

Memorandum 2009-9

**Nonsubstantive Reorganization of Deadly Weapon Statutes:
Miscellaneous Duties of the Department of Justice
(Division 12 of Title 4 of New Part 6)**

For the past two years, the Commission has been working towards 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. Attached is a draft of Division 12 of Title 4 of new Part 6, which concerns miscellaneous duties of the Department of Justice. This is the last piece of new Part 6.

Two tasks remain before the draft tentative recommendation is complete. First, numerous provisions throughout the codes need to be conformed to reflect the proposed recodification of the deadly weapons provisions. These conforming revisions will be presented in Memorandum 2009-11, which is in preparation.

Second, the draft legislation prepared over the past two years contains some blanks that need to be filled in, cross-references that need to be conformed, and the like. This will be addressed in Memorandum 2009-12, which is also in preparation.

Staff Notes (☞ **Staff Note**) in the attached draft raise 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.

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 12. MISCELLANEOUS DUTIES OF THE DEPARTMENT OF JUSTICE

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CHAPTER 1. MISCELLANEOUS REPORTS AND PUBLICATIONS

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§ 34200. Annual report by Attorney General on firearm use in crimes

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34200. The Attorney General shall provide the Legislature on or before April 15 of each year, commencing in 1998, a written report on the specific types of firearms used in the commission of crimes based upon information obtained from state and local crime laboratories. The report shall include all of the following information regarding crimes in which firearms were used:

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(a) A description of the relative occurrence of firearms most frequently used in the commission of violent crimes, distinguishing whether the firearms used were handguns, rifles, shotguns, assault weapons, or other related types of weapons.

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(b) A description of specific types of firearms that are used in homicides or street gang and drug trafficking crimes.

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(c) The frequency with which stolen firearms were used in the commission of the crimes.

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(d) The frequency with which fully automatic firearms were used in the commission of the crimes.

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(e) Any trends of importance such as those involving specialized ammunition or firearms modifications, such as conversion to a fully automatic weapon, removal of serial number, shortening of barrel, or use of a suppressor.

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Comment. Section 34200 continues former Section 12039 without substantive change.

1 See Sections 16520 (“firearm”), 16640 (“handgun”), 17090 (“rifle”), 17190 (“shotgun”), 30510
2 (“assault weapon”), 30515 (further clarification of “assault weapon”).

3 **§ 34205. Pamphlet summarizing California firearms laws**

4 34205. (a) The Department of Justice shall prepare a pamphlet that summarizes
5 California firearms laws as they pertain to persons other than law enforcement
6 officers or members of the armed services.

7 (b) The pamphlet shall include the following matters:

8 (1) Lawful possession.

9 (2) Licensing procedures.

10 (3) Transportation and use of firearms.

11 (4) Acquisition of hunting licenses.

12 (5) The safe handling and use of firearms.

13 (6) Various methods of safe storage and child proofing of firearms.

14 (7) The availability of firearms safety programs and devices.

15 (8) The responsibilities of firearms ownership.

16 (9) The operation of various types of firearms.

17 (10) The lawful use of deadly force.

18 (c) The department shall offer copies of the pamphlet at actual cost to firearms
19 dealers licensed pursuant to Sections 26700 to 26915, inclusive, who shall have
20 copies of the most current version available for sale to retail purchasers or
21 transferees of firearms. The cost of the pamphlet, if any, may be added to the sale
22 price of the firearm. Other interested parties may purchase copies directly from the
23 Department of General Services.

24 (d) The pamphlet shall declare that it is merely intended to provide a general
25 summary of laws applicable to firearms and is not designed to provide individual
26 guidance for specific areas. Individuals having specific questions shall be directed
27 to contact their local law enforcement agency or private counsel.

28 (e) The Department of Justice or any other public entity shall be immune from
29 any liability arising from the drafting, publication, or dissemination of the
30 pamphlet or any reliance upon it. All receipts from the sale of these pamphlets
31 shall be deposited as reimbursements to the support appropriation for the
32 Department of Justice.

33 **Comment.** Section 34205 continues former Section 12080 without substantive change.

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

36 **CHAPTER 2. BALLISTICS IDENTIFICATION SYSTEM**

37 **§ 34350. Study of ballistics identification systems**

38 34350. (a) The Attorney General shall conduct a study to evaluate ballistics
39 identification systems to determine the feasibility and potential benefits to law
40 enforcement of utilizing a statewide ballistics identification system capable of

1 maintaining a database of ballistic images and information from test fired and sold
2 firearms. The study shall include an evaluation of ballistics identification systems
3 currently used by state and federal law enforcement agencies and the firearms
4 industry. The Attorney General shall consult with law enforcement agencies,
5 firearms industry representatives, private technology providers, and other
6 appropriate parties in conducting the study.

7 (b) In evaluating ballistics identification systems to determine the feasibility of
8 utilizing a statewide system as required pursuant to subdivision (a), the Attorney
9 General shall consider, at a minimum, the following:

10 (1) The development of methods by which firearm manufacturers, importers,
11 and dealers may potentially capture ballistic images from firearms prior to sale in
12 California and forward that information to the Attorney General.

13 (2) The development of methods by which the Attorney General will receive,
14 store, and make available to law enforcement ballistic images submitted by
15 firearm manufacturers, importers, and dealers prior to sale in California.

16 (3) The potential financial costs to the Attorney General of implementing and
17 operating a statewide ballistics identification system, including the process for
18 receipt of information from firearm manufacturers, importers, and dealers.

19 (4) The capability of a ballistics identification system maintaining a database of
20 ballistic images and information from test fired firearms for all firearms sold in
21 California.

22 (5) The compatibility of a ballistics identification system with ballistics
23 identification systems that are currently used by law enforcement agencies in
24 California.

25 (6) A method to ensure that state and local law enforcement agencies can
26 forward ballistic identification information to the Attorney General for inclusion in
27 a statewide ballistics identification system.

28 (7) The feasibility and potential benefits to law enforcement of requiring firearm
29 manufacturers, importers, and dealers to provide the Attorney General with
30 ballistic images from any, or a selected number of, test fired firearms prior to the
31 sale of those firearms in California.

32 (c) The Attorney General shall submit a report to the Legislature with the results
33 of the study not later than June 1, 2001. In the event the report includes a
34 determination that a ballistics identification system and database is feasible and
35 would benefit law enforcement, the report shall also recommend a strategy for
36 implementation.

37 **Comment.** Section 34350 continues former Section 12072.5 without substantive change.

38 For other provisions relating to identification of firearms, see Sections 23900-23925
39 (obliteration of identification marks), 31910(b)(7) (identification of serial number of pistol or
40 other firearm from spent cartridge casings).

41 See Sections 16230 (“ballistics identification system”), 16520 (“firearm”), 26700 (“dealer,”
42 “licensee,” or “person licensed pursuant to Sections 26700 to 26915, inclusive”).

43 **Staff Note.** Proposed Section 34350 would continue the substance of existing Section
44 12072.5, which requires the Attorney General to complete a report on ballistics identification

1 systems “not later than June 1, 2001.” Technically, that provision would seem to be obsolete,
2 because it is now well after June 1, 2001.

3 The staff recognizes, however, that retaining the provision and its exceptions in the codes
4 might sometimes be useful for reference purposes. Further, this is a strictly nonsubstantive study
5 and the Commission is striving to minimize any concern that the proposed legislation would have
6 a substantive impact.

7 Thus, the staff does not recommend deleting the provision or its exceptions as obsolete in this
8 study. We would appreciate input on whether they remain useful, and whether it would be
9 appropriate to add this matter to the Commission’s list of “Minor Clean-up Issues for Possible
10 Future Legislative Attention.”

11 **§ 34355. Exception for sale, delivery, or transfer to authorized law enforcement**
12 **representative of city, county, city and county, or state or federal government**

13 34355. (a) Section 34350 does not apply to any sale, delivery, or transfer of
14 firearms made to an authorized law enforcement representative of any city,
15 county, city and county, or state, or of the federal government, for exclusive use
16 by that governmental agency if, prior to the sale, delivery, or transfer of these
17 firearms, written authorization from the head of the agency authorizing the
18 transaction is presented to the person from whom the purchase, delivery, or
19 transfer is being made.

20 (b) Proper written authorization is defined as verifiable written certification from
21 the head of the agency by which the purchaser or transferee is employed,
22 identifying the employee as an individual authorized to conduct the transaction,
23 and authorizing the transaction for the exclusive use of the agency by which that
24 person is employed.

25 (c) Within 10 days of the date a handgun is acquired by the agency, a record of
26 the same shall be entered as an institutional weapon into the Automated Firearms
27 System (AFS) via the California Law Enforcement Telecommunications System
28 (CLETS) by the law enforcement or state agency. Any agency without access to
29 AFS shall arrange with the sheriff of the county in which the agency is located to
30 input this information via this system.

31 **Comment.** Section 34355 continues former Section 12078(a)(2) without substantive change, as
32 that provision applied to former Section 12072.5.

33 For other exceptions relating to law enforcement, see Sections 34360 (exception for loan of
34 firearm to peace officer employee for use in performing official duties), 34365 (exception for
35 sale, delivery, or transfer by law enforcement agency to peace officer pursuant to Public Contract
36 Code), 34370 (exception for sale, delivery, or transfer by law enforcement agency to retiring
37 peace officer authorized to carry concealed and loaded firearm).

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

39 **Staff Notes.**

40 (1) Proposed Section 34355 would state an exception to proposed Section 34350. Because
41 proposed Section 34350 technically appears obsolete, the exception stated in proposed Section
42 34355 might also be obsolete. For further discussion of this matter, see the Staff Note on
43 proposed Section 34350.

44 (2) It is not entirely clear to the staff how the exception provided in existing Section
45 12078(a)(2) (and continued in proposed Section 34355) would be relevant to the study of

1 ballistics identification systems required under existing Section 12072.5 (continued in proposed
2 Section 34350).

3 If Section 12078(a)(2) is read literally, the exception applies. By its terms, Section 12078(a)(2)
4 applies to the “preceding provisions of this article,” and Section 12072.5 is one of the “preceding
5 provisions” in the article that contains Section 12078.

6 Conceivably, the Legislature actually intended to exempt firearm sales to law enforcement
7 from the Attorney General’s study of ballistics identification systems. Under Section 12072.5, the
8 Attorney General was to study not only the effectiveness of ballistic identification systems, but
9 also means of implementing such a system in California, including the “development of methods
10 by which firearm manufacturers, importers, and dealers may potentially capture ballistic images
11 from firearms prior to sale in California and forward that information to the Attorney General.” It
12 is possible that the Legislature meant to exclude law enforcement weapons from the Attorney
13 General’s study of systems for obtaining and processing ballistic image information about
14 firearms sold in California.

15 The staff suspects, however, that this may not have been the actual intent. Inclusion of law
16 enforcement weapons in a ballistics identification system would be potentially useful. For
17 example, it could help in determining which of two law enforcement officers fired a particular
18 bullet. It could also help resolve whether a bullet was fired by a law enforcement officer, as
19 opposed to another person with the same type of gun, which is not in the state’s database. The
20 literal inclusion of Section 12072.5 within the scope of Section 12078(a)(2) might have been the
21 result of overbroad drafting, rather than actual intent to exclude law enforcement transactions
22 from the Attorney General’s study of how to implement a ballistics identification system.

23 In the context of this strictly nonsubstantive study, however, the safest course would be to
24 preserve the literal language of Section 12078(a)(2), as shown in proposed Section 34355 above.
25 That is particularly true because the deadline for completion of the Attorney General’s study
26 passed long ago. At this point, it would be inappropriate to rewrite the statutory terms under
27 which the study was to be conducted, even if some of the statutory language was problematic.

28 **§ 34360. Exception for loan of firearm to peace officer employee for use in performing**
29 **official duties**

30 34360. Section 34350 does not apply to the loan of a firearm if all of the
31 following conditions are satisfied:

32 (a) The loan is made by an authorized law enforcement representative of a city,
33 county, or city and county, or of the state or federal government.

34 (b) The loan is made to a peace officer employed by that agency and authorized
35 to carry a firearm.

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

38 **Comment.** Section 34360 continues former Section 12078(a)(3) without substantive change, as
39 that provision applied to former Section 12072.5.

40 For other exceptions relating to law enforcement, see Sections 34355 (exception for sale,
41 delivery, or transfer to authorized law enforcement representative of city, county, city and county,
42 or state or federal government), 34365 (exception for sale, delivery, or transfer by law
43 enforcement agency to peace officer pursuant to Public Contract Code), 34370 (exception for
44 sale, delivery, or transfer by law enforcement agency to retiring peace officer authorized to carry
45 concealed and loaded firearm).

46 See Section 16520 (“firearm”).

47 **Staff Notes.**

48 (1) Proposed Section 34360 would state an exception to proposed Section 34350. Because
49 proposed Section 34350 technically appears obsolete, the exception stated in proposed Section

1 34360 might also be obsolete. For further discussion of this matter, see the Staff Note on
2 proposed Section 34350.

3 (2) It is not entirely clear to the staff how the exception provided in existing Section
4 12078(a)(3) (and continued in proposed Section 34360) would be relevant to the study of
5 ballistics identification systems required under existing Section 12072.5 (continued in proposed
6 Section 34350). For further discussion of this point, see Staff Note #2 on proposed Section
7 34355.

8 **§ 34365. Exception for sale, delivery, or transfer by law enforcement agency to peace officer**
9 **pursuant to Public Contract Code**

10 34365. (a) Section 34350 does not apply to the sale, delivery, or transfer of a
11 firearm by a law enforcement agency to a peace officer pursuant to Section 10334
12 of the Public Contract Code.

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

22 **Comment.** Section 34365 continues former Section 12078(a)(4) without substantive change, as
23 that provision applied to former Section 12072.5.

24 For other exceptions relating to law enforcement, see Sections 34355 (exception for sale,
25 delivery, or transfer to authorized law enforcement representative of city, county, city and county,
26 or state or federal government), 34360 (exception for loan of firearm to peace officer employee
27 for use in performing official duties), 34370 (exception for sale, delivery, or transfer by law
28 enforcement agency to retiring peace officer authorized to carry concealed and loaded firearm).

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

30 **☞ Staff Notes.**

31 (1) Proposed Section 34365 would state an exception to proposed Section 34350. Because
32 proposed Section 34350 technically appears obsolete, the exception stated in proposed Section
33 34365 might also be obsolete. For further discussion of this matter, see the Staff Note on
34 proposed Section 34350.

35 (2) It is not entirely clear to the staff how the exception provided in existing Section
36 12078(a)(4) (and continued in proposed Section 34365) would be relevant to the study of
37 ballistics identification systems required under existing Section 12072.5 (continued in proposed
38 Section 34350). For further discussion of this point, see Staff Note #2 on proposed Section
39 34355.

40 **§ 34370. Exception for sale, delivery, or transfer by law enforcement agency to retiring**
41 **peace officer authorized to carry concealed and loaded firearm**

42 34370. (a) Section 34350 does not apply to the sale, delivery, or transfer of a
43 firearm by a law enforcement agency to a retiring peace officer who is authorized

1 to carry a firearm pursuant to Chapter 5 (commencing with Section 26300) of
2 Division 5.

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

11 **Comment.** Section 34370 continues former Section 12078(a)(5) without substantive change, as
12 that provision applied to former Section 12072.5.

13 For other exceptions relating to law enforcement, see Sections 34355 (exception for sale,
14 delivery, or transfer to authorized law enforcement representative of city, county, city and county,
15 or state or federal government), 34360 (exception for loan of firearm to peace officer employee
16 for use in performing official duties), 34365 (exception for sale, delivery, or transfer by law
17 enforcement agency to peace officer pursuant to Public Contract Code).

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

19 **☞ Staff Notes.**

20 (1) Proposed Section 34370 would state an exception to proposed Section 34350. Because
21 proposed Section 34350 technically appears obsolete, the exception stated in proposed Section
22 34370 might also be obsolete. For further discussion of this matter, see the Staff Note on
23 proposed Section 34350.

24 (2) It is not entirely clear to the staff how the exception provided in existing Section
25 12078(a)(5) (and continued in proposed Section 34370) would be relevant to the study of
26 ballistics identification systems required under existing Section 12072.5 (continued in proposed
27 Section 34350). For further discussion of this point, see Staff Note #2 on proposed Section
28 34355.