARM IN CUSTODY OR
11 CONTROL OF COURT OR LAW ENFORCEMENT AGENCY

12 **§ 33850. Application for return of firearm in custody or control of court or law enforcement**
13 **agency, or sale or transfer of such firearm to dealer**

14 33850. (a) Any person who claims title to any firearm that is in the custody or
15 control of a court or law enforcement agency and who wishes to have the firearm
16 returned shall make application for a determination by the Department of Justice
17 as to whether the applicant is eligible to possess a firearm. The application shall
18 include the following:

19 (1) The applicant’s name, date and place of birth, gender, telephone number, and
20 complete address.

21 (2) Whether the applicant is a United States citizen. If the applicant is not a
22 United States citizen, the application shall also include the applicant’s country of
23 citizenship and the applicant’s alien registration or I-94 number.

24 (3) If the firearm is a handgun, the firearm’s make, model, caliber, barrel length,
25 handgun type, country of origin, and serial number.

26 (4) For residents of California, the applicant’s valid California driver’s license
27 number or valid California identification card number issued by the Department of
28 Motor Vehicles. For nonresidents of California, a copy of the applicant’s military
29 identification with orders indicating that the individual is stationed in California,
30 or a copy of the applicant’s valid driver’s license from the applicant’s state of
31 residence, or a copy of the applicant’s state identification card from the applicant’s
32 state of residence. Copies of the documents provided by non-California residents
33 shall be notarized.

34 (5) The name of the court or law enforcement agency holding the firearm.

35 (6) The signature of the applicant and the date of signature.

36 (7) Any person furnishing a fictitious name or address or knowingly furnishing
37 any incorrect information or knowingly omitting any information required to be
38 provided for the application, including any notarized information pursuant to
39 paragraph (4) of this subdivision, shall be guilty of a misdemeanor.

40 (b) A person who owns a firearm that is in the custody of a court or law
41 enforcement agency and who does not wish to obtain possession of the firearm,
42 and the firearm is an otherwise legal firearm, and the person otherwise has right to

1 title of the firearm, shall be entitled to sell or transfer title of the firearm to a
2 licensed dealer.

3 (c) Any person furnishing a fictitious name or address, or knowingly furnishing
4 any incorrect information or knowingly omitting any information required to be
5 provided for the application, including any notarized information pursuant to
6 paragraph (4) of subdivision (a), is punishable as a misdemeanor.

7 **Comment.** Section 33850 continues former Section 12021.3(a) without substantive change.

8 The remainder of this chapter (Sections 33855-33900) provides further guidance regarding
9 return or transfer of a firearm in the custody or control of a court or law enforcement agency. For
10 other provisions on return or transfer of a firearm in custody, see Sections 18005 (disposal of
11 weapons constituting nuisance), 18010 (treatment of other weapons constituting nuisance),
12 18250-18500 (seizure of firearm or other deadly weapon at scene of domestic violence). For rules
13 governing disposal of firearms that are unclaimed, abandoned, or subject to destruction, see
14 Sections 34000-34010.

15 A return or transfer of a firearm pursuant to this chapter is exempt from the requirement of
16 using a dealer for a firearms transaction. See Sections 27390, 33895. A return or transfer of a
17 firearm pursuant to this chapter is also exempt from the license requirement for firearms
18 transactions. See Section 33900.

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

20 **☞ Staff Notes.**

21 (1) Subparagraph (1)(G) and paragraph (3) of existing Section 12021.3(a) are almost identically
22 worded, as shown in italics below:

23 12021.3. (a)(1) Any person who claims title to any firearm that is in the custody or control
24 of a court or law enforcement agency and who wishes to have the firearm returned to him or
25 her shall make application for a determination by the Department of Justice as to whether he
26 or she is eligible to possess a firearm. The application shall include the following:

27 (A) The applicant’s name, date and place of birth, gender, telephone number, and complete
28 address.

29

30 (G) *Any person furnishing a fictitious name or address or knowingly furnishing any*
31 *incorrect information or knowingly omitting any information required to be provided for the*
32 *application, including any notarized information pursuant to subparagraph (D) of paragraph*
33 *(1) of subdivision (a) shall be guilty of a misdemeanor.*

34 (2) A person who owns a firearm that is in the custody of a court or law enforcement
35 agency and who does not wish to obtain possession of the firearm, and the firearm is an
36 otherwise legal firearm, and the person otherwise has right to title of the firearm, shall be
37 entitled to sell or transfer title of the firearm to a licensed dealer as defined in Section 12071.

38 (3) *Any person furnishing a fictitious name or address, or knowingly furnishing any*
39 *incorrect information or knowingly omitting any information required to be provided for the*
40 *application, including any notarized information pursuant to subparagraph (D) of paragraph*
41 *(1) of subdivision (a) is punishable as a misdemeanor.*

42

43 (Emphasis added.) The staff does not know why Section 12021.3 includes both of these
44 provisions, instead of only one of them.

45 Possible explanations include:

- 46 • The duplication is accidental and Section 12021.3(a)(1)(G) should be deleted.
- 47 • Paragraph (3) is meant to define a misdemeanor, but subparagraph (1)(G) is not. Instead,
48 subparagraph (1)(G) meant to *require the application to state that*

1 Any person furnishing a fictitious name or address or knowingly furnishing
2 any incorrect information or knowingly omitting any information required to be
3 provided for the application, including any notarized information pursuant to
4 subparagraph (D) of paragraph (1) of subdivision (a) shall be guilty of a
5 misdemeanor.

6 If that is the intent, it is not expressed as well as it could be.

- 7 • Subparagraph (1)(G) applies when a person seeks return of a firearm in custody, while
8 paragraph (3) applies when a person seeks to sell or transfer a firearm in custody to a
9 licensed dealer. If that is the intent, it is difficult to explain why paragraph (3) refers to
10 “notarized information pursuant to subparagraph (D) of paragraph (1) of subdivision (a).”

11 In this strictly nonsubstantive study, it would be inappropriate to take a position on which of
12 these possible explanations is correct. The staff has therefore preserved the existing language and
13 paraphrasing in drafting proposed Section 33850.

14 The duplication problem discussed above might be worth addressing in the future, in a
15 different reform. Unless the Commission otherwise directs, we will add this issue to the
16 Commission’s list of “Minor Clean-up Issues for Possible Future Legislative Attention.”

17 (2) Existing Section 12021.3(a)(2) refers to “a licensed dealer *as defined in Section 12071.*”
18 (Emphasis added.) In proposed Section 33850, we have (1) replaced that reference with “a
19 licensed dealer,” and (2) included a reference to the definition of “dealer” in the Comment, which
20 also states that “Section 33850 continues former Section 12021.3(a) without substantive change.”

21 We chose this approach because it would further the Legislature’s directive to “[a]void
22 unnecessary use of cross-references” while “[n]either expand[ing] nor contract[ing] the scope of
23 criminal liability under current provisions.” 2006 Cal. Stat. res. ch. 128. Because courts give great
24 weight to the Commission’s comments, we think this would be sufficient to preserve the
25 substance of Section 12021.3(a). See 2007-2008 Annual Report, 37 Cal. L. Revision Comm’n
26 Reports 1, 17-23 (2007).

27 (3) Existing Section 12021.3(a)(2) says:

28 A person who owns a firearm that is in the custody of a court or law
29 enforcement agency and who does not wish to obtain possession of the firearm,
30 *and the firearm is an otherwise legal firearm, and the person otherwise has right*
31 *to title of the firearm*, shall be entitled to sell or transfer title of the firearm to a
32 licensed dealer as defined in Section 12071.

33 (Emphasis added.) Grammatically, the italicized language does not fit well with the rest of the
34 sentence.

35 In addition, the requirement that the person “otherwise has right to title of the firearm” is
36 confusing. Section 12021.3(a)(2) begins by referring to a “person *who owns* a firearm that is in
37 the custody of a court or law enforcement agency” (Emphasis added.) If a person “owns a
38 firearm,” doesn’t that person necessarily “ha[ve] right to title of the firearm”? Perhaps the
39 requirement that the person “otherwise has right to title of the firearm” could be deleted as
40 redundant.

41 This is a strictly nonsubstantive study, however, and the Commission is striving to minimize
42 any concern that the proposed legislation would have a substantive impact. The staff therefore
43 preserved the existing language in drafting proposed Section 33850.

44 The points discussed above might be worth addressing in the future, in a different reform.
45 Unless the Commission otherwise directs, we will add them to the Commission’s list of “Minor
46 Clean-up Issues for Possible Future Legislative Attention.”

47 (4) Existing Section 12021.3(a)(2) (shown in Staff Note #3 above) is similar but not identical to
48 paragraph (i)(1) of the same section, which says:

1 If a law enforcement agency determines that the applicant is the legal owner of
2 any firearm deposited with the law enforcement agency and is prohibited from
3 possessing any firearm and the firearm is an otherwise legal firearm, the
4 applicant shall be entitled to sell or transfer the firearm to a licensed dealer as
5 defined in Section 12071.

6 A significant difference between these provisions is that paragraph (i)(1) applies only to a person
7 “prohibited from possessing any firearm,” while paragraph (a)(2) encompasses any person who
8 “does not wish to obtain possession of the firearm.”

9 Despite this distinction, it might be possible to consolidate or coordinate the two provisions to
10 eliminate unnecessary overlap. Because this is a strictly nonsubstantive study, the staff did not
11 attempt such consolidation or coordination in drafting proposed Section 33850. That might be
12 worth exploring in the future, in a different study. Unless the Commission otherwise directs, we
13 will add this matter to the Commission’s list of “Minor Clean-up Issues for Possible Future
14 Legislative Attention.”

15 **§ 33855. Requirements for return of firearm in custody of court or law enforcement agency**

16 33855. No law enforcement agency or court that has taken custody of any
17 firearm may return the firearm to any individual unless the following requirements
18 are satisfied:

19 (a) The individual presents to the agency or court notification of a determination
20 by the department pursuant to Section 33865 that the person is eligible to possess
21 firearms.

22 (b) If the agency or court has direct access to the Automated Firearms System,
23 the agency or court has verified that the firearm is not listed as stolen pursuant to
24 Section 11108, and that the firearm has been recorded in the Automated Firearms
25 System in the name of the individual who seeks its return.

26 (c) If the firearm has been reported lost or stolen pursuant to Section 11108, a
27 law enforcement agency shall notify the owner or person entitled to possession
28 pursuant to Section 11108.5. However, that person shall provide proof of
29 eligibility to possess a firearm pursuant to Section 33865.

30 (d) Nothing in this section shall prevent the local law enforcement agency from
31 charging the rightful owner or person entitled to possession of the firearm the fees
32 described in Section 33880. However, an individual who is applying for a
33 background check to retrieve a firearm that came into the custody or control of a
34 court or law enforcement agency pursuant to Section 33850 shall be exempt from
35 the fees in Section 33860, provided that the court or agency determines the firearm
36 was reported stolen to a law enforcement agency prior to the date the firearm came
37 into custody or control of the court or law enforcement agency, or within five
38 business days of the firearm being stolen from its owner. The court or agency shall
39 notify the Department of Justice of this fee exemption in a manner prescribed by
40 the department.

41 **Comment.** Section 33855 continues former Section 12021.3(b) without substantive change.

42 A return or transfer of a firearm pursuant to this chapter is exempt from the requirement of
43 using a dealer for a firearms transaction. See Sections 27390, 33895. A return or transfer of a
44 firearm pursuant to this chapter is also exempt from the license requirement for firearms
45 transactions. See Section 33900.

1 See Section 16520 (“firearm”).

2 **☞ Staff Note.** The first two sentences of existing Section 12021.3(b)(3) say:

3 (3) If the firearm has been reported lost or stolen pursuant to Section 11108, a
4 law enforcement agency shall notify the owner or person entitled to possession
5 pursuant to Section 11108.5. However, that person shall provide proof of
6 eligibility to possess a firearm pursuant to subdivision (e)....

7 Similarly, paragraph (i)(2) of the same section says:

8 (2) If the firearm has been lost or stolen, the firearm shall be restored to the
9 lawful owner pursuant to Section 11108.5 upon his or her identification of the
10 firearm and proof of ownership, and proof of eligibility to possess a firearm
11 pursuant to subdivision (e).

12 These provisions are not identical, but there is substantial overlap.

13 It might be possible to coordinate or consolidate the two provisions to eliminate unnecessary
14 overlap. Because this is a strictly nonsubstantive study, the staff did not attempt such
15 consolidation or coordination in drafting proposed Section 33855. That might be worth exploring
16 in the future, in a different study. Unless the Commission otherwise directs, we will add this
17 matter to the Commission’s list of “Minor Clean-up Issues for Possible Future Legislative
18 Attention.”

19 **§ 33860. Fee for requesting return of firearm**

20 33860. (a) The Department of Justice shall establish a fee of twenty dollars
21 (\$20) per request for return of a firearm, plus a three-dollar (\$3) charge for each
22 additional handgun being processed as part of the request to return a firearm, to
23 cover its costs for processing firearm clearance determinations submitted pursuant
24 to this chapter.

25 (b) The fees collected pursuant to subdivision (a) shall be deposited into the
26 Dealers’ Record of Sale Special Account.

27 (c) The department may increase the fee by using the California Consumer Price
28 Index as compiled and reported by the California Department of Industrial
29 Relations to determine an annual rate of increase. Any fee increase shall be
30 rounded to the nearest dollar.

31 **Comment.** Section 33860 continues former Section 12021.3(c) without substantive change.
32 See Sections 16520 (“firearm”), 16640 (“handgun”).

33 **§ 33865. Eligibility check**

34 33865. (a) When the Department of Justice receives a completed application
35 pursuant to Section 33850 accompanied by the fee required pursuant to Section
36 33860, it shall conduct an eligibility check of the applicant to determine whether
37 the applicant is eligible to possess a firearm.

38 (b) The department shall have 30 days from the date of receipt to complete the
39 background check, unless the background check is delayed by circumstances
40 beyond the control of the department. The applicant may contact the department to
41 inquire about the reason for a delay.

1 (c) If the department determines that the applicant is eligible to possess the
2 firearm, the department shall provide the applicant with written notification that
3 includes the following:

4 (1) The identity of the applicant.

5 (2) A statement that the applicant is eligible to possess a firearm.

6 (3) If the firearm is a handgun, a description of the handgun by make, model,
7 and serial number.

8 (d) If the firearm is a handgun, the department shall enter a record of the
9 handgun into the Automated Firearms System.

10 (e) If the department denies the application, and the firearm is an otherwise legal
11 firearm, the department shall notify the applicant of the denial and provide a form
12 for the applicant to use to sell or transfer the firearm to a licensed dealer. The
13 applicant may contact the department to inquire about the reason for the denial.

14 **Comment.** Subdivision (a) of Section 33865 continues former Section 12021.3(d) without
15 substantive change.

16 Subdivision (b) continues former Section 12021.3(e)(3) without substantive change.

17 Subdivision (c) continues former Section 12021.3(e)(1) without substantive change.

18 Subdivision (d) continues former Section 12021.3(e)(2) without substantive change.

19 Subdivision (e) continues former Section 12021.3(f) without substantive change.

20 A return or transfer of a firearm pursuant to this chapter is exempt from the requirement of
21 using a dealer for a firearms transaction. See Sections 27390, 33895. A return or transfer of a
22 firearm pursuant to this chapter is also exempt from the license requirement for firearms
23 transactions. See Section 33900.

24 See Sections 16520 (“firearm”), 16640 (“handgun”), 26700 (“dealer,” “licensee,” or “person
25 licensed pursuant to Sections 26700 to 26915, inclusive”).

26 **Staff Note.** Existing Section 12021.3(f) refers to “a licensed dealer *as defined in Section*
27 *12071.*” (Emphasis added.) In proposed Section 33865, we have (1) replaced that reference with
28 “a licensed dealer,” and (2) included a reference to the definition of “dealer” in the Comment,
29 which also states that “Subdivision (e) continues former Section 12021.3(f) without substantive
30 change.”

31 We chose this approach because it would further the Legislature’s directive to “[a]void
32 unnecessary use of cross-references” while “[n]either expand[ing] nor contract[ing] the scope of
33 criminal liability under current provisions.” 2006 Cal. Stat. res. ch. 128. Because courts give great
34 weight to the Commission’s comments, we think this would be sufficient to preserve the
35 substance of Section 12021.3(f). See 2007-2008 Annual Report, 37 Cal. L. Revision Comm’n
36 Reports 1, 17-23 (2007).

37 **§ 33870. Lost or stolen firearm, or firearm belonging to person prohibited from possessing**
38 **any firearm**

39 33870. (a) If a law enforcement agency determines that the applicant is the legal
40 owner of any firearm deposited with the agency, that the applicant is prohibited
41 from possessing any firearm, and that the firearm is an otherwise legal firearm, the
42 applicant shall be entitled to sell or transfer the firearm to a licensed dealer.

43 (b) If the firearm has been lost or stolen, the firearm shall be restored to the
44 lawful owner pursuant to Section 11108.5 upon the owner’s identification of the
45 firearm, proof of ownership, and proof of eligibility to possess a firearm pursuant
46 to Section 33865.

1 (c) Nothing in this section shall prevent the local law enforcement agency from
2 charging the rightful owner of the firearm the fees described in Section 33880.

3 **Comment.** Subdivision (a) of Section 33870 continues former Section 12021.3(i)(1) without
4 substantive change.

5 Subdivision (b) continues the first paragraph of former Section 12021.3(i)(2) without
6 substantive change.

7 Subdivision (c) continues the second paragraph of former Section 12021.3(i)(2) without
8 substantive change.

9 A return or transfer of a firearm pursuant to this chapter is exempt from the requirement of
10 using a dealer for a firearms transaction. See Sections 27390, 33895. A return or transfer of a
11 firearm pursuant to this chapter is also exempt from the license requirement for firearms
12 transactions. See Section 33900.

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

15 **☞ Staff Notes.**

16 (1) Existing Section 12021.3(i)(1) refers to “a licensed dealer *as defined in Section 12071.*”
17 (Emphasis added.) In proposed Section 33870, we have (1) replaced that reference with “a
18 licensed dealer,” and (2) included a reference to the definition of “dealer” in the Comment, which
19 also states that “[s]ubdivision (a) of Section 33870 continues former Section 12021.3(i)(1)
20 without substantive change.”

21 We chose this approach because it would further the Legislature’s directive to “[a]void
22 unnecessary use of cross-references” while “[n]either expand[ing] nor contract[ing] the scope of
23 criminal liability under current provisions.” 2006 Cal. Stat. res. ch. 128. Because courts give great
24 weight to the Commission’s comments, we think this would be sufficient to preserve the
25 substance of Section 12021.3(i)(1). See 2007-2008 Annual Report, 37 Cal. L. Revision Comm’n
26 Reports 1, 17-23 (2007).

27 (2) There is significant overlap between existing Section 12021.3(i)(1) and paragraph (a)(2) of
28 the same section. See Staff Note #4 on proposed Section 33850. It might be possible to
29 consolidate or coordinate the two provisions to eliminate unnecessary overlap.

30 Because this is a strictly nonsubstantive study, the staff did not attempt such consolidation or
31 coordination in drafting proposed Section 33870(a). That might be worth exploring in the future,
32 in a different study. Unless the Commission otherwise directs, we will add this matter to the
33 Commission’s list of “Minor Clean-up Issues for Possible Future Legislative Attention.”

34 (3) There is significant overlap between the first paragraph of existing Section 12021.3(i)(2)
35 and the first two sentences of paragraph (b)(3) of the same section. See the Staff Note on
36 proposed Section 33855. It might be possible to consolidate or coordinate the two provisions to
37 eliminate unnecessary overlap.

38 Because this is a strictly nonsubstantive study, the staff did not attempt such consolidation or
39 coordination in drafting proposed Section 33870(b). That might be worth exploring in the future,
40 in a different study. Unless the Commission otherwise directs, we will add this matter to the
41 Commission’s list of “Minor Clean-up Issues for Possible Future Legislative Attention.”

42 **§ 33875. Unclaimed firearm**

43 33875. Notwithstanding any other provision of law, no law enforcement agency
44 or court shall be required to retain a firearm for more than 180 days after the
45 owner of the firearm has been notified by the court or law enforcement agency that
46 the firearm has been made available for return. An unclaimed firearm may be
47 disposed of after the 180-day period has expired.

48 **Comment.** Section 33875 continues former Section 12021.3(g) without substantive change.

1 See Section 16520 (“firearm”).

2 **§ 33880. Charge for administrative costs relating to seizure, impounding, storage, or release**
3 **of firearms**

4 33880. (a) A city, county, or city and county, or a state agency may adopt a
5 regulation, ordinance, or resolution imposing a charge equal to its administrative
6 costs relating to the seizure, impounding, storage, or release of a firearm.

7 (b) The fee under subdivision (a) shall not exceed the actual costs incurred for
8 the expenses directly related to taking possession of a firearm, storing the firearm,
9 and surrendering possession of the firearm to a licensed firearms dealer or to the
10 owner.

11 (c) The administrative costs described in subdivisions (a) and (b) may be waived
12 by the local or state agency upon verifiable proof that the firearm was reported
13 stolen at the time the firearm came into the custody or control of the law
14 enforcement agency.

15 (d) The following apply to any charges imposed for administrative costs
16 pursuant to this section:

17 (1) The charges shall only be imposed on the person claiming title to the
18 firearm.

19 (2) Any charges shall be collected by the local or state authority only from the
20 person claiming title to the firearm.

21 (3) The charges shall be in addition to any other charges authorized or imposed
22 pursuant to this code.

23 (4) No charge may be imposed for any hearing or appeal relating to the removal,
24 impound, storage, or release of a firearm, unless that hearing or appeal was
25 requested in writing by the legal owner of the firearm. In addition, the charge may
26 be imposed only upon the person requesting that hearing or appeal.

27 (e) No costs for any hearing or appeal related to the release of a firearm shall be
28 charged to the legal owner who redeems the firearm, unless the legal owner
29 voluntarily requests the post-storage hearing or appeal. No city, county, city and
30 county, or state agency shall require a legal owner to request a post-storage
31 hearing as a requirement for release of the firearm to the legal owner.

32 **Comment.** Section 33880 continues former Section 12021.3(j) without substantive change.
33 See Section 16520 (“firearm”).

34 **Staff Note.** Subparagraph (2)(D) and paragraph (3) of existing Section 12021.3(j) are similar.
35 They provide:

36 (2) The following apply to any charges imposed for administrative costs
37 pursuant to this subdivision:

38

39 (D) *No charge may be imposed for any hearing or appeal relating to the*
40 *removal, impound, storage, or release of a firearm unless that hearing or appeal*
41 *was requested in writing by the legal owner of the firearm. In addition, the*
42 *charge may be imposed only upon the person requesting that hearing or appeal.*

43 (3) *No costs for any hearing or appeal related to the release of a firearm shall*
44 *be charged to the legal owner who redeems the firearm unless the legal owner*

1 *voluntarily requests the post storage hearing or appeal.* No city, county, city and
2 county, or state agency shall require a legal owner to request a poststorage
3 hearing as a requirement for release of the firearm to the legal owner.

4 (Emphasis added.)

5 The staff does not understand the relationship between these two provisions. As best we can
6 tell, they overlap to a large extent. It might be possible to consolidate or coordinate them to
7 eliminate unnecessary overlap.

8 Because this is a strictly nonsubstantive study, the staff did not attempt such consolidation or
9 coordination in drafting proposed Section 33880. Instead, proposed Section 33880(d)(4) would
10 closely track the language in Section 12021.3(j)(2)(D), and proposed Section 33880(e) would
11 closely track the language in Section 12021.3(j)(3).

12 The possibility of consolidating or coordinating the two provisions might be worth exploring in
13 the future, in a different study. Unless the Commission otherwise directs, we will add this matter
14 to the Commission’s list of “Minor Clean-up Issues for Possible Future Legislative Attention.”

15 **§ 33885. Attorney’s fees**

16 33885. In a proceeding for the return of a firearm seized and not returned
17 pursuant to this chapter, where the defendant or cross-defendant is a law
18 enforcement agency, the court shall award reasonable attorney’s fees to the
19 prevailing party.

20 **Comment.** Section 33885 continues former Section 12021.3(k) without substantive change.
21 See Section 16520 (“firearm”).

22 **§ 33890. Retention of personal information by Department of Justice**

23 33890. Notwithstanding Section 11106, the Department of Justice may retain
24 personal information about an applicant in connection with a claim under this
25 chapter for a firearm that is not a handgun, to allow for law enforcement
26 confirmation of compliance with this chapter. The information retained may
27 include personal identifying information regarding the individual applying for the
28 clearance, but may not include information that identifies any particular firearm
29 that is not a handgun.

30 **Comment.** Section 33890 continues former Section 12021.3(h) without substantive change.
31 See Sections 16520 (“firearm”), 16640 (“handgun”).

32 **§ 33895. Exception to requirement of using dealer for firearms transaction**

33 33895. Section 27545 does not apply to deliveries, transfers, or returns of
34 firearms made pursuant to this chapter.

35 **Comment.** Section 33895 continues former Section 12021.3(i)(4) without substantive change.
36 See Section 16520 (“firearm”).

37 **☞ Staff Note.** Existing Section 12021.3(i)(4) provides: “Subdivision (d) of Section 12072 shall
38 not apply to deliveries, transfers, or returns of firearms made pursuant to this section.” Similarly,
39 existing Section 12078(j) provides: “Subdivision (d) of Section 12072 ... shall not apply to
40 deliveries, transfers, or returns of firearms made pursuant to Section 12021.3 ...”

41 This aspect of Section 12078(j) would be continued without substantive change in proposed
42 Section 27930. That provision would be located in “Division 6. Sale, Lease, or Transfer of
43 Firearms,” together with other numerous other exceptions to the requirement of using a dealer for

1 a firearms transaction (existing Section 12072(d), which would be continued in proposed Section
2 27545).

3 Existing Section 12021.3(i)(4) would be continued in proposed Section 33895 (shown above).
4 Because it is virtually identical to the pertinent substance of proposed Section 27930, it may not
5 be necessary. The Comments to several provisions in this chapter would draw attention to
6 proposed Section 29730. Restating the same exception here strikes the staff as overkill.

7 This is a strictly nonsubstantive study, however, and the Commission is striving to minimize
8 any concern that the proposed legislation would have a substantive impact. We therefore
9 recommend that the Commission proceed with proposed Section 33895, as shown above.

10 The possibility of deleting that provision as redundant might be worth considering in the
11 future, in a different study. Unless the Commission otherwise directs, we will add this issue to the
12 Commission’s list of “Minor Clean-up Issues for Possible Future Legislative Attention.”

13 **§ 33900. Exception to license requirement for sale, lease, or transfer of firearms**

14 33900. Section 26500 does not apply to deliveries, transfers, or returns of
15 firearms made by a court or a law enforcement agency pursuant to this chapter.

16 **Comment.** Section 33900 continues former Section 12021.3(i)(3) without substantive change.
17 See Section 16520 (“firearm”).

18 **Staff Note.** Proposed Section 33900 would state an exception to the license requirement for
19 sale, lease, or transfer of firearms. That exception is currently stated in Section 12021.3, which is
20 why it is included here, with the other provisions that would continue the substance of Section
21 12021.3. The Commission’s outline for new Part 6 tentatively placed the entirety of Section
22 12021.3 in this division. See Memorandum 2008-48, Exhibit p. 28.

23 Having now examined that statute more closely, the staff believes it would be a mistake to
24 place the substance of Section 12021.3(i)(3) here. Instead, it belongs in “Division 6. Sale, Lease,
25 or Transfer of Firearms,” together with the numerous other exceptions to the license requirement
26 for sale, lease, or transfer of firearms. We recommend that proposed Section 33900 be
27 renumbered as proposed Section 26590, and conforming revisions be made to reflect this
28 relocation.

29 Is the recommended relocation acceptable to the Commission? Does anyone see any problem
30 with it? Comments on this point would be appreciated.

31 **CHAPTER 3. FIREARMS THAT ARE UNCLAIMED, ABANDONED, OR**
32 **SUBJECT TO DESTRUCTION**

33 **§ 34000. Unclaimed firearm or firearm no longer needed as exhibit in criminal case**

34 34000. (a) Notwithstanding any provision of law or of any local ordinance to the
35 contrary, when any firearm is in the possession of any officer of the state, or of a
36 county, city, or city and county, or of any campus of the University of California
37 or the California State University, and the firearm is an exhibit filed in any
38 criminal action or proceeding which is no longer needed or is unclaimed or
39 abandoned property, which has been in the possession of the officer for at least
40 180 days, the firearm shall be sold, or destroyed, as provided for in Sections 18000
41 and 18005.

42 (b) This section does not apply to any firearm in the possession of the
43 Department of Fish and Game, or which was used in the violation of any provision
44 in the Fish and Game Code, or any regulation under that code.

1 **Comment.** Section 34000 continues former Section 12032 without substantive change.
2 For guidance on whether a firearm can be considered unclaimed, see Section 33875 (unclaimed
3 firearm). For a notification requirement relating to destruction of a firearm pursuant to Sections
4 18000 and 18005, see Section 34010 (notification of Department of Justice).
5 See Section 16520 (“firearm”).

6 ☞ **Staff Note.** Proposed Section 34000(a) would closely track the punctuation and wording of
7 the first paragraph of existing Section 12032. The staff was reluctant to make any changes in that
8 punctuation and wording, for fear of inadvertently making a substantive change.
9 In our opinion, however, it would be helpful to revise that paragraph to improve clarity. Unless
10 the Commission otherwise directs, we will add this issue to the Commission’s list of “Minor
11 Clean-up Issues for Possible Future Legislative Attention.”

12 **§ 34005. Permissible uses of firearm in custody, otherwise subject to destruction**

13 34005. (a)(1) An officer having custody of any firearm that may be useful to the
14 California National Guard, the Coast Guard Auxiliary, or to any military or naval
15 agency of the federal or state government, including, but not limited to, the
16 California National Guard military museum and resource center, may, upon the
17 authority of the legislative body of the city, city and county, or county by which
18 the officer is employed and the approval of the Adjutant General, deliver the
19 firearm to the commanding officer of a unit of the California National Guard, the
20 Coast Guard Auxiliary, or any other military agency of the state or federal
21 government, in lieu of destruction as required by any of the provisions listed in
22 Section 16580.

23 (2) The officer delivering a firearm pursuant to this subdivision shall take a
24 receipt for it, which contains a complete description of the firearm, and shall keep
25 the receipt on file in his or her office as a public record.

26 (b) Any law enforcement agency that has custody of any firearms, or any parts
27 of any firearms, which are subject to destruction as required by any of the
28 provisions listed in Section 16580, may, in lieu of destroying the weapons, retain
29 and use any of them as may be useful in carrying out the official duties of the
30 agency. Alternatively, upon approval of a court, the agency may do either of the
31 following:

32 (1) Release the weapons to any other law enforcement agency for use in
33 carrying out the official duties of that agency.

34 (2) Turn over to the criminalistics laboratory of the Department of Justice or the
35 criminalistics laboratory of a police department, sheriff’s office, or district
36 attorney’s office, any weapons that may be useful in carrying out the official
37 duties of the respective agencies.

38 (c)(1) Any firearm, or part of any firearm, which, rather than being destroyed, is
39 used for official purposes pursuant to this section, shall be destroyed by the agency
40 using the weapon when it is no longer needed by the agency for use in carrying out
41 its official duties.

42 (2) Firearms or weaponry donated to the California National Guard military
43 museum and resource center may be disposed of pursuant to Section 179 of the
44 Military and Veterans Code.

1 (d)(1) Any law enforcement agency that has custody of any firearms, or any
2 parts of any firearms, which are subject to destruction as required by any of the
3 provisions listed in Section 16580, may, in lieu of destroying the firearms, obtain
4 an order from the superior court directing the release of the firearms to the sheriff.

5 (2) The sheriff shall enter those weapons into the Automated Firearms System
6 (AFS), via the California Law Enforcement Telecommunications System, with a
7 complete description of each weapon, including the make, type, category, caliber,
8 and serial number of the firearms, and the name of the academy receiving the
9 weapon entered into the AFS miscellaneous field.

10 (3) The sheriff shall then release the firearms to the basic training academy
11 certified by the Commission on Peace Officer Standards and Training, so that the
12 firearms may be used for instructional purposes in the certified courses. All
13 firearms released to an academy shall be under the care, custody, and control of
14 the particular academy.

15 (4) Any firearm, or part of any firearm, which is not destroyed, and is used for
16 the purposes authorized by this section, shall be returned to the law enforcement
17 agency that had original custody of the firearm when it is no longer needed by the
18 basic training academy, or when the basic training academy is no longer certified
19 by the commission.

20 (5) When those firearms are returned, the law enforcement agency to which the
21 firearms are returned, shall on the date of the return, enter into the Automated
22 Firearms System (AFS), via the California Law Enforcement Telecommunications
23 System, a complete description of each weapon, including the make, type,
24 category, caliber, and serial number of the firearms, and the name of the entity
25 returning the firearm.

26 **Comment.** Subdivision (a) of Section 34005 continues former Section 12030(a) without
27 substantive change.

28 Subdivision (b) continues former Section 12030(b) without substantive change.

29 Subdivision (c) continues former Section 12030(c) without substantive change.

30 Subdivision (d) continues the first, second, third, and fifth sentences of the first paragraph of
31 former Section 12030(d) without substantive change. Subdivision (d) also continues the second
32 paragraph of former Section 12030(d) without substantive change.

33 For a notice requirement relating to retention of a firearm pursuant to this section, see Section
34 34010 (notification of Department of Justice).

35 For rules relating to return or transfer of a firearm that is in the custody or control of a court or
36 law enforcement agency, see Sections 33850-33900. For other provisions on disposal of a firearm
37 in custody, see Sections 18005 (disposal of weapons constituting nuisance), 18010 (treatment of
38 other weapons constituting nuisance), 18250-18500 (seizure of firearm or other deadly weapon at
39 scene of domestic violence), 29300 (firearm of any nature constitutes nuisance under specified
40 circumstances), 34000 (unclaimed firearm or firearm no longer needed as exhibit in criminal
41 case).

42 See Section 16520 (“firearm”).

43 **Staff Note.** The relationship between existing Section 12030 (proposed Section 34005) and
44 existing Section 12032 (proposed Section 34000) is not clear to the staff. Section 12032 says that
45 under certain circumstances a firearm in custody “shall be sold, or destroyed, as provided for in
46 Section 12028.” Section 12030 states several acceptable alternatives to destroying a firearm that
47 is in custody and otherwise subject to destruction. Those procedures differ from the ones in

1 Section 12028. Perhaps they are meant to supplement the ones in Section 12028, and Section
2 12030 is intended as an exception to Section 12032. But Section 12032 applies
3 “[n]otwithstanding any provision of law or of any local ordinance to the contrary” That
4 language does not seem to allow any exceptions.

5 The staff finds this situation puzzling and would appreciate input on this point, particularly
6 from persons with expertise in this area. For purposes of this nonsubstantive study, the only
7 viable option is to preserve the existing statutory language, as shown in proposed Sections 34000
8 and 34005 above. If the existing statutory language is problematic, it might be appropriate to add
9 this matter to the Commission’s list of “Minor Clean-up Issues for Possible Future Legislative
10 Attention.” We encourage comments on whether the Commission should take that step.

11 **§ 34010. Notification of Department of Justice**

12 34010. Any law enforcement agency that retains custody of any firearm
13 pursuant to Section 34005, or that destroys a firearm pursuant to Sections 18000
14 and 18005, shall notify the Department of Justice of the retention or destruction.
15 This notification shall consist of a complete description of each firearm, including
16 the name of the manufacturer or brand name, model, caliber, and serial number.

17 **Comment.** Section 34010 continues former Section 12030(e) without substantive change.
18 See Section 16520 (“firearm”).