

Memorandum 2009-11

**Nonsubstantive Reorganization of Deadly Weapon Statutes:
Staff Draft Tentative Recommendation
(Conforming Revisions Only)**

The Legislature has directed the Law Revision Commission to recommend revisions of the statutes governing control of deadly weapons. The objective of this project is to make the statutes more user-friendly, without effecting any substantive change. The Commission's report is due by July 1, 2009. See 2006 Cal. Stat. res. ch. 128.

In compliance with the legislative directive and in accordance with its normal study process, the Commission has been 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. A complete draft of the tentative recommendation (presented in a number of pieces) will be considered for approval at the upcoming Commission meeting.

If the proposed recodification is eventually enacted, numerous provisions throughout the codes will need to be conformed to reflect the recodification. A draft of these conforming revisions is attached for Commissioners and other interested persons to review.

The staff recommends that the Commission circulate the conforming revisions as a separate document, instead of incorporating them into the same tentative recommendation as the main proposal. That would help keep the main proposal manageable in size. The Commission has used this approach effectively in the past, most recently in its nonsubstantive reorganization of the civil discovery statutes. Consistent with its recommendation, the staff formatted the attached draft to be circulated as a separate document.

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

Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

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 to approve it as a tentative recommendation, with or without revisions.

Respectfully submitted,

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CALIFORNIA LAW REVISION COMMISSION

STAFF DRAFT

TENTATIVE RECOMMENDATION

Nonsubstantive Reorganization of Deadly Weapon Statutes: Conforming Revisions

February 2009

The purpose of this tentative recommendation is to solicit public comment on the Commission's tentative conclusions. A comment submitted to the Commission will be part of the public record. The Commission will consider the comment at a public meeting when the Commission determines what, if any, recommendation it will make to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made to it.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN **May 1, 2009.**

The Commission will often substantially revise a proposal in response to comment it receives. Thus this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

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SUMMARY OF TENTATIVE RECOMMENDATION

The Legislature has directed the Law Revision Commission to “study, report on, and prepare recommended legislation by July 1, 2009, concerning the revision of the portions of the Penal Code relating to the control of deadly weapons....” 2006 Cal. Stat. res. ch. 128. The general purpose of the study is to improve the organization and accessibility of the deadly weapons statutes, without making any change to criminal liability under those statutes.

Pursuant to the legislative directive and in accordance with its normal study process, the Commission has issued a tentative recommendation proposing nonsubstantive reforms of the deadly weapon statutes. Enactment of that proposal would necessitate conforming revisions of numerous other provisions in the codes. A draft of the conforming revisions is set forth below.

The Commission is soliciting comment on the tentative recommendation and on the proposed conforming revisions set forth below. The comment deadline is **May 1, 2009**.

The tentative recommendation proposing nonsubstantive reorganization of the deadly weapon statutes is available by following the “Deadly Weapons” link on the Commission’s homepage (www.clrc.ca.gov). The proposal is also available in hard copy form from the California Law Revision Commission, 4000 Middlefield Road, Room D-2, Palo Alto, CA 94303-4739.

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PROPOSED LEGISLATION

BUSINESS & PROFESSIONS CODE

1 **Bus. & Prof. Code § 7542.1 (amended). Licensee or employee of licensee carrying tear gas**
2 **or other nonlethal chemical agent**

3 SEC. ____ . Section 7542.1 of the Business and Professions Code is amended to
4 read:

5 7542.1. Every licensee and any person employed and compensated by a licensee
6 who in the course of ~~such~~ that employment or business carries tear gas or any
7 other nonlethal chemical agent shall complete the required course pursuant to
8 Section ~~12403.5~~ 22835 of the Penal Code.

9 **Comment.** Section 7542.1 is amended to reflect nonsubstantive reorganization of the statutes
10 governing control of deadly weapons. The section is also amended to make a technical revision.

11 **Bus. & Prof. Code § 7581 (amended). Rules director may adopt and enforce**

12 SEC. ____ . Section 7581 of the Business and Professions Code is amended to
13 read:

14 7581. The director may adopt and enforce reasonable rules, as follows:

15 (a) Classifying licensees according to the type of business regulated by this
16 chapter in which they are engaged, including, but not limited to, persons employed
17 by any lawful business as security guards or patrolpersons, and armored contract
18 carriers and limiting the field and scope of the operations of a licensee to those in
19 which he or she is classified and qualified to engage.

20 (b) Fixing the qualifications of licensees and managers, in addition to those
21 prescribed in this chapter, necessary to promote and protect the public welfare.

22 (c) Carrying out generally the provisions of this chapter, including regulation of
23 the conduct of licensees.

24 (d) Establishing the qualifications that any person employed by a private patrol
25 operator or any lawful business as a security guard or patrolperson, or employed
26 by an armored contract carrier, must meet as a condition of becoming eligible to
27 carry firearms pursuant to ~~subdivision (d) of Section 12031~~ Section 26030 of the
28 Penal Code.

29 (e) Requiring each uniformed employee of a private patrol operator and each
30 armored vehicle guard, as defined in this chapter, and any other person employed
31 and compensated by a private patrol operator or any lawful business as a security
32 guard or patrolperson and who in the course of this employment carries a deadly
33 weapon to be registered with the bureau upon application on a form prescribed by
34 the director accompanied by the registration fee and by two classifiable sets of
35 fingerprints of the applicant or its equivalent as determined by the director and
36 approved by the Department of Justice, establishing the term of the registration for
37 a period of not less than two nor more than four years, and providing for the

1 renewal thereof upon proper application and payment of the renewal fee. The
2 director may, after opportunity for a hearing, refuse this registration to any person
3 who lacks good moral character, and may impose reasonable additional
4 requirements as are necessary to meet local needs that are not inconsistent with the
5 provisions of this chapter.

6 (f) Establishing procedures whereby the local authorities of any city, county, or
7 city and county may file charges with, or any person in this state, may file a
8 complaint with the director alleging that any licensed private patrol operator,
9 registered security guard, or patrolperson, or anyone who is an applicant for
10 registration or licensure with the bureau, fails to meet standards for registration or
11 licensure, or violates any provision of this chapter, and providing further for the
12 investigation of the charges and a response to the charging or complaining party in
13 the manner described in subdivision (b) of Section 129.

14 (g) Requiring private patrol operators and any lawful business to maintain
15 detailed records identifying all firearms in their possession or under their control,
16 and the employees or persons authorized to carry or have access to those firearms.

17 **Comment.** Subdivision (d) of Section 7581 is amended to reflect nonsubstantive
18 reorganization of the statutes governing control of deadly weapons.

19 **Bus. & Prof. Code § 7582.2 (amended). Application of chapter**

20 SEC. _____. Section 7582.2 of the Business and Professions Code is amended to
21 read:

22 7582.2. This chapter does not apply to the following:

23 (a) A person who does not meet the requirements to be a proprietary private
24 security officer, as defined in Section 7574.1, and is employed exclusively and
25 regularly by any employer who does not provide contract security services for
26 other entities or persons, in connection with the affairs of the employer only and
27 where there exists an employer-employee relationship if that person at no time
28 carries or uses any deadly weapon in the performance of his or her duties. For
29 purposes of this subdivision, “deadly weapon” is defined to include any instrument
30 or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub,
31 sandbag, metal knuckles, any dirk, dagger, pistol, revolver, or any other firearm,
32 any knife having a blade longer than five inches, any razor with an unguarded
33 blade and any metal pipe or bar used or intended to be used as a club.

34 (b) An officer or employee of the United States of America, or of this state or a
35 political subdivision thereof, while the officer or employee is engaged in the
36 performance of his or her official duties, including uniformed peace officers
37 employed part time by a public agency pursuant to a written agreement between a
38 chief of police or sheriff and the public agency, provided the part-time
39 employment does not exceed 50 hours in any calendar month.

40 (c) A person engaged exclusively in the business of obtaining and furnishing
41 information as to the financial rating of persons.

1 (d) A charitable philanthropic society or association duly incorporated under the
2 laws of this state that is organized and maintained for the public good and not for
3 private profit.

4 (e) Patrol special police officers appointed by the police commission of any city,
5 county, or city and county under the express terms of its charter who also under
6 the express terms of the charter (1) are subject to suspension or dismissal after a
7 hearing on charges duly filed with the commission after a fair and impartial trial,
8 (2) must be not less than 18 years of age nor more than 40 years of age, (3) must
9 possess physical qualifications prescribed by the commission, and (4) are
10 designated by the police commission as the owners of a certain beat or territory as
11 may be fixed from time to time by the police commission.

12 (f) An attorney at law in performing his or her duties as an attorney at law.

13 (g) A collection agency or an employee thereof while acting within the scope of
14 his or her employment, while making an investigation incidental to the business of
15 the agency, including an investigation of the location of a debtor or his or her
16 property where the contract with an assignor creditor is for the collection of claims
17 owed or due or asserted to be owed or due or the equivalent thereof.

18 (h) Admitted insurers and agents and insurance brokers licensed by the state,
19 performing duties in connection with insurance transacted by them.

20 (i) Any bank subject to the jurisdiction of the Commissioner of Financial
21 Institutions of the State of California under Division 1 (commencing with Section
22 99) of the Financial Code or the Comptroller of Currency of the United States.

23 (j) A person engaged solely in the business of securing information about
24 persons or property from public records.

25 (k) A peace officer of this state or a political subdivision thereof while the peace
26 officer is employed by a private employer to engage in off-duty employment in
27 accordance with Section 1126 of the Government Code. However, nothing herein
28 shall exempt ~~such a~~ peace officer who either contracts for his or her services or the
29 services of others as a private patrol operator or contracts for his or her services as
30 or is employed as an armed private security officer. For purposes of this
31 subdivision, "armed security officer" means an individual who carries or uses a
32 firearm in the course and scope of that contract or employment.

33 (l) A retired peace officer of the state or political subdivision thereof when the
34 retired peace officer is employed by a private employer in employment approved
35 by the chief law enforcement officer of the jurisdiction where the employment
36 takes place, provided that the retired officer is in a uniform of a public law
37 enforcement agency, has registered with the bureau on a form approved by the
38 director, and has met any training requirements or their equivalent as established
39 for security personnel under Section 7583.5. This officer may not carry a loaded or
40 concealed firearm unless he or she is exempted under the provisions of ~~subdivision~~
41 ~~(a) of Section 12027~~ Article 2 (commencing with Section 25450) of Chapter 2 of
42 Division 5 of Title 4 of Part 6 of the Penal Code or paragraph (1) of subdivision
43 (b) of Section 12031 Sections 25900 to 25910, inclusive, of the Penal Code or has

1 met the requirements set forth in ~~Section 12033~~ subdivision (d) of Section 26030
2 of the Penal Code. However, nothing herein shall exempt the retired peace officer
3 who contracts for his or her services or the services of others as a private patrol
4 operator.

5 (m) A licensed insurance adjuster in performing his or her duties within the
6 scope of his or her license as an insurance adjuster.

7 (n) Any savings association subject to the jurisdiction of the Commissioner of
8 Financial Institutions or the Office of Thrift Supervision.

9 (o) Any secured creditor engaged in the repossession of the creditor's collateral
10 and any lessor engaged in the repossession of leased property in which it claims an
11 interest.

12 (p) A peace officer in his or her official police uniform acting in accordance
13 with subdivisions (c) and (d) of Section 70 of the Penal Code.

14 (q) An unarmed, uniformed security person employed exclusively and regularly
15 by a motion picture studio facility employer who does not provide contract
16 security services for other entities or persons in connection with the affairs of that
17 employer only and where there exists an employer-employee relationship if that
18 person at no time carries or uses any deadly weapon, as defined in subdivision (a),
19 in the performance of his or her duties, which may include, but are not limited to,
20 the following business purposes:

21 (1) The screening and monitoring access of employees of the same employer.

22 (2) The screening and monitoring access of prearranged and preauthorized
23 invited guests.

24 (3) The screening and monitoring of vendors and suppliers.

25 (4) Patrolling the private property facilities for the safety and welfare of all who
26 have been legitimately authorized to have access to the facility.

27 (r) The changes made to this section by the act adding this subdivision during
28 the 2005-06 Regular Session of the Legislature shall apply as follows:

29 (1) On and after July 1, 2006, to a person hired as a security officer on and after
30 January 1, 2006.

31 (2) On and after January 1, 2007, to a person hired as a security officer before
32 January 1, 2006.

33 **Comment.** Subdivision (k) of Section 7582.2 is amended to make a technical revision.

34 Subdivision (l) is amended to reflect nonsubstantive reorganization of the statutes governing
35 control of deadly weapons.

36 **Bus. & Prof. Code § 7583.12 (amended). Requirements for employee or licensee to carry**
37 **firearm**

38 SEC. ____ . Section 7583.12 of the Business and Professions Code is amended to
39 read:

40 7583.12. (a) No employee of a licensee shall carry or use a firearm unless the
41 employee has in his or her possession both of the following:

42 (1) A valid guard registration card issued pursuant to this chapter.

1 (2) A valid firearm qualification card issued pursuant to this chapter.

2 (b) Paragraph (2) of subdivision (a) shall not apply to a duly appointed peace
3 officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part
4 2 of the Penal Code, who meets all of the following:

5 (1) He or she has successfully completed a course of study in the use of
6 firearms.

7 (2) He or she is authorized to carry a concealed firearm in the course and scope
8 of his or her employment pursuant to ~~subdivision (a) of Section 12027~~ Article 2
9 (commencing with Section 25450) of Chapter 2 of Division 5 of Title 4 of Part 6
10 of the Penal Code.

11 (3) He or she has proof that he or she has applied to the bureau for a firearms
12 qualification card.

13 (c)(1) This section shall not apply to a duly appointed peace officer, as defined
14 in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal
15 Code, who has written approval from his or her primary employer, as defined in
16 paragraph (2) of subdivision (i) of Section 7583.9, to carry a firearm while
17 working as a security guard or security officer.

18 (2) A peace officer exempt under this subdivision shall carry on his or her
19 person a letter of approval from his or her primary employer authorizing him or
20 her to carry a firearm while working as a security guard or security officer.

21 **Comment.** Subdivision (b) of Section 7583.12 is amended to reflect nonsubstantive
22 reorganization of the statutes governing control of deadly weapons.

23 **Bus. & Prof. Code § 7583.31 (amended). Firearms qualification card**

24 SEC. _____. Section 7583.31 of the Business and Professions Code is amended to
25 read:

26 7583.31. A firearms qualification card does not authorize the holder thereof to
27 carry a pistol, revolver, or other firearm capable of being concealed upon the
28 person in a concealed manner pursuant to Section ~~12050~~ 26150, 26155, 26170, or
29 26215 of the Penal Code.

30 **Comment.** Section 7583.31 is amended to reflect nonsubstantive reorganization of the statutes
31 governing control of deadly weapons.

32 **Bus. & Prof. Code § 7583.35 (amended). Required course for carrying tear gas or other**
33 **nonlethal chemical agent**

34 SEC. _____. Section 7583.35 of the Business and Professions Code is amended to
35 read:

36 7583.35. Every licensee, qualified manager, or a registered uniformed security
37 guard, who in the course of his or her employment carries tear gas or any other
38 nonlethal chemical agent, shall complete the required course pursuant to Section
39 ~~12403.5~~ 22835 of the Penal Code.

40 **Comment.** Section 7583.35 is amended to reflect nonsubstantive reorganization of the statutes
41 governing control of deadly weapons.

1 **Bus. & Prof. Code § 7583.37 (amended). Fines and prohibited acts**

2 SEC. _____. Section 7583.37 of the Business and Professions Code is amended to
3 read:

4 7583.37. The director may assess fines as enumerated in Article 7 (commencing
5 with Section 7587). Assessment of administrative fines shall be independent of
6 any other action by the bureau or any local, state, or federal governmental agency
7 that may result from a violation of this article. In addition to other prohibited acts
8 under this chapter, no licensee, qualified manager, or registered security guard
9 shall, during the course and scope of licensed activity, do any of the following:

10 (a) Carry any inoperable, replica, or other simulated firearm.

11 (b) Use a firearm in violation of the law, or in knowing violation of the
12 standards for the carrying and usage of firearms as taught in the course of training
13 in the carrying and use of firearms. Unlawful or prohibited uses of firearms shall
14 include, but not be limited to, the following:

15 (1) Illegally using, carrying, or possessing a dangerous weapon.

16 (2) Brandishing a weapon.

17 (3) Drawing a weapon without proper cause.

18 (4) Provoking a shooting incident without cause.

19 (5) Carrying or using a firearm while on duty while under the influence of
20 alcohol or dangerous drugs.

21 (6) Carrying or using a firearm of a caliber for which a firearms permit has not
22 been issued by the bureau.

23 (c) Carry or use a baton in the performance of his or her duties, unless he or she
24 has in his or her possession a valid baton certificate issued pursuant to Section
25 7585.14.

26 (d) Carry or use tear gas or any other nonlethal chemical agent in the
27 performance of his or her duties unless he or she has in his or her possession proof
28 of completion of a course in the carrying and use of tear gas or any other nonlethal
29 chemical agent.

30 (e) Carry a concealed pistol, revolver, or other firearm capable of being
31 concealed upon the person unless one of the following circumstances applies:

32 (1) The person has been issued a permit to carry a pistol, revolver, or other
33 firearm capable of being concealed upon the person in a concealed manner by a
34 local law enforcement agency pursuant to Section ~~12050~~ 26150, 26155, 26170, or
35 26215 of the Penal Code.

36 (2) The person is employed as a guard or messenger of a common carrier, bank,
37 or other financial institution and he or she carries the weapon while actually
38 employed in and about the shipment, transportation, or delivery of any money,
39 treasure, bullion, bonds, or other thing of value within this state, as specified in
40 ~~subdivision (e) of Section 12027~~ Section 25630 of the Penal Code.

41 (3) The person is an honorably retired peace officer authorized to carry a
42 concealed firearm pursuant to ~~subdivision (a) or (i) of Section 12027~~ Section

1 25650 of the Penal Code or Article 2 (commencing with Section 25450) of
2 Chapter 2 of Division 5 of Title 4 of Part 6 of the Penal Code.

3 (4) The person is a duly appointed peace officer, as defined in Chapter 4.5
4 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, who is
5 authorized to carry a concealed firearm in the course and scope of his or her
6 employment pursuant to ~~subdivision (a) of Section 12027~~ Article 2 (commencing
7 with Section 25450) of Chapter 2 of Division 5 of Title 4 of Part 6 of the Penal
8 Code.

9 **Comment.** Subdivision (e) of Section 7583.37 is amended to reflect nonsubstantive
10 reorganization of the statutes governing control of deadly weapons.

11 **Bus. & Prof. Code § 7591.11 (amended). Firearms permit for licensee, qualified manager, or**
12 **alarm agent**

13 SEC. _____. Section 7591.11 of the Business and Professions Code is amended to
14 read:

15 7591.11. The bureau shall deny a firearms permit, pursuant to ~~Section 12021~~
16 Article 1 (commencing with Section 29800) of Chapter 2 of Division 9 of Title 4
17 of Part 6 of the Penal Code, to any licensee, qualified manager, or alarm agent
18 who has been convicted of a felony, unless the felony conviction has been reduced
19 pursuant to Section 17 of the Penal Code or the person has been pardoned by the
20 Governor. The licensee, qualified manager, or alarm agent shall not have a right to
21 a review or a hearing if the denial is made pursuant to this section.

22 **Comment.** Section 7591.11 is amended to reflect nonsubstantive reorganization of the statutes
23 governing control of deadly weapons.

24 **Bus. & Prof. Code § 7596.6 (amended). Firearm qualification card**

25 SEC. _____. Section 7596.6 of the Business and Professions Code is amended to
26 read:

27 7596.6. A firearms qualification card does not authorize the holder thereof to
28 carry a pistol, revolver, or other firearm capable of being concealed upon the
29 person in a concealed manner pursuant to ~~Section 12050~~ 26150, 26155, 26170, or
30 26215 of the Penal Code.

31 **Comment.** Section 7596.6 is amended to reflect nonsubstantive reorganization of the statutes
32 governing control of deadly weapons.

33 **Bus. & Prof. Code § 7596.12 (amended). Completion of course to carry tear gas or other**
34 **nonlethal chemical agent**

35 SEC. _____. Section 7596.12 of the Business and Professions Code is amended to
36 read:

37 7596.12. Every person licensed, registered, or designated under this chapter,
38 who in the course of his or her employment carries tear gas, or any other nonlethal
39 chemical agent, shall complete the course required pursuant to ~~Section 12403.5~~
40 22835 of the Penal Code.

1 **Comment.** Section 7596.12 is amended to reflect nonsubstantive reorganization of the statutes
2 governing control of deadly weapons.

3 **Bus. & Prof. Code § 7597.1 (amended). Possession of firearms qualification card required**

4 SEC. ____ . Section 7597.1 of the Business and Professions Code is amended to
5 read:

6 7597.1. (a) No licensee, qualified manager, branch office manager, or alarm
7 agent shall carry, use, or possess a loaded or unloaded firearm in the course and
8 scope of his or her employment, whether or not it is serviceable or operative,
9 unless he or she has in his or her possession a valid and current firearms
10 qualification card issued to him or her by the bureau. The card shall be shown to
11 any peace officer or bureau representative upon demand.

12 (b) Subdivision (a) shall not apply to a duly appointed peace officer, as defined
13 in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal
14 Code, who meets all of the following:

15 (1) He or she has successfully completed a course of study in the use of
16 firearms.

17 (2) He or she is authorized to carry a concealed firearm in the course and scope
18 of his or her employment pursuant to ~~subdivision (a) of Section 12027~~ Article 2
19 (commencing with Section 25450) of Chapter 2 of Division 5 of Title 4 of Part 6
20 of the Penal Code.

21 (3) He or she has proof that he or she has applied to the bureau for a firearms
22 qualification card.

23 (c) A fine of twenty-five dollars (\$25) may be assessed for the first violation of
24 this section and a fine of one hundred dollars (\$100) for each subsequent violation.

25 **Comment.** Subdivision (b) of Section 7597.1 is amended to reflect nonsubstantive
26 reorganization of the statutes governing control of deadly weapons.

27 **Bus. & Prof. Code § 7597.6 (amended). Carrying concealed pistol, revolver, or other**
28 **firearm**

29 SEC. ____ . Section 7597.6 of the Business and Professions Code is amended to
30 read:

31 7597.6. (a) No licensee, qualified manager, branch office manager, or alarm
32 agent shall carry a pistol, revolver, or other firearm capable of being concealed
33 upon the person in a concealed manner unless one of the following circumstances
34 apply:

35 (1) The person has been issued a permit to carry that firearm in a concealed
36 manner by a local law enforcement agency pursuant to ~~Section 12050~~ 26150,
37 26155, 26170, or 26215 of the Penal Code.

38 (2) The person is an honorably retired peace officer authorized to carry a
39 concealed firearm pursuant to ~~subdivision (a) or (i) of Section 12027~~ Section
40 25650 of the Penal Code or Article 2 (commencing with Section 25450) of
41 Chapter 2 of Division 5 of Title 4 of Part 6 of the Penal Code.

1 (3) The person is a duly appointed peace officer, as defined in Chapter 4.5
2 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, who is
3 authorized to carry a concealed firearm in the course and scope of his or her
4 employment pursuant to ~~subdivision (a) of Section 12027~~ Article 2 (commencing
5 with Section 25450) of Chapter 2 of Division 5 of Title 4 of Part 6 of the Penal
6 Code.

7 (b) A fine of five hundred dollars (\$500) may be assessed for each violation of
8 subdivision (a).

9 **Comment.** Subdivision (a) of Section 7597.6 is amended to reflect nonsubstantive
10 reorganization of the statutes governing control of deadly weapons.

11 **Bus. & Prof. Code § 17533.9 (amended). Advertising for sale of tear gas, tear gas devices,**
12 **and tear gas weapons**

13 SEC. ____ . Section 17533.9 of the Business and Professions Code is amended to
14 read:

15 17533.9. It shall be unlawful for any person, firm, corporation, or association, in
16 any newspaper, magazine, circular, form letter, or open publication, published,
17 distributed, or circulated in this state, including over the Internet, or on any
18 billboard, card, label, or other advertising medium, or by means of any other
19 advertising device, to advertise the sale of tear gas, tear gas devices, and tear gas
20 weapons, as defined in Sections ~~12401 and 12402~~ 17240 and 17250 of the Penal
21 Code, unless there is conspicuously displayed or stated in connection with the
22 name and description of that tear gas, or those tear gas weapons or devices, a
23 direct and unequivocal statement that will clearly indicate that possession or
24 transportation of tear gas and tear gas weapons or devices is prohibited by law
25 unless specifically exempted or permitted pursuant to the authority contained in
26 ~~Chapter 4 (commencing with Section 12401) of Title 2 of Part 4~~ Division 11
27 (commencing with Section 22810) of Title 3 of Part 6 of the Penal Code.

28 **Comment.** Section 17533.9 is amended to reflect nonsubstantive reorganization of the statutes
29 governing control of deadly weapons.

30 **Bus. & Prof. Code § 21626 (amended). “Secondhand dealer” and “coin dealer”**

31 SEC. ____ . Section 21626 of the Business and Professions Code is amended to
32 read:

33 21626. (a) A “secondhand dealer,” as used in this article, means and includes
34 any person, copartnership, firm, or corporation whose business includes buying,
35 selling, trading, taking in pawn, accepting for sale on consignment, accepting for
36 auctioning, or auctioning secondhand tangible personal property. A “secondhand
37 dealer” does not include a “coin dealer” or participants at gun shows or events, as
38 defined in Section 478.100 of Title 27 of the Code of Federal Regulations, or its
39 successor, who are not required to be licensed pursuant to ~~Section 12071~~ Sections
40 26700 to 26915, inclusive, of the Penal Code, who are acting in compliance with
41 the requirements of ~~Section 12070 and subdivision (d) of Section 12072~~ Section

1 27545 of the Penal Code and Article 2 (commencing with Section 26500) of
2 Chapter 1 of Division 6 of Title 4 of Part 6 of the Penal Code, and who are not a
3 “Gun Show Trader,” as described in paragraph (5) of subdivision (b) of Section
4 12070 Sections 16620 and 26525 of the Penal Code.

5 (b) As used in this section, a “coin dealer” means any person, firm, partnership,
6 or corporation whose principal business is the buying, selling, and trading of
7 coins, monetized bullion, or commercial grade ingots of gold, or silver, or other
8 precious metals.

9 **Comment.** Subdivision (a) of Section 21626 is amended to reflect nonsubstantive
10 reorganization of the statutes governing control of deadly weapons.

11 **Bus. & Prof. Code § 21641 (amended). License to engage in business of secondhand dealer**

12 SEC. ____ . Section 21641 of the Business and Professions Code is amended to
13 read:

14 21641. (a) The chief of police, the sheriff or, where appropriate, the police
15 commission, shall accept an application for and grant a license permitting the
16 licensee to engage in the business of secondhand dealer, as defined in Section
17 21626, to an applicant who has not been convicted of an attempt to receive stolen
18 property or any other offense involving stolen property. Prior to the granting of a
19 license, the licensing authority shall submit the application to the Department of
20 Justice. If the Department of Justice does not comment on the application within
21 30 days thereafter, the licensing authority may grant the applicant a license. All
22 forms for application and licensure, and license renewal, shall be prescribed and
23 provided by the Department of Justice. A fee may be charged to the applicant as
24 specified by the Department of Justice and the local licensing authority for
25 processing the initial license application.

26 (b) For the purposes of this section, “convicted” means a plea or verdict of
27 guilty or a conviction following a plea of nolo contendere.

28 (c) Notwithstanding subdivisions (a) and (b), no person shall be denied a
29 secondhand dealer’s license solely on the grounds that he or she violated any
30 provision contained in Article 4 (commencing with Section 21625) or Article 5
31 (commencing with Section 21650) of this chapter, or any provision contained in
32 Chapter 2 (commencing with Section 21200) of Division 8 of the Financial Code,
33 unless the violation demonstrates a pattern of conduct.

34 (d) Any person licensed as a firearms dealer pursuant to ~~Section 12071~~ Sections
35 26700 to 26915, inclusive, of the Penal Code, who is conducting business at gun
36 shows or events pursuant to ~~subparagraph (B) of paragraph (1) of subdivision (b)~~
37 ~~of Section 12071~~ subdivision (b) of Section 26805 of the Penal Code, and who has
38 a valid secondhand dealer license granted by the appropriate local authorities in
39 the jurisdiction where the firearms dealer license has been granted, shall be
40 authorized to conduct business as a secondhand dealer at any gun show or event,
41 as defined in Section 478.100 of Title 27 of the Code of Federal Regulations, or its
42 successor, without regard to the jurisdiction within this state that issued the

1 secondhand dealer license pursuant to subdivision (a) of this section. No additional
2 fees or separate secondhand dealer license shall be required by any agency having
3 jurisdiction over the locality where the gun show or event is conducted. However,
4 the person shall otherwise be subject to, and comply with, the requirements of this
5 article when he or she acts as a secondhand dealer at the gun show or event to the
6 same extent as if he or she were licensed as a secondhand dealer in the jurisdiction
7 in which the gun show or event is being conducted.

8 **Comment.** Subdivision (d) of Section 21641 is amended to reflect nonsubstantive
9 reorganization of the statutes governing control of deadly weapons.

CIVIL CODE

10 **Civ. Code § 3485 (amended). Abatement of nuisance on real property**

11 SEC. ____ . Section 3485 of the Civil Code is amended to read:

12 3485. (a) To abate the nuisance caused by illegal conduct involving an unlawful
13 weapons or ammunition purpose on real property, the city prosecutor or city
14 attorney may file, in the name of the people, an action for unlawful detainer
15 against any person who is in violation of the nuisance or illegal purpose provisions
16 of subdivision 4 of Section 1161 of the Code of Civil Procedure, with respect to
17 that unlawful weapons or ammunition purpose. In filing this action, which shall be
18 based upon an arrest report or other report by a law enforcement agency, reporting
19 an offense committed on the property and documented by the observations of a
20 police officer, the city prosecutor or city attorney shall use the procedures set forth
21 in Chapter 4 (commencing with Section 1159) of Title 3 of Part 3 of the Code of
22 Civil Procedure, except that in cases filed under this section, the following also
23 shall apply:

24 (1)(A) Prior to filing an action pursuant to this section, the city prosecutor or
25 city attorney shall give 30 calendar days' written notice to the owner, requiring the
26 owner to file an action for the removal of the person who is in violation of the
27 nuisance or illegal purpose provisions of subdivision 4 of Section 1161 of the
28 Code of Civil Procedure with respect to an unlawful weapons or ammunition
29 purpose.

30 (B) This notice shall include sufficient documentation establishing a violation of
31 the nuisance or illegal purpose provisions of subdivision 4 of Section 1161 of the
32 Code of Civil Procedure and shall be served upon the owner and the tenant in
33 accordance with subdivision (e).

34 (C) The notice to the tenant shall also include on the bottom of its front page, in
35 at least 14-point bold type, the following:

36 "Notice to Tenant: This notice is not a notice of eviction. However, you should
37 know that an eviction action may soon be filed in court against you for an
38 unlawful weapons or ammunition activity, as described above. You should call
39 (insert name and telephone number of the city attorney or prosecutor pursuing the

1 action) or a legal assistance provider to stop the eviction action if any of the
2 following is applicable:

- 3 (i) You are not the person named in this notice.
- 4 (ii) The person named in the notice does not live with you.
- 5 (iii) The person named in the notice has permanently moved.
- 6 (iv) You do not know the person named in the notice.
- 7 (v) You have any other legal defense or legal reason to stop the eviction action.

8 A list of legal assistance providers is attached to this notice. Some provide free
9 legal help if you are eligible.”

10 (D) The owner shall, within 30 calendar days of the mailing of the written
11 notice, either provide the city prosecutor or city attorney with all relevant
12 information pertaining to the unlawful detainer case, or provide a written
13 explanation setting forth any safety-related reasons for noncompliance, and an
14 assignment to the city prosecutor or city attorney of the right to bring an unlawful
15 detainer action against the tenant.

16 (E) The assignment shall be on a form provided by the city prosecutor or city
17 attorney and may contain a provision for costs of investigation, discovery, and
18 reasonable attorney’s fees, in an amount not to exceed six hundred dollars (\$600).

19 (F) If the city prosecutor or city attorney accepts the assignment of the right of
20 the owner to bring the unlawful detainer action, the owner shall retain all other
21 rights and duties, including the handling of the tenant’s personal property,
22 following issuance of the writ of possession and its delivery to and execution by
23 the appropriate agency.

24 (2) Upon the failure of the owner to file an action pursuant to this section, or to
25 respond to the city prosecutor or city attorney as provided in paragraph (1), or
26 having filed an action, if the owner fails to prosecute it diligently and in good
27 faith, the city prosecutor or city attorney may file and prosecute the action, and
28 join the owner as a defendant in the action. This action shall have precedence over
29 any similar proceeding thereafter brought by the owner, or to one previously
30 brought by the owner and not prosecuted diligently and in good faith. Service of
31 the summons and complaint upon the defendant owner shall be in accordance with
32 Sections 415.10, 415.20, 415.30, 415.40, and 415.50 of the Code of Civil
33 Procedure.

34 (3) If a jury or court finds the defendant tenant guilty of unlawful detainer in a
35 case filed pursuant to paragraph (2), the city prosecutor or city attorney may be
36 awarded costs, including the costs of investigation and discovery and reasonable
37 attorney’s fees. These costs shall be assessed against the defendant owner, to
38 whom notice was directed pursuant to paragraph (1), and once an abstract of
39 judgment is recorded, it shall constitute a lien on the subject real property.

40 (4) This article shall not prevent a local governing body from adopting and
41 enforcing laws, consistent with this article, relating to weapons or ammunition
42 abatement. If local laws duplicate or supplement this article, this article shall be
43 construed as providing alternative remedies and not preempting the field.

1 (5) This article shall not prevent a tenant from receiving relief against a
2 forfeiture of a lease pursuant to Section 1179 of the Code of Civil Procedure.

3 (b) In any proceeding brought under this section, the court may, upon a showing
4 of good cause, issue a partial eviction ordering the removal of any person,
5 including, but not limited to, members of the tenant's household if the court finds
6 that the person has engaged in the activities described in subdivision (a). Persons
7 removed pursuant to this section may be permanently barred from returning to or
8 reentering any portion of the entire premises. The court may further order as an
9 express condition of the tenancy that the remaining tenants shall not give
10 permission to or invite any person who has been removed pursuant to this
11 subdivision to return to or reenter any portion of the entire premises.

12 (c) For purposes of this section, "unlawful weapons or ammunition purpose"
13 means the illegal use, manufacture, causing to be manufactured, importation,
14 possession, possession for sale, sale, furnishing, or giving away of any of the
15 following:

16 (1) A firearm, as defined in subdivision ~~(b) of Section 12001~~ (a) of Section
17 16520 of the Penal Code.

18 (2) Any ammunition, as defined in ~~paragraph (2) of subdivision (b) of Section~~
19 ~~12316 or subdivisions (a) and (b) of Section 12323~~ subdivision (b) of Section
20 16150 of the Penal Code or in Section 16650 or 16660 of the Penal Code.

21 (3) Any assault weapon, as defined in Section ~~12276, 12276.1, or 12276.5~~
22 30510 or 30515 of the Penal Code.

23 (4) Any .50 BMG rifle, as defined in Section ~~12278~~ 16110 of the Penal Code.

24 (5) Any tear gas weapon, as defined in Section ~~12402~~ 17250 of the Penal Code.

25 (d) Notwithstanding subdivision (b) of Section 68097.2 of the Government
26 Code, a public entity may waive all or part of the costs incurred in furnishing the
27 testimony of a peace officer in an unlawful detainer action brought pursuant to this
28 section.

29 (e) The notice and documentation described in paragraph (1) of subdivision (a)
30 shall be given in writing and may be given either by personal delivery or by
31 deposit in the United States mail in a sealed envelope, postage prepaid, addressed
32 to the owner at the address known to the public entity giving the notice, or as
33 shown on the last equalized assessment roll, if not known. Separate notice of not
34 less than 30 calendar days and documentation shall be provided to the tenant in
35 accordance with this subdivision. Service by mail shall be deemed to be completed
36 at the time of deposit in the United States mail. Proof of giving the notice may be
37 made by a declaration signed under penalty of perjury by any employee of the
38 public entity which shows service in conformity with this section.

39 (f) This section shall apply only to the following courts:

40 (1) In the County of Los Angeles, any court having jurisdiction over unlawful
41 detainer cases involving real property situated in the City of Los Angeles or the
42 City of Long Beach.

1 (2) In the County of San Diego, any court having jurisdiction over unlawful
2 detainer cases involving real property situated in the City of San Diego.

3 (3) In the County of Alameda, any court with jurisdiction over unlawful detainer
4 cases involving real property situated in the City of Oakland.

5 (4) In the County of Sacramento, any court with jurisdiction over unlawful
6 detainer cases involving real property situated in the City of Sacramento.

7 (g)(1) The city attorney and city prosecutor of each participating jurisdiction
8 shall provide to the Judicial Council the following information:

9 (A) The number of notices provided pursuant to paragraph (1) of subdivision
10 (a).

11 (B) The number of cases filed by an owner, upon notice.

12 (C) The number of assignments executed by owners to the city attorney or city
13 prosecutor.

14 (D) The number of three-day, 30-day, or 60-day notices issued by the city
15 attorney or city prosecutor.

16 (E) The number of cases filed by the city attorney or city prosecutor.

17 (F) The number of times that an owner is joined as a defendant pursuant to this
18 section.

19 (G) As to each case filed by an owner, the city attorney, or the city prosecutor,
20 the following information:

21 (i) The number of judgments ordering an eviction or partial eviction, and
22 specifying whether each was a default judgment, stipulated judgment, or judgment
23 following trial.

24 (ii) The number of cases, listed by separate categories, in which the case was
25 withdrawn or in which the tenant prevailed.

26 (iii) The number of other dispositions, and specifying the disposition.

27 (iv) The number of defendants represented by counsel.

28 (v) Whether the case was a trial by the court or a trial by a jury.

29 (vi) Whether an appeal was taken, and, if so, the result of the appeal.

30 (vii) The number of cases in which partial eviction was requested, and the
31 number of cases in which the court ordered a partial eviction.

32 (H) As to each case in which a notice was issued, but no case was filed, the
33 following information:

34 (i) The number of instances in which a tenant voluntarily vacated.

35 (ii) The number of instances in which a tenant vacated a unit prior to the
36 providing of the notice.

37 (iii) The number of cases in which the notice provided pursuant to subdivision
38 (a) was erroneously sent to the tenant. This shall include a list of the reasons, if
39 known, for the erroneously sent notice, such as reliance on information on the
40 suspected violator's name or address that was incorrect, a clerical error, or any
41 other reason.

42 (iv) The number of other resolutions, and specifying the type of resolution.

1 (2)(A) Information compiled pursuant to this section shall be reported annually
2 to the Judicial Council on or before January 30 of each year.

3 (B) The Judicial Council shall thereafter submit a brief report to the Senate and
4 Assembly Committees on Judiciary on or before April 15, 2009, summarizing the
5 information collected pursuant to this section and evaluating the merits of the pilot
6 programs established by this section. The report for this section may be combined
7 with the Judicial Council report submitted for the pilot program established by
8 Section 11571.1 of the Health and Safety Code.

9 (h) This section shall remain in effect only until January 1, 2010, and as of that
10 date is repealed, unless a later enacted statute, ~~that~~ which is enacted before January
11 1, 2010, deletes or extends that date.

12 **Comment.** Subdivision (c) of Section 3485 is amended to reflect nonsubstantive
13 reorganization of the statutes governing control of deadly weapons.

14 Subdivision (h) is amended to make a technical revision.

15 **Staff Note.** By its terms, Civil Code Section 3485 is scheduled to sunset on January 1, 2010.
16 If that occurs, the amendment shown above will not be necessary.

CODE OF CIVIL PROCEDURE

17 **Code Civ. Proc. § 527.6 (amended). Temporary restraining order and injunction** 18 **prohibiting harassment**

19 SEC. ____ . Section 527.6 of the Code of Civil Procedure is amended to read:

20 527.6. (a) A person who has suffered harassment as defined in subdivision (b)
21 may seek a temporary restraining order and an injunction prohibiting harassment
22 as provided in this section.

23 (b) For the purposes of this section, “harassment” is unlawful violence, a
24 credible threat of violence, or a knowing and willful course of conduct directed at
25 a specific person that seriously alarms, annoys, or harasses the person, and that
26 serves no legitimate purpose. The course of conduct must be such as would cause
27 a reasonable person to suffer substantial emotional distress, and must actually
28 cause substantial emotional distress to the plaintiff.

29 As used in this subdivision:

30 (1) “Unlawful violence” is any assault or battery, or stalking as prohibited in
31 Section 646.9 of the Penal Code, but shall not include lawful acts of self-defense
32 or defense of others.

33 (2) “Credible threat of violence” is a knowing and willful statement or course of
34 conduct that would place a reasonable person in fear for his or her safety, or the
35 safety of his or her immediate family, and that serves no legitimate purpose.

36 (3) “Course of conduct” is a pattern of conduct composed of a series of acts over
37 a period of time, however short, evidencing a continuity of purpose, including
38 following or stalking an individual, making harassing telephone calls to an
39 individual, or sending harassing correspondence to an individual by any means,
40 including, but not limited to, the use of public or private mails, interoffice mail,

1 fax, or computer e-mail. Constitutionally protected activity is not included within
2 the meaning of “course of conduct.”

3 (c) Upon filing a petition for an injunction under this section, the plaintiff may
4 obtain a temporary restraining order in accordance with Section 527, except to the
5 extent this section provides a rule that is inconsistent. A temporary restraining
6 order may be issued with or without notice upon an affidavit that, to the
7 satisfaction of the court, shows reasonable proof of harassment of the plaintiff by
8 the defendant, and that great or irreparable harm would result to the plaintiff. In
9 the discretion of the court, and on a showing of good cause, a temporary
10 restraining order or injunction, issued under this section may include other named
11 family or household members who reside with the plaintiff. A temporary
12 restraining order issued under this section shall remain in effect, at the court’s
13 discretion, for a period not to exceed 15 days, or, if the court extends the time for
14 hearing under subdivision (d), not to exceed 22 days, unless otherwise modified or
15 terminated by the court.

16 (d) Within 15 days, or, if good cause appears to the court, 22 days from the date
17 the temporary restraining order is issued, a hearing shall be held on the petition for
18 the injunction. The defendant may file a response that explains, excuses, justifies,
19 or denies the alleged harassment or may file a cross-complaint under this section.
20 At the hearing, the judge shall receive any testimony that is relevant, and may
21 make an independent inquiry. If the judge finds by clear and convincing evidence
22 that unlawful harassment exists, an injunction shall issue prohibiting the
23 harassment. An injunction issued pursuant to this section shall have a duration of
24 not more than three years. At any time within the three months before the
25 expiration of the injunction, the plaintiff may apply for a renewal of the injunction
26 by filing a new petition for an injunction under this section.

27 (e) This section does not preclude either party from representation by private
28 counsel or from appearing on the party’s own behalf.

29 (f) In a proceeding under this section if there are allegations or threats of
30 domestic violence, a support person may accompany a party in court and, if the
31 party is not represented by an attorney, may sit with the party at the table that is
32 generally reserved for the party and the party’s attorney. The support person is
33 present to provide moral and emotional support for a person who alleges he or she
34 is a victim of domestic violence. The support person is not present as a legal
35 adviser and may not provide legal advice. The support person may assist the
36 person who alleges he or she is a victim of domestic violence in feeling more
37 confident that he or she will not be injured or threatened by the other party during
38 the proceedings if the person who alleges he or she is a victim of domestic
39 violence and the other party are required to be present in close proximity. This
40 subdivision does not preclude the court from exercising its discretion to remove
41 the support person from the courtroom if the court believes the support person is
42 prompting, swaying, or influencing the party assisted by the support person.

1 (g) Upon the filing of a petition for an injunction under this section, the
2 defendant shall be personally served with a copy of the petition, temporary
3 restraining order, if any, and notice of hearing of the petition. Service shall be
4 made at least five days before the hearing. The court may for good cause, on
5 motion of the plaintiff or on its own motion, shorten the time for service on the
6 defendant.

7 (h) The court shall order the plaintiff or the attorney for the plaintiff to deliver a
8 copy of each temporary restraining order or injunction, or modification or
9 termination thereof, granted under this section, by the close of the business day on
10 which the order was granted, to the law enforcement agencies within the court's
11 discretion as are requested by the plaintiff. Each appropriate law enforcement
12 agency shall make available information as to the existence and current status of
13 these orders to law enforcement officers responding to the scene of reported
14 harassment.

15 An order issued under this section shall, on request of the plaintiff, be served on
16 the defendant, whether or not the defendant has been taken into custody, by any
17 law enforcement officer who is present at the scene of reported harassment
18 involving the parties to the proceeding. The plaintiff shall provide the officer with
19 an endorsed copy of the order and a proof of service that the officer shall complete
20 and send to the issuing court.

21 Upon receiving information at the scene of an incident of harassment that a
22 protective order has been issued under this section, or that a person who has been
23 taken into custody is the subject of an order, if the protected person cannot
24 produce a certified copy of the order, a law enforcement officer shall immediately
25 attempt to verify the existence of the order.

26 If the law enforcement officer determines that a protective order has been
27 issued, but not served, the officer shall immediately notify the defendant of the
28 terms of the order and shall at that time also enforce the order. Verbal notice of the
29 terms of the order shall constitute service of the order and is sufficient notice for
30 the purposes of this section and for the purposes of Section 273.6 and ~~subdivision~~
31 ~~(g) of Section 12021~~ Section 29825 of the Penal Code.

32 (i) The prevailing party in any action brought under this section may be awarded
33 court costs and attorney's fees, if any.

34 (j) Any willful disobedience of any temporary restraining order or injunction
35 granted under this section is punishable pursuant to Section 273.6 of the Penal
36 Code.

37 (k)(1) A person subject to a protective order issued under this section shall not
38 own, possess, purchase, receive, or attempt to purchase or receive a firearm while
39 the protective order is in effect.

40 (2) The court shall order a person subject to a protective order issued under this
41 section to relinquish any firearms he or she owns or possesses pursuant to Section
42 527.9.

1 (3) Every person who owns, possesses, purchases or receives, or attempts to
2 purchase or receive a firearm while the protective order is in effect is punishable
3 pursuant to ~~subdivision (g) of Section 12021~~ Section 29825 of the Penal Code.

4 (l) This section does not apply to any action or proceeding covered by Title 1.6C
5 (commencing with Section 1788) of the Civil Code or by Division 10
6 (commencing with Section 6200) of the Family Code. This section does not
7 preclude a plaintiff from using other existing civil remedies.

8 (m) The Judicial Council shall promulgate forms and instructions therefor, and
9 rules for service of process, scheduling of hearings, and any other matters required
10 by this section. The petition and response forms shall be simple and concise, and
11 their use by parties in actions brought pursuant to this section shall be mandatory.

12 (n) A temporary restraining order or injunction relating to harassment or
13 domestic violence issued by a court pursuant to this section shall be issued on
14 forms adopted by the Judicial Council of California and that have been approved
15 by the Department of Justice pursuant to subdivision (i) of Section 6380 of the
16 Family Code. However, the fact that an order issued by a court pursuant to this
17 section was not issued on forms adopted by the Judicial Council and approved by
18 the Department of Justice shall not, in and of itself, make the order unenforceable.

19 (o) Information on any temporary restraining order or injunction relating to
20 harassment or domestic violence issued by a court pursuant to this section shall be
21 transmitted to the Department of Justice in accordance with subdivision (b) of
22 Section 6380 of the Family Code.

23 (p) There is no filing fee for a petition that alleges that a person has inflicted or
24 threatened violence against the petitioner, or stalked the petitioner, or acted or
25 spoken in any other manner that has placed the petitioner in reasonable fear of
26 violence, and that seeks a protective or restraining order or injunction restraining
27 stalking or future violence or threats of violence, in any action brought pursuant to
28 this section. No fee shall be paid for a subpoena filed in connection with a petition
29 alleging these acts. No fee shall be paid for filing a response to a petition alleging
30 these acts.

31 (q)(1) Subject to paragraph (4) of subdivision (b) of Section 6103.2 of the
32 Government Code, there shall be no fee for the service of process of a protective
33 order, restraining order, or injunction to be issued, if any of the following
34 conditions apply:

35 (A) The protective order, restraining order, or injunction issued pursuant to this
36 section is based upon stalking, as prohibited by Section 646.9 of the Penal Code.

37 (B) The protective order, restraining order, or injunction issued pursuant to this
38 section is based upon a credible threat of violence.

39 (C) The protective order, restraining order, or injunction is issued pursuant to
40 Section 6222 of the Family Code.

41 (2) The Judicial Council shall prepare and develop application forms for
42 applicants who wish to avail themselves of the services described in this
43 subdivision.

1 **Comment.** Subdivisions (h) and (k) of Section 527.6 are amended to reflect nonsubstantive
2 reorganization of the statutes governing control of deadly weapons.

3 **Code Civ. Proc. § 527.8 (amended). Temporary restraining order and injunction on behalf**
4 **of employee**

5 SEC. ____ . Section 527.8 of the Code of Civil Procedure is amended to read:

6 527.8. (a) Any employer, whose employee has suffered unlawful violence or a
7 credible threat of violence from any individual, that can reasonably be construed
8 to be carried out or to have been carried out at the workplace, may seek a
9 temporary restraining order and an injunction on behalf of the employee and, at
10 the discretion of the court, any number of other employees at the workplace, and,
11 if appropriate, other employees at other workplaces of the employer.

12 (b) For the purposes of this section:

13 (1) “Unlawful violence” is any assault or battery, or stalking as prohibited in
14 Section 646.9 of the Penal Code, but shall not include lawful acts of self-defense
15 or defense of others.

16 (2) “Credible threat of violence” is a knowing and willful statement or course of
17 conduct that would place a reasonable person in fear for his or her safety, or the
18 safety of his or her immediate family, and that serves no legitimate purpose.

19 (3) “Course of conduct” is a pattern of conduct composed of a series of acts over
20 a period of time, however short, evidencing a continuity of purpose, including
21 following or stalking an employee to or from the place of work; entering the
22 workplace; following an employee during hours of employment; making
23 telephone calls to an employee; or sending correspondence to an employee by any
24 means, including, but not limited to, the use of the public or private mails,
25 interoffice mail, fax, or computer e-mail.

26 (c) This section does not permit a court to issue a temporary restraining order or
27 injunction prohibiting speech or other activities that are constitutionally protected,
28 or otherwise protected by Section 527.3 or any other provision of law.

29 (d) For purposes of this section, the terms “employer” and “employee” mean
30 persons defined in Section 350 of the Labor Code. “Employer” also includes a
31 federal agency, the state, a state agency, a city, county, or district, and a private,
32 public, or quasi-public corporation, or any public agency thereof or therein.
33 “Employee” also includes the members of boards of directors of private, public,
34 and quasi-public corporations and elected and appointed public officers. For
35 purposes of this section only, “employee” also includes a volunteer or independent
36 contractor who performs services for the employer at the employer’s worksite.

37 (e) Upon filing a petition for an injunction under this section, the plaintiff may
38 obtain a temporary restraining order in accordance with subdivision (a) of Section
39 527, if the plaintiff also files an affidavit that, to the satisfaction of the court,
40 shows reasonable proof that an employee has suffered unlawful violence or a
41 credible threat of violence by the defendant, and that great or irreparable harm
42 would result to an employee. In the discretion of the court, and on a showing of

1 good cause, a temporary restraining order or injunction issued under this section
2 may include other named family or household members who reside with the
3 employee, or other persons employed at his or her workplace or workplaces.

4 A temporary restraining order granted under this section shall remain in effect,
5 at the court's discretion, for a period not to exceed 15 days, unless otherwise
6 modified or terminated by the court.

7 (f) Within 15 days of the filing of the petition, a hearing shall be held on the
8 petition for the injunction. The defendant may file a response that explains,
9 excuses, justifies, or denies the alleged unlawful violence or credible threats of
10 violence or may file a cross-complaint under this section. At the hearing, the judge
11 shall receive any testimony that is relevant and may make an independent inquiry.
12 Moreover, if the defendant is a current employee of the entity requesting the
13 injunction, the judge shall receive evidence concerning the employer's decision to
14 retain, terminate, or otherwise discipline the defendant. If the judge finds by clear
15 and convincing evidence that the defendant engaged in unlawful violence or made
16 a credible threat of violence, an injunction shall issue prohibiting further unlawful
17 violence or threats of violence. An injunction issued pursuant to this section shall
18 have a duration of not more than three years. At any time within the three months
19 before the expiration of the injunction, the plaintiff may apply for a renewal of the
20 injunction by filing a new petition for an injunction under this section.

21 (g) This section does not preclude either party from representation by private
22 counsel or from appearing on his or her own behalf.

23 (h) Upon filing of a petition for an injunction under this section, the defendant
24 shall be personally served with a copy of the petition, temporary restraining order,
25 if any, and notice of hearing of the petition. Service shall be made at least five
26 days before the hearing. The court may, for good cause, on motion of the plaintiff
27 or on its own motion, shorten the time for service on the defendant.

28 (i)(1) The court shall order the plaintiff or the attorney for the plaintiff to deliver
29 a copy of each temporary restraining order or injunction, or modification or
30 termination thereof, granted under this section, by the close of the business day on
31 which the order was granted, to the law enforcement agencies within the court's
32 discretion as are requested by the plaintiff. Each appropriate law enforcement
33 agency shall make available information as to the existence and current status of
34 these orders to law enforcement officers responding to the scene of reported
35 unlawful violence or a credible threat of violence.

36 (2) At the request of the plaintiff, an order issued under this section shall be
37 served on the defendant, regardless of whether the defendant has been taken into
38 custody, by any law enforcement officer who is present at the scene of reported
39 unlawful violence or a credible threat of violence involving the parties to the
40 proceedings. The plaintiff shall provide the officer with an endorsed copy of the
41 order and proof of service that the officer shall complete and send to the issuing
42 court.

1 (3) Upon receiving information at the scene of an incident of unlawful violence
2 or a credible threat of violence that a protective order has been issued under this
3 section, or that a person who has been taken into custody is the subject of an order,
4 if the plaintiff or the protected person cannot produce an endorsed copy of the
5 order, a law enforcement officer shall immediately attempt to verify the existence
6 of the order.

7 (4) If the law enforcement officer determines that a protective order has been
8 issued, but not served, the officer shall immediately notify the defendant of the
9 terms of the order and obtain the defendant's address. The law enforcement officer
10 shall at that time also enforce the order, but may not arrest or take the defendant
11 into custody for acts in violation of the order that were committed prior to the
12 verbal notice of the terms and conditions of the order. The law enforcement
13 officer's verbal notice of the terms of the order shall constitute service of the order
14 and constitutes sufficient notice for the purposes of this section and for the
15 purposes of Section 273.6 and ~~subdivision (g) of Section 12021~~ Section 29825
16 of the Penal Code. The plaintiff shall mail an endorsed copy of the order to the
17 defendant's mailing address provided to the law enforcement officer within one
18 business day of the reported incident of unlawful violence or a credible threat of
19 violence at which a verbal notice of the terms of the order was provided by a law
20 enforcement officer.

21 (j)(1) A person subject to a protective order issued under this section shall not
22 own, possess, purchase, receive, or attempt to purchase or receive a firearm while
23 the protective order is in effect.

24 (2) The court shall order a person subject to a protective order issued under this
25 section to relinquish any firearms he or she owns or possesses pursuant to Section
26 527.9.

27 (3) Every person who owns, possesses, purchases or receives, or attempts to
28 purchase or receive a firearm while the protective order is in effect is punishable
29 pursuant to ~~subdivision (g) of Section 12021~~ Section 29825 of the Penal Code.

30 (k) Any intentional disobedience of any temporary restraining order or
31 injunction granted under this section is punishable pursuant to Section 273.6 of the
32 Penal Code.

33 (l) Nothing in this section may be construed as expanding, diminishing, altering,
34 or modifying the duty, if any, of an employer to provide a safe workplace for
35 employees and other persons.

36 (m) The Judicial Council shall develop forms, instructions, and rules for
37 scheduling of hearings and other procedures established pursuant to this section.
38 The forms for the petition and response shall be simple and concise, and their use
39 by parties in actions brought pursuant to this section shall be mandatory.

40 (n) A temporary restraining order or injunction relating to harassment or
41 domestic violence issued by a court pursuant to this section shall be issued on
42 forms adopted by the Judicial Council of California and that have been approved
43 by the Department of Justice pursuant to subdivision (i) of Section 6380 of the

1 Family Code. However, the fact that an order issued by a court pursuant to this
2 section was not issued on forms adopted by the Judicial Council and approved by
3 the Department of Justice shall not, in and of itself, make the order unenforceable.

4 (o) Information on any temporary restraining order or injunction relating to
5 harassment or domestic violence issued by a court pursuant to this section shall be
6 transmitted to the Department of Justice in accordance with subdivision (b) of
7 Section 6380 of the Family Code.

8 (p) There is no filing fee for a petition that alleges that a person has inflicted or
9 threatened violence against an employee of the petitioner, or stalked the employee,
10 or acted or spoken in any other manner that has placed the employee in reasonable
11 fear of violence, and that seeks a protective or restraining order or injunction
12 restraining stalking or future violence or threats of violence, in any action brought
13 pursuant to this section. No fee shall be paid for a subpoena filed in connection
14 with a petition alleging these acts. No fee shall be paid for filing a response to a
15 petition alleging these acts.

16 (q)(1) Subject to paragraph (4) of subdivision (b) of Section 6103.2 of the
17 Government Code, there shall be no fee for the service of process of a temporary
18 restraining order or injunction to be issued pursuant to this section if either of the
19 following conditions apply:

20 (A) The temporary restraining order or injunction issued pursuant to this section
21 is based upon stalking, as prohibited by Section 646.9 of the Penal Code.

22 (B) The temporary restraining order or injunction issued pursuant to this section
23 is based upon a credible threat of violence.

24 (2) The Judicial Council shall prepare and develop application forms for
25 applicants who wish to avail themselves of the services described in this
26 subdivision.

27 **Comment.** Subdivisions (i) and (j) of Section 527.8 are amended to reflect nonsubstantive
28 reorganization of the statutes governing control of deadly weapons.

29 **Code Civ. Proc. § 527.9 (amended). Relinquishment of firearms by order or injunction**

30 SEC. _____. Section 527.9 of the Code of Civil Procedure is amended to read:

31 527.9. (a) A person subject to a temporary restraining order or injunction issued
32 pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, or subject to a
33 restraining order issued pursuant to Section 136.2 of the Penal Code, or Section
34 15657.03 of the Welfare and Institutions Code, shall relinquish the firearm
35 pursuant to this section.

36 (b) Upon the issuance of a protective order pursuant to subdivision (a), the court
37 shall order the person to relinquish any firearm in that person's immediate
38 possession or control, or subject to that person's immediate possession or control,
39 within 24 hours of being served with the order, either by surrendering the firearm
40 to the control of local law enforcement officials, or by selling the firearm to a
41 licensed gun dealer, as specified in ~~Section 12071~~ Sections 26700 to 26915,
42 inclusive, of the Penal Code. A person ordered to relinquish any firearm pursuant

1 to this subdivision shall file with the court a receipt showing the firearm was
2 surrendered to the local law enforcement agency or sold to a licensed gun dealer
3 within 48 hours after receiving the order.

4 In the event that it is necessary to continue the date of any hearing due to a
5 request for a relinquishment order pursuant to this section, the court shall ensure
6 that all applicable protective orders described in Section 6218 of the Family Code
7 remain in effect or bifurcate the issues and grant the permanent restraining order
8 pending the date of the hearing.

9 (c) A local law enforcement agency may charge the person subject to the order
10 or injunction a fee for the storage of any firearm relinquished pursuant to this
11 section. The fee shall not exceed the actual cost incurred by the local law
12 enforcement agency for the storage of the firearm. For purposes of this
13 subdivision, “actual cost” means expenses directly related to taking possession of
14 a firearm, storing the firearm, and surrendering possession of the firearm to a
15 licensed dealer as defined in Section ~~12071~~ 26700 of the Penal Code or to the
16 person relinquishing the firearm.

17 (d) The restraining order requiring a person to relinquish a firearm pursuant to
18 subdivision (b) shall state on its face that the respondent is prohibited from
19 owning, possessing, purchasing, or receiving a firearm while the protective order
20 is in effect and that the firearm shall be relinquished to the local law enforcement
21 agency for that jurisdiction or sold to a licensed gun dealer, and that proof of
22 surrender or sale shall be filed with the court within a specified period of receipt of
23 the order. The order shall also state on its face the expiration date for
24 relinquishment. Nothing in this section shall limit a respondent’s right under
25 existing law to petition the court at a later date for modification of the order.

26 (e) The restraining order requiring a person to relinquish a firearm pursuant to
27 subdivision (b) shall prohibit the person from possessing or controlling any
28 firearm for the duration of the order. At the expiration of the order, the local law
29 enforcement agency shall return possession of any surrendered firearm to the
30 respondent, within five days after the expiration of the relinquishment order,
31 unless the local law enforcement agency determines that (1) the firearm has been
32 stolen, (2) the respondent is prohibited from possessing a firearm because the
33 respondent is in any prohibited class for the possession of firearms, as defined in
34 ~~Sections 12021 and 12021.1~~ Chapter 2 (commencing with Section 29800) and
35 Chapter 3 (commencing with Section 29900) of Division 9 of Title 4 of Part 6 of
36 the Penal Code and Sections 8100 and 8103 of the Welfare and Institutions Code,
37 or (3) another successive restraining order is used against the respondent under
38 this section. If the local law enforcement agency determines that the respondent is
39 the legal owner of any firearm deposited with the local law enforcement agency
40 and is prohibited from possessing any firearm, the respondent shall be entitled to
41 sell or transfer the firearm to a licensed dealer as defined in Section ~~12071~~ 26700
42 of the Penal Code. If the firearm has been stolen, the firearm shall be restored to

1 the lawful owner upon his or her identification of the firearm and proof of
2 ownership.

3 (f) The court may, as part of the relinquishment order, grant an exemption from
4 the relinquishment requirements of this section for a particular firearm if the
5 respondent can show that a particular firearm is necessary as a condition of
6 continued employment and that the current employer is unable to reassign the
7 respondent to another position where a firearm is unnecessary. If an exemption is
8 granted pursuant to this subdivision, the order shall provide that the firearm shall
9 be in the physical possession of the respondent only during scheduled work hours
10 and during travel to and from his or her place of employment. In any case
11 involving a peace officer who as a condition of employment and whose personal
12 safety depends on the ability to carry a firearm, a court may allow the peace
13 officer to continue to carry a firearm, either on duty or off duty, if the court finds
14 by a preponderance of the evidence that the officer does not pose a threat of harm.
15 Prior to making this finding, the court shall require a mandatory psychological
16 evaluation of the peace officer and may require the peace officer to enter into
17 counseling or other remedial treatment program to deal with any propensity for
18 domestic violence.

19 (g) During the period of the relinquishment order, a respondent is entitled to
20 make one sale of all firearms that are in the possession of a local law enforcement
21 agency pursuant to this section. A licensed gun dealer, who presents a local law
22 enforcement agency with a bill of sale indicating that all firearms owned by the
23 respondent that are in the possession of the local law enforcement agency have
24 been sold by the respondent to the licensed gun dealer, shall be given possession
25 of those firearms, at the location where a respondent's firearms are stored, within
26 five days of presenting the local law enforcement agency with a bill of sale.

27 **Comment.** Section 527.9 is amended to reflect nonsubstantive reorganization of the statutes
28 governing control of deadly weapons.

EDUCATION CODE

29 **Educ. Code § 49330 (amended). Injurious objects defined**

30 SEC. ____ . Section 49330 of the Education Code is amended to read:

31 49330. (a) As used in this article "injurious object" shall mean those objects
32 specified in ~~Sections 653k, 12001, 12020, 12220, 12401, and 12402 of the Penal~~
33 ~~Code, and the following sections:~~

34 (1) Subdivision (b) of Section 16170 of the Penal Code.

35 (2) Section 16250 of the Penal Code.

36 (3) Subdivisions (a) to (d), inclusive, of Section 16520 of the Penal Code.

37 (4) Section 16530 of the Penal Code.

38 (5) Section 16590 of the Penal Code.

39 (6) Section 16640 of the Penal Code.

40 (7) Subdivision (a) of Section 16840 of the Penal Code.

1 (8) Section 17235 of the Penal Code.

2 (9) Section 17240 of the Penal Code.

3 (10) Section 17250 of the Penal Code.

4 (11) Section 32625 of the Penal Code.

5 (b) As used in this article, “injurious object” shall also mean objects capable of
6 inflicting substantial bodily damage, not necessary for the academic purpose of the
7 pupil.

8 (c) As used in this section, “academic purpose” means any school sponsored
9 activity or class of instruction scheduled during the schoolday.

10 (d) “Injurious object” does not include any personal possessions or items of
11 apparel which a schoolage child reasonably may be expected either to have in his
12 or her possession or to wear.

13 **Comment.** Section 49330 is amended to reflect nonsubstantive reorganization of the statutes
14 governing control of deadly weapons. The section is also amended to make technical revisions.

15 **Staff Note.** Education Code Section 49330 includes a cross-reference to Penal Code Section
16 12220, which specifies some unlawful acts relating to machineguns. In drafting the conforming
17 revision shown above, we assumed that this cross-reference is correct and therefore replaced it
18 with a cross-reference to the provision that would continue the substance of Penal Code Section
19 12220 (proposed Penal Code Section 32625).

20 The staff suspects, however, that the Legislature actually intended to cross-refer not to Penal
21 Code Section 12220 but to Penal Code Section 12200, which defines “machinegun.” We would
22 appreciate input on whether this perception is correct, and whether to add this matter to the
23 Commission’s list of “Minor Clean-up Issues for Possible Future Legislative Attention.”

FAMILY CODE

24 **Fam. Code § 6383 (amended). Temporary restraining order or emergency protective order**
25 **issued at scene of domestic violence**

26 SEC. ____ . Section 6383 of the Family Code is amended to read:

27 6383. (a) A temporary restraining order or emergency protective order issued
28 under this part shall, on request of the petitioner, be served on the respondent,
29 whether or not the respondent has been taken into custody, by any law
30 enforcement officer who is present at the scene of reported domestic violence
31 involving the parties to the proceeding.

32 (b) The petitioner shall provide the officer with an endorsed copy of the order
33 and a proof of service that the officer shall complete and transmit to the issuing
34 court.

35 (c) It is a rebuttable presumption that the proof of service was signed on the date
36 of service.

37 (d) Upon receiving information at the scene of a domestic violence incident that
38 a protective order has been issued under this part, or that a person who has been
39 taken into custody is the respondent to that order, if the protected person cannot
40 produce an endorsed copy of the order, a law enforcement officer shall

1 immediately inquire of the Department of Justice Domestic Violence Restraining
2 Order System to verify the existence of the order.

3 (e) If the law enforcement officer determines that a protective order has been
4 issued, but not served, the officer shall immediately notify the respondent of the
5 terms of the order and where a written copy of the order can be obtained and the
6 officer shall, at that time, also enforce the order. The law enforcement officer's
7 verbal notice of the terms of the order shall constitute service of the order and is
8 sufficient notice for the purposes of this section and for the purposes of Section
9 273.6 and ~~subdivision (g) of Section 12021~~ Section 29825 of the Penal Code.

10 (f) If a report is required under Section 13730 of the Penal Code, or if no report
11 is required, then in the daily incident log, the officer shall provide the name and
12 assignment of the officer notifying the respondent pursuant to subdivision (e) and
13 the case number of the order.

14 (g) Upon service of the order outside of the court, a law enforcement officer
15 shall advise the respondent to go to the local court to obtain a copy of the order
16 containing the full terms and conditions of the order.

17 (h) There shall be no civil liability on the part of, and no cause of action for,
18 false arrest or false imprisonment against any peace officer who makes an arrest
19 pursuant to a protective or restraining order that is regular upon its face, if the
20 peace officer in making the arrest acts in good faith and has reasonable cause to
21 believe that the person against whom the order is issued has notice of the order
22 and has committed an act in violation of the order. If there is more than one civil
23 order regarding the same parties, the peace officer shall enforce the order that was
24 issued last. If there are both civil and criminal orders regarding the same parties,
25 the peace officer shall enforce the criminal order issued last, subject to the
26 provisions of subdivisions (h) and (i) of Section 136.2 of the Penal Code. Nothing
27 in this section shall be deemed to exonerate a peace officer from liability for the
28 unreasonable use of force in the enforcement of the order. The immunities
29 afforded by this section shall not affect the availability of any other immunity
30 which may apply, including, but not limited to, Sections 820.2 and 820.4 of the
31 Government Code.

32 **Comment.** Subdivision (e) of Section 6383 is amended to reflect nonsubstantive
33 reorganization of the statutes governing control of deadly weapons.

34 **Fam. Code § 6385 (amended). Protective order**

35 SEC. ____ . Section 6385 of the Family Code is amended to read:

36 6385. (a) Proof of service of the protective order is not required for the purposes
37 of Section 6380 if the order indicates on its face that both parties were personally
38 present at the hearing at which the order was issued and that, for the purpose of
39 Section 6384, no proof of service is required, or if the order was served by a law
40 enforcement officer pursuant to Section 6383.

1 (b) The failure of the petitioner to provide the Department of Justice with the
2 personal descriptive information regarding the person restrained does not
3 invalidate the protective order.

4 (c) There is no civil liability on the part of, and no cause of action arises against,
5 an employee of a local law enforcement agency, a court, or the Department of
6 Justice, acting within the scope of employment, if a person described in
7 ~~subdivision (g) of Section 12021~~ Section 29825 of the Penal Code unlawfully
8 purchases or receives or attempts to purchase or receive a firearm and a person is
9 injured by that firearm or a person who is otherwise entitled to receive a firearm is
10 denied a firearm and either wrongful action is due to a failure of a court to provide
11 the notification provided for in this chapter.

12 **Comment.** Subdivision (c) of Section 6385 is amended to reflect nonsubstantive
13 reorganization of the statutes governing control of deadly weapons.

14 **Fam. Code § 6389 (amended). Effect of protective order on ownership, possession,**
15 **purchase, and receipt of firearm**

16 SEC. ____. Section 6389 of the Family Code is amended to read:

17 6389. (a) A person subject to a protective order, as defined in Section 6218,
18 shall not own, possess, purchase, or receive a firearm while that protective order is
19 in effect. Every person who owns, possesses, purchases or receives, or attempts to
20 purchase or receive a firearm while the protective order is in effect is punishable
21 pursuant to ~~subdivision (g) of Section 12021~~ Section 29825 of the Penal Code.

22 (b) On all forms providing notice that a protective order has been requested or
23 granted, the Judicial Council shall include a notice that, upon service of the order,
24 the respondent shall be ordered to relinquish possession or control of any firearms
25 and not to purchase or receive or attempt to purchase or receive any firearms for a
26 period not to exceed the duration of the restraining order.

27 (c)(1) Upon issuance of a protective order, as defined in Section 6218, the court
28 shall order the respondent to relinquish any firearm in the respondent's immediate
29 possession or control or subject to the respondent's immediate possession or
30 control.

31 (2) The relinquishment ordered pursuant to paragraph (1) shall occur by
32 immediately surrendering the firearm in a safe manner, upon request of any law
33 enforcement officer, to the control of the officer, after being served with the
34 protective order. Alternatively, if no request is made by a law enforcement officer,
35 the relinquishment shall occur within 24 hours of being served with the order, by
36 either surrendering the firearm in a safe manner to the control of local law
37 enforcement officials, or by selling the firearm to a licensed gun dealer, as
38 specified in ~~Section 12071~~ Sections 26700 to 26915, inclusive, of the Penal Code.
39 The law enforcement officer or licensed gun dealer taking possession of the
40 firearm pursuant to this subdivision shall issue a receipt to the person relinquishing
41 the firearm at the time of relinquishment. A person ordered to relinquish any
42 firearm pursuant to this subdivision shall file with the court that issued the

1 protective order, within 48 hours after being served with the order, the receipt
2 showing the firearm was surrendered to a local law enforcement agency or sold to
3 a licensed gun dealer. Failure to timely file a receipt shall constitute a violation of
4 the protective order.

5 (3) The application forms for protective orders adopted by the Judicial Council
6 and approved by the Department of Justice shall be amended to require the
7 petitioner to describe the number, types, and locations of any firearms presently
8 known by the petitioner to be possessed or controlled by the respondent.

9 (4) It is recommended that every law enforcement agency in the state develop,
10 adopt, and implement written policies and standards for law enforcement officers
11 who request immediate relinquishment of firearms.

12 (d) If the respondent declines to relinquish possession of any firearm based on
13 the assertion of the right against self-incrimination, as provided by the Fifth
14 Amendment to the United States Constitution and Section 15 of Article I of the
15 California Constitution, the court may grant use immunity for the act of
16 relinquishing the firearm required under this section.

17 (e) A local law enforcement agency may charge the respondent a fee for the
18 storage of any firearm pursuant to this section. This fee shall not exceed the actual
19 cost incurred by the local law enforcement agency for the storage of the firearm.
20 For purposes of this subdivision, “actual cost” means expenses directly related to
21 taking possession of a firearm, storing the firearm, and surrendering possession of
22 the firearm to a licensed dealer as defined in Section ~~12071~~ 26700 of the Penal
23 Code or to the respondent.

24 (f) The restraining order requiring a person to relinquish a firearm pursuant to
25 subdivision (c) shall state on its face that the respondent is prohibited from
26 owning, possessing, purchasing, or receiving a firearm while the protective order
27 is in effect and that the firearm shall be relinquished to the local law enforcement
28 agency for that jurisdiction or sold to a licensed gun dealer, and that proof of
29 surrender or sale shall be filed with the court within a specified period of receipt of
30 the order. The order shall also state on its face the expiration date for
31 relinquishment. Nothing in this section shall limit a respondent’s right under
32 existing law to petition the court at a later date for modification of the order.

33 (g) The restraining order requiring a person to relinquish a firearm pursuant to
34 subdivision (c) shall prohibit the person from possessing or controlling any
35 firearm for the duration of the order. At the expiration of the order, the local law
36 enforcement agency shall return possession of any surrendered firearm to the
37 respondent, within five days after the expiration of the relinquishment order,
38 unless the local law enforcement agency determines that (1) the firearm has been
39 stolen, (2) the respondent is prohibited from possessing a firearm because the
40 respondent is in any prohibited class for the possession of firearms, as defined in
41 Sections 12021 and 12021.1 Chapter 2 (commencing with Section 29800) and
42 Chapter 3 (commencing with Section 29900) of Division 9 of Title 4 of Part 6 of
43 the Penal Code and Sections 8100 and 8103 of the Welfare and Institutions Code,

1 or (3) another successive restraining order is used against the respondent under
2 this section. If the local law enforcement agency determines that the respondent is
3 the legal owner of any firearm deposited with the local law enforcement agency
4 and is prohibited from possessing any firearm, the respondent shall be entitled to
5 sell or transfer the firearm to a licensed dealer as defined in Section ~~12071~~ 26700
6 of the Penal Code. If the firearm has been stolen, the firearm shall be restored to
7 the lawful owner upon his or her identification of the firearm and proof of
8 ownership.

9 (h) The court may, as part of the relinquishment order, grant an exemption from
10 the relinquishment requirements of this section for a particular firearm if the
11 respondent can show that a particular firearm is necessary as a condition of
12 continued employment and that the current employer is unable to reassign the
13 respondent to another position where a firearm is unnecessary. If an exemption is
14 granted pursuant to this subdivision, the order shall provide that the firearm shall
15 be in the physical possession of the respondent only during scheduled work hours
16 and during travel to and from his or her place of employment. In any case
17 involving a peace officer who as a condition of employment and whose personal
18 safety depends on the ability to carry a firearm, a court may allow the peace
19 officer to continue to carry a firearm, either on duty or off duty, if the court finds
20 by a preponderance of the evidence that the officer does not pose a threat of harm.
21 Prior to making this finding, the court shall require a mandatory psychological
22 evaluation of the peace officer and may require the peace officer to enter into
23 counseling or other remedial treatment program to deal with any propensity for
24 domestic violence.

25 (i) During the period of the relinquishment order, a respondent is entitled to
26 make one sale of all firearms that are in the possession of a local law enforcement
27 agency pursuant to this section. A licensed gun dealer, who presents a local law
28 enforcement agency with a bill of sale indicating that all firearms owned by the
29 respondent that are in the possession of the local law enforcement agency have
30 been sold by the respondent to the licensed gun dealer, shall be given possession
31 of those firearms, at the location where a respondent's firearms are stored, within
32 five days of presenting the local law enforcement agency with a bill of sale.

33 (j) The disposition of any unclaimed property under this section shall be made
34 pursuant to Section 1413 of the Penal Code.

35 (k) The return of a firearm to any person pursuant to subdivision (g) shall not be
36 subject to the requirements of ~~subdivision (d) of Section 12072~~ Section 27545 of
37 the Penal Code.

38 (l) If the respondent notifies the court that he or she owns a firearm that is not in
39 his or her immediate possession, the court may limit the order to exclude that
40 firearm if the judge is satisfied the respondent is unable to gain access to that
41 firearm while the protective order is in effect.

1 (m) Any respondent to a protective order who violates any order issued pursuant
2 to this section shall be punished under the provisions of ~~subdivision (g) of Section~~
3 12021 Section 29825 of the Penal Code.

4 **Comment.** Section 6389 is amended to reflect nonsubstantive reorganization of the statutes
5 governing control of deadly weapons.

FISH & GAME CODE

6 **Fish & Game Code § 211 (amended). Restrictions on material printed pursuant to Section** 7 **210(d)**

8 SEC. ____ . Section 211 of the Fish and Game Code is amended to read:

9 211. (a) Material printed pursuant to subdivision (d) of Section 210 that contains
10 advertisements shall meet all specifications prescribed by the department. The
11 printed material shall not contain advertisements for tobacco products, alcohol,
12 firearms and devices prohibited pursuant to ~~Sections 12020, 12220, and 12280~~
13 Section 32625 of the Penal Code, Article 2 (commencing with Section 30600) of
14 Chapter 2 of Division 10 of Title 4 of Part 6 of the Penal Code, or any provision
15 listed in Section 16590 of the Penal Code, or firearms not authorized by the
16 commission as a legal method of sport-hunting, political statements, solicitations
17 for membership in organizations, or any other statement, solicitation, or product
18 advertisement that is in conflict with the purposes for which the material is
19 produced, as determined by the commission. The printing contract shall include
20 criteria to ensure that the public information provided in the publication is easy to
21 reference, read, and understand.

22 (b) Neither the department nor the commission shall contract with private
23 entities to print the materials described in subdivision (d) of Section 210 if the
24 letting of those contracts will result in the elimination of civil service positions.

25 **Comment.** Section 211 is amended to reflect nonsubstantive reorganization of the statutes
26 governing control of deadly weapons.

27 **Fish & Game Code § 3001 (amended). Unlawful take of birds or mammals**

28 SEC. ____ . Section 3001 of the Fish and Game Code is amended to read:

29 3001. It is unlawful to take birds or mammals with firearms, BB devices as
30 defined in ~~subdivision (g) of Section 12001~~ Section 16250 of the Penal Code,
31 crossbows, or with bow and arrow when intoxicated.

32 **Comment.** Section 3001 is amended to reflect nonsubstantive reorganization of the statutes
33 governing control of deadly weapons.

34 **Fish & Game Code § 3801.6 (amended). Nongame birds**

35 SEC. ____ . Section 3801.6 of the Fish and Game Code is amended to read:

36 3801.6. (a) Except as otherwise provided in this code or regulations made
37 pursuant thereto, it is unlawful to possess the carcass, skin, or parts of any
38 nongame bird. The feathers, carcass, skin, or parts of any nongame bird possessed

1 by any person in violation of any of the provisions of this code shall be seized by
2 the department and delivered to a California Native American tribal government
3 or a scientific or educational institution, used by the department, or destroyed.

4 (b)(1) It shall be an affirmative defense to a violation of this section if the
5 possessor of feathers, carcass, skin, or parts of a nongame bird legally acquired the
6 feathers, carcass, skin, or parts, possesses them for tribal, cultural, or spiritual
7 purposes, and satisfies either of the following criteria:

8 (A) The possessor is an enrolled member of a federally recognized Native
9 American tribe or nonfederally recognized California Native American tribe listed
10 on the California Tribal Consultation List maintained by the Native American
11 Heritage Commission who has, in his or her immediate possession, valid tribal
12 identification or other irrefutable proof of current enrollment.

13 (B) The possessor has a certificate of degree of Indian blood issued by the
14 United States Bureau of Indian Affairs in his or her immediate possession.

15 (2) Nothing in this section allows any person to sell nongame bird feathers,
16 carcasses, skins, or parts. Native Americans meeting the affirmative defense
17 requirements may salvage dead nongame birds so long as the person salvaging
18 these birds does not possess, nor is in the company of any person who possesses, a
19 firearm, BB device as defined in ~~subdivision (g) of Section 12001~~ Section 16250
20 of the Penal Code, trap, snare, net archery equipment, device capable of
21 discharging a projectile, or any apparatus designed to take birds. Salvaging shall
22 not take place by any person involved in the take of the nongame bird to be
23 salvaged, any person present at the time of the take, or by any person who
24 received related information originating from any person present at the time of the
25 take of the nongame bird. Salvaging pursuant to this subdivision shall not take
26 place if a bird has been struck with any thrown or discharged projectile, trapped,
27 netted, caught, or snared.

28 (c) Notwithstanding subdivisions (a) and (b), any officer deputized pursuant to
29 this code may interrupt any ongoing salvaging of dead nongame carcasses,
30 feathers, skins, or parts if, in the officer's judgment, the activity causes a public
31 disruption, safety hazard, or is detrimental to the ability of the department to
32 prevent a possible violation of this section. The officer may seize any of the
33 salvaged feathers, carcasses, skins, or parts and has the option of returning them to
34 the general location from where they were salvaged.

35 **Comment.** Subdivision (b) of Section 3801.6 is amended to reflect nonsubstantive
36 reorganization of the statutes governing control of deadly weapons.

37 **Fish & Game Code § 10500 (amended). Taking or possessing in refuges**

38 SEC. _____. Section 10500 of the Fish and Game Code is amended to read:
39 10500. Except under a permit or specific authorization, it is unlawful to do any
40 of the following:

41 (a) To take or possess any bird or mammal, or part thereof, in any game refuge.

1 (b) To use or have in possession in a game refuge, any firearm, BB device as
2 defined in ~~subdivision (g) of Section 12001~~ Section 16250 of the Penal Code,
3 crossbow, bow and arrow, or any trap or other contrivance designed to be, or
4 capable of being, used to take birds or mammals, or to discharge any firearm or
5 BB device or to release any arrow or crossbow bolt into any game refuge.

6 (c) To take or possess any species of fish or amphibian, or part thereof, in any
7 fish refuge, or to use or have in possession in that refuge any contrivance designed
8 to be used for catching fish.

9 (d) To take or possess any bird in, or to discharge any firearm or BB device, or
10 to release any arrow or crossbow bolt within or into, any waterfowl refuge.

11 (e) To take or possess any quail in a quail refuge.

12 (f) To take or possess any invertebrate or specimen of marine plant life in a
13 marine life refuge.

14 (g) To take or possess any clam in a clam refuge or to possess in such a clam
15 refuge any instrument or apparatus capable of being used to dig clams.

16 **Comment.** Subdivision (b) of Section 10500 is amended to reflect nonsubstantive
17 reorganization of the statutes governing control of deadly weapons.

18 Subdivision (g) is amended to make a technical revision.

19 **Fish & Game Code § 10506 (amended). Travel through game refuge**

20 SEC. ____ . Section 10506 of the Fish and Game Code is amended to read:

21 10506. Nothing in this code prohibits the possession of firearms, BB devices as
22 defined in ~~subdivision (g) of Section 12001~~ Section 16250 of the Penal Code,
23 crossbows and bolts, or bows and arrows by persons when traveling through any
24 game refuges when the firearms are taken apart or encased and unloaded and the
25 bows are unstrung or stored separately from any arrow or bolt. When the traveling
26 is done on a route other than a public highway or other public thoroughfare or
27 right of way, notice shall be given to the department at least 24 hours before that
28 traveling. The notice shall give the name and address of the person intending to
29 travel through the refuge, the name of the refuge, the approximate route, and the
30 approximate time when that person intends to travel through the refuge.

31 **Comment.** Section 10506 is amended to reflect nonsubstantive reorganization of the statutes
32 governing control of deadly weapons.

GOVERNMENT CODE

33 **Gov't Code § 6254 (amended). Records not required to be disclosed**

34 SEC. ____ . Section 6254 of the Government Code is amended to read:

35 6254. Except as provided in Sections 6254.7 and 6254.13, nothing in this
36 chapter shall be construed to require disclosure of records that are any of the
37 following:

38 (a) Preliminary drafts, notes, or interagency or intra-agency memoranda that are
39 not retained by the public agency in the ordinary course of business, if the public

1 interest in withholding those records clearly outweighs the public interest in
2 disclosure.

3 (b) Records pertaining to pending litigation to which the public agency is a
4 party, or to claims made pursuant to Division 3.6 (commencing with Section 810),
5 until the pending litigation or claim has been finally adjudicated or otherwise
6 settled.

7 (c) Personnel, medical, or similar files, the disclosure of which would constitute
8 an unwarranted invasion of personal privacy.

9 (d) Contained in or related to any of the following:

10 (1) Applications filed with any state agency responsible for the regulation or
11 supervision of the issuance of securities or of financial institutions, including, but
12 not limited to, banks, savings and loan associations, industrial loan companies,
13 credit unions, and insurance companies.

14 (2) Examination, operating, or condition reports prepared by, on behalf of, or for
15 the use of, any state agency referred to in paragraph (1).

16 (3) Preliminary drafts, notes, or interagency or intra-agency communications
17 prepared by, on behalf of, or for the use of, any state agency referred to in
18 paragraph (1).

19 (4) Information received in confidence by any state agency referred to in
20 paragraph (1).

21 (e) Geological and geophysical data, plant production data, and similar
22 information relating to utility systems development, or market or crop reports, that
23 are obtained in confidence from any person.

24 (f) Records of complaints to, or investigations conducted by, or records of
25 intelligence information or security procedures of, the office of the Attorney
26 General and the Department of Justice, the California Emergency Management
27 Agency, and any state or local police agency, or any investigatory or security files
28 compiled by any other state or local police agency, or any investigatory or security
29 files compiled by any other state or local agency for correctional, law
30 enforcement, or licensing purposes. However, state and local law enforcement
31 agencies shall disclose the names and addresses of persons involved in, or
32 witnesses other than confidential informants to, the incident, the description of any
33 property involved, the date, time, and location of the incident, all diagrams,
34 statements of the parties involved in the incident, the statements of all witnesses,
35 other than confidential informants, to the victims of an incident, or an authorized
36 representative thereof, an insurance carrier against which a claim has been or
37 might be made, and any person suffering bodily injury or property damage or loss,
38 as the result of the incident caused by arson, burglary, fire, explosion, larceny,
39 robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision

40 (b) of Section 13951, unless the disclosure would endanger the safety of a witness
41 or other person involved in the investigation, or unless disclosure would endanger
42 the successful completion of the investigation or a related investigation. However,
43 nothing in this division shall require the disclosure of that portion of those

1 investigative files that reflects the analysis or conclusions of the investigating
2 officer.

3 Customer lists provided to a state or local police agency by an alarm or security
4 company at the request of the agency shall be construed to be records subject to
5 this subdivision.

6 Notwithstanding any other provision of this subdivision, state and local law
7 enforcement agencies shall make public the following information, except to the
8 extent that disclosure of a particular item of information would endanger the safety
9 of a person involved in an investigation or would endanger the successful
10 completion of the investigation or a related investigation:

11 (1) The full name and occupation of every individual arrested by the agency, the
12 individual's physical description including date of birth, color of eyes and hair,
13 sex, height and weight, the time and date of arrest, the time and date of booking,
14 the location of the arrest, the factual circumstances surrounding the arrest, the
15 amount of bail set, the time and manner of release or the location where the
16 individual is currently being held, and all charges the individual is being held
17 upon, including any outstanding warrants from other jurisdictions and parole or
18 probation holds.

19 (2) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the
20 time, substance, and location of all complaints or requests for assistance received
21 by the agency and the time and nature of the response thereto, including, to the
22 extent the information regarding crimes alleged or committed or any other incident
23 investigated is recorded, the time, date, and location of occurrence, the time and
24 date of the report, the name and age of the victim, the factual circumstances
25 surrounding the crime or incident, and a general description of any injuries,
26 property, or weapons involved. The name of a victim of any crime defined by
27 Section 220, 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f,
28 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3 (as added by
29 Chapter 337 of the Statutes of 2006), 288.3 (as added by Section 6 of Proposition
30 83 of the November 7, 2006, statewide general election), 288.5, 288.7, 289, 422.6,
31 422.7, 422.75, 646.9, or 647.6 of the Penal Code may be withheld at the victim's
32 request, or at the request of the victim's parent or guardian if the victim is a minor.
33 When a person is the victim of more than one crime, information disclosing that
34 the person is a victim of a crime defined in any of the sections of the Penal Code
35 set forth in this subdivision may be deleted at the request of the victim, or the
36 victim's parent or guardian if the victim is a minor, in making the report of the
37 crime, or of any crime or incident accompanying the crime, available to the public
38 in compliance with the requirements of this paragraph.

39 (3) Subject to the restrictions of Section 841.5 of the Penal Code and this
40 subdivision, the current address of every individual arrested by the agency and the
41 current address of the victim of a crime, where the requester declares under
42 penalty of perjury that the request is made for a scholarly, journalistic, political, or
43 governmental purpose, or that the request is made for investigation purposes by a

1 licensed private investigator as described in Chapter 11.3 (commencing with
2 Section 7512) of Division 3 of the Business and Professions Code. However, the
3 address of the victim of any crime defined by Section 220, 261, 261.5, 262, 264,
4 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5,
5 285, 286, 288, 288a, 288.2, 288.3 (as added by Chapter 337 of the Statutes of
6 2006), 288.3 (as added by Section 6 of Proposition 83 of the November 7, 2006,
7 statewide general election), 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or
8 647.6 of the Penal Code shall remain confidential. Address information obtained
9 pursuant to this paragraph may not be used directly or indirectly, or furnished to
10 another, to sell a product or service to any individual or group of individuals, and
11 the requester shall execute a declaration to that effect under penalty of perjury.
12 Nothing in this paragraph shall be construed to prohibit or limit a scholarly,
13 journalistic, political, or government use of address information obtained pursuant
14 to this paragraph.

15 (g) Test questions, scoring keys, and other examination data used to administer a
16 licensing examination, examination for employment, or academic examination,
17 except as provided for in Chapter 3 (commencing with Section 99150) of Part 65
18 of Division 14 of Title 3 of the Education Code.

19 (h) The contents of real estate appraisals or engineering or feasibility estimates
20 and evaluations made for or by the state or local agency relative to the acquisition
21 of property, or to prospective public supply and construction contracts, until all of
22 the property has been acquired or all of the contract agreement obtained. However,
23 the law of eminent domain shall not be affected by this provision.

24 (i) Information required from any taxpayer in connection with the collection of
25 local taxes that is received in confidence and the disclosure of the information to
26 other persons would result in unfair competitive disadvantage to the person
27 supplying the information.

28 (j) Library circulation records kept for the purpose of identifying the borrower of
29 items available in libraries, and library and museum materials made or acquired
30 and presented solely for reference or exhibition purposes. The exemption in this
31 subdivision shall not apply to records of fines imposed on the borrowers.

32 (k) Records, the disclosure of which is exempted or prohibited pursuant to
33 federal or state law, including, but not limited to, provisions of the Evidence Code
34 relating to privilege.

35 (l) Correspondence of and to the Governor or employees of the Governor's
36 office or in the custody of or maintained by the Governor's Legal Affairs
37 Secretary. However, public records shall not be transferred to the custody of the
38 Governor's Legal Affairs Secretary to evade the disclosure provisions of this
39 chapter.

40 (m) In the custody of or maintained by the Legislative Counsel, except those
41 records in the public database maintained by the Legislative Counsel that are
42 described in Section 10248.

1 (n) Statements of personal worth or personal financial data required by a
2 licensing agency and filed by an applicant with the licensing agency to establish
3 his or her personal qualification for the license, certificate, or permit applied for.

4 (o) Financial data contained in applications for financing under Division 27
5 (commencing with Section 44500) of the Health and Safety Code, where an
6 authorized officer of the California Pollution Control Financing Authority
7 determines that disclosure of the financial data would be competitively injurious to
8 the applicant and the data is required in order to obtain guarantees from the United
9 States Small Business Administration. The California Pollution Control Financing
10 Authority shall adopt rules for review of individual requests for confidentiality
11 under this section and for making available to the public those portions of an
12 application that are subject to disclosure under this chapter.

13 (p) Records of state agencies related to activities governed by Chapter 10.3
14 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525),
15 and Chapter 12 (commencing with Section 3560) of Division 4, that reveal a state
16 agency's deliberative processes, impressions, evaluations, opinions,
17 recommendations, meeting minutes, research, work products, theories, or strategy,
18 or that provide instruction, advice, or training to employees who do not have full
19 collective bargaining and representation rights under these chapters. Nothing in
20 this subdivision shall be construed to limit the disclosure duties of a state agency
21 with respect to any other records relating to the activities governed by the
22 employee relations acts referred to in this subdivision.

23 (q) Records of state agencies related to activities governed by Article 2.6
24 (commencing with Section 14081), Article 2.8 (commencing with Section
25 14087.5), and Article 2.91 (commencing with Section 14089) of Chapter 7 of Part
26 3 of Division 9 of the Welfare and Institutions Code, that reveal the special
27 negotiator's deliberative processes, discussions, communications, or any other
28 portion of the negotiations with providers of health care services, impressions,
29 opinions, recommendations, meeting minutes, research, work product, theories, or
30 strategy, or that provide instruction, advice, or training to employees.

31 Except for the portion of a contract containing the rates of payment, contracts
32 for inpatient services entered into pursuant to these articles, on or after April 1,
33 1984, shall be open to inspection one year after they are fully executed. If a
34 contract for inpatient services that is entered into prior to April 1, 1984, is
35 amended on or after April 1, 1984, the amendment, except for any portion
36 containing the rates of payment, shall be open to inspection one year after it is
37 fully executed. If the California Medical Assistance Commission enters into
38 contracts with health care providers for other than inpatient hospital services, those
39 contracts shall be open to inspection one year after they are fully executed.

40 Three years after a contract or amendment is open to inspection under this
41 subdivision, the portion of the contract or amendment containing the rates of
42 payment shall be open to inspection.

1 Notwithstanding any other provision of law, the entire contract or amendment
2 shall be open to inspection by the Joint Legislative Audit Committee and the
3 Legislative Analyst's Office. The committee and that office shall maintain the
4 confidentiality of the contracts and amendments until the time a contract or
5 amendment is fully open to inspection by the public.

6 (r) Records of Native American graves, cemeteries, and sacred places and
7 records of Native American places, features, and objects described in Sections
8 5097.9 and 5097.993 of the Public Resources Code maintained by, or in the
9 possession of, the Native American Heritage Commission, another state agency, or
10 a local agency.

11 (s) A final accreditation report of the Joint Commission on Accreditation of
12 Hospitals that has been transmitted to the State Department of Health Care
13 Services pursuant to subdivision (b) of Section 1282 of the Health and Safety
14 Code.

15 (t) Records of a local hospital district, formed pursuant to Division 23
16 (commencing with Section 32000) of the Health and Safety Code, or the records
17 of a municipal hospital, formed pursuant to Article 7 (commencing with Section
18 37600) or Article 8 (commencing with Section 37650) of Chapter 5 of Part 2 of
19 Division 3 of Title 4 of this code, that relate to any contract with an insurer or
20 nonprofit hospital service plan for inpatient or outpatient services for alternative
21 rates pursuant to Section 10133 of the Insurance Code. However, the record shall
22 be open to inspection within one year after the contract is fully executed.

23 (u)(1) Information contained in applications for licenses to carry firearms issued
24 pursuant to Section ~~42050~~ 26150, 26155, 26170, or 26215 of the Penal Code by
25 the sheriff of a county or the chief or other head of a municipal police department
26 that indicates when or where the applicant is vulnerable to attack or that concerns
27 the applicant's medical or psychological history or that of members of his or her
28 family.

29 (2) The home address and telephone number of peace officers, judges, court
30 commissioners, and magistrates that are set forth in applications for licenses to
31 carry firearms issued pursuant to Section ~~42050~~ 26150, 26155, 26170, or 26215
32 of the Penal Code by the sheriff of a county or the chief or other head of a municipal
33 police department.

34 (3) The home address and telephone number of peace officers, judges, court
35 commissioners, and magistrates that are set forth in licenses to carry firearms
36 issued pursuant to Section ~~42050~~ 26150, 26155, 26170, or 26215 of the Penal
37 Code by the sheriff of a county or the chief or other head of a municipal police
38 department.

39 (v)(1) Records of the Managed Risk Medical Insurance Board related to
40 activities governed by Part 6.3 (commencing with Section 12695) and Part 6.5
41 (commencing with Section 12700) of Division 2 of the Insurance Code, and that
42 reveal the deliberative processes, discussions, communications, or any other
43 portion of the negotiations with entities contracting or seeking to contract with the

1 board, or the impressions, opinions, recommendations, meeting minutes, research,
2 work product, theories, or strategy of the board or its staff, or records that provide
3 instructions, advice, or training to employees.

4 (2)(A) Except for the portion of a contract that contains the rates of payment,
5 contracts for health coverage entered into pursuant to Part 6.3 (commencing with
6 Section 12695) or Part 6.5 (commencing with Section 12700) of Division 2 of the
7 Insurance Code, on or after July 1, 1991, shall be open to inspection one year after
8 their effective dates.

9 (B) If a contract that is entered into prior to July 1, 1991, is amended on or after
10 July 1, 1991, the amendment, except for any portion containing the rates of
11 payment, shall be open to inspection one year after the amendment has been fully
12 executed.

13 (3) Three years after a contract or amendment is open to inspection pursuant to
14 this subdivision, the portion of the contract or amendment containing the rates of
15 payment shall be open to inspection.

16 (4) Notwithstanding any other provision of law, the entire contract or
17 amendments to a contract shall be open to inspection by the Joint Legislative
18 Audit Committee. The committee shall maintain the confidentiality of the
19 contracts and amendments thereto, until the contract or amendments to a contract
20 are open to inspection pursuant to paragraph (3).

21 (w)(1) Records of the Managed Risk Medical Insurance Board related to
22 activities governed by Chapter 8 (commencing with Section 10700) of Part 2 of
23 Division 2 of the Insurance Code, and that reveal the deliberative processes,
24 discussions, communications, or any other portion of the negotiations with health
25 plans, or the impressions, opinions, recommendations, meeting minutes, research,
26 work product, theories, or strategy of the board or its staff, or records that provide
27 instructions, advice, or training to employees.

28 (2) Except for the portion of a contract that contains the rates of payment,
29 contracts for health coverage entered into pursuant to Chapter 8 (commencing
30 with Section 10700) of Part 2 of Division 2 of the Insurance Code, on or after
31 January 1, 1993, shall be open to inspection one year after they have been fully
32 executed.

33 (3) Notwithstanding any other provision of law, the entire contract or
34 amendments to a contract shall be open to inspection by the Joint Legislative
35 Audit Committee. The committee shall maintain the confidentiality of the
36 contracts and amendments thereto, until the contract or amendments to a contract
37 are open to inspection pursuant to paragraph (2).

38 (x) Financial data contained in applications for registration, or registration
39 renewal, as a service contractor filed with the Director of Consumer Affairs
40 pursuant to Chapter 20 (commencing with Section 9800) of Division 3 of the
41 Business and Professions Code, for the purpose of establishing the service
42 contractor's net worth, or financial data regarding the funded accounts held in
43 escrow for service contracts held in force in this state by a service contractor.

1 (y)(1) Records of the Managed Risk Medical Insurance Board related to
2 activities governed by Part 6.2 (commencing with Section 12693) or Part 6.4
3 (commencing with Section 12699.50) of Division 2 of the Insurance Code, and
4 that reveal the deliberative processes, discussions, communications, or any other
5 portion of the negotiations with entities contracting or seeking to contract with the
6 board, or the impressions, opinions, recommendations, meeting minutes, research,
7 work product, theories, or strategy of the board or its staff, or records that provide
8 instructions, advice, or training to employees.

9 (2)(A) Except for the portion of a contract that contains the rates of payment,
10 contracts entered into pursuant to Part 6.2 (commencing with Section 12693) or
11 Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance
12 Code, on or after January 1, 1998, shall be open to inspection one year after their
13 effective dates.

14 (B) If a contract entered into pursuant to Part 6.2 (commencing with Section
15 12693) or Part 6.4 (commencing with Section 12699.50) of Division 2 of the
16 Insurance Code is amended, the amendment shall be open to inspection one year
17 after the amendment has been fully executed.

18 (3) Three years after a contract or amendment is open to inspection pursuant to
19 this subdivision, the portion of the contract or amendment containing the rates of
20 payment shall be open to inspection.

21 (4) Notwithstanding any other provision of law, the entire contract or
22 amendments to a contract shall be open to inspection by the Joint Legislative
23 Audit Committee. The committee shall maintain the confidentiality of the
24 contracts and amendments thereto until the contract or amendments to a contract
25 are open to inspection pursuant to paragraph (2) or (3).

26 (5) The exemption from disclosure provided pursuant to this subdivision for the
27 contracts, deliberative processes, discussions, communications, negotiations,
28 impressions, opinions, recommendations, meeting minutes, research, work
29 product, theories, or strategy of the board or its staff shall also apply to the
30 contracts, deliberative processes, discussions, communications, negotiations,
31 impressions, opinions, recommendations, meeting minutes, research, work
32 product, theories, or strategy of applicants pursuant to Part 6.4 (commencing with
33 Section 12699.50) of Division 2 of the Insurance Code.

34 (z) Records obtained pursuant to paragraph (2) of subdivision (c) of Section
35 2891.1 of the Public Utilities Code.

36 (aa) A document prepared by or for a state or local agency that assesses its
37 vulnerability to terrorist attack or other criminal acts intended to disrupt the public
38 agency's operations and that is for distribution or consideration in a closed
39 session.

40 (ab) Critical infrastructure information, as defined in Section 131(3) of Title 6 of
41 the United States Code, that is voluntarily submitted to the California Emergency
42 Management Agency for use by that office, including the identity of the person
43 who or entity that voluntarily submitted the information. As used in this

1 subdivision, “voluntarily submitted” means submitted in the absence of the office
2 exercising any legal authority to compel access to or submission of critical
3 infrastructure information. This subdivision shall not affect the status of
4 information in the possession of any other state or local governmental agency.

5 (ac) All information provided to the Secretary of State by a person for the
6 purpose of registration in the Advance Health Care Directive Registry, except that
7 those records shall be released at the request of a health care provider, a public
8 guardian, or the registrant’s legal representative.

9 Nothing in this section prevents any agency from opening its records concerning
10 the administration of the agency to public inspection, unless disclosure is
11 otherwise prohibited by law.

12 Nothing in this section prevents any health facility from disclosing to a certified
13 bargaining agent relevant financing information pursuant to Section 8 of the
14 National Labor Relations Act (29 U.S.C. Sec. 158).

15 **Comment.** Subdivision (u) of Section 6254 is amended to reflect nonsubstantive
16 reorganization of the statutes governing control of deadly weapons.

17 **Staff Note.** The text of Section 6254 reflects the enactment of AB 38 (Nava), 2008 Cal. Stat.
18 ch. 372.

19 **Gov’t Code § 6276.18 (amended). Partial list of records and information exempt from**
20 **Public Records Act**

21 SEC. ____ . Section 6276.18 of the Government Code is amended to read:

22 6276.18. Family counselor and client, confidential information, Section 4982,
23 Business and Professions Code.

24 Family Court, records, Section 1818, Family Law Code.

25 Farm product processor license, confidentiality of financial statements, Section
26 55523.6, Food and Agricultural Code.

27 Farm product processor licensee, confidentiality of grape purchases, Section
28 55601.5, Food and Agricultural Code.

29 Fee payer information, prohibition against disclosure by Board of Equalization
30 and others, Section 55381, Revenue and Taxation Code.

31 Financial institutions, issuance of securities, reports and records of state
32 agencies, subdivision (d), Section 6254, Government Code.

33 Financial records, confidentiality of, Sections 7470, 7471, and 7473,
34 Government Code.

35 Financial statements of insurers, confidentiality of information received, Section
36 925.3, Insurance Code.

37 Financial statements and questionnaires, of prospective bidders for the state,
38 confidentiality of, Section 10165, Public Contract Code.

39 Financial statements and questionnaires, of prospective bidders for California
40 State University contracts, confidentiality of, Section 10763, Public Contract
41 Code.

42 Firearm license applications, subdivision (u), Section 6254, Government Code.

1 Firearm sale or transfer, confidentiality of records, ~~Section 12082~~ Chapter 5
2 (commencing with Section 28050) of Division 6 of Title 4 of Part 6, Penal Code.

3 Firefighters Service Award, confidentiality of data filed with the Board of
4 Administration of the Public Employees' Retirement System, Section 50955,
5 Government Code.

6 Fish and wildlife law enforcement agreements with other states, confidentiality
7 of information, Section 391, Fish and Game Code.

8 Fish and wildlife taken illegally, public record status of records of case, Section
9 2584, Fish and Game Code.

10 Food stamps, disclosure of information, Section 18909, Welfare and Institutions
11 Code.

12 Foreign marketing of agricultural products, confidentiality of financial
13 information, Section 58577, Food and Agricultural Code.

14 Forest fires, anonymity of informants, Section 4417, Public Resources Code.

15 Foster homes, identifying information, Section 1536, Health and Safety Code.

16 Franchise Tax Board, access to Franchise Tax Board information by the State
17 Department of Social Services, Section 11025, Welfare and Institutions Code.

18 Franchise Tax Board, auditing, confidentiality of, Section 90005, Government
19 Code.

20 Franchises, applications, and reports filed with Commissioner of Corporations,
21 disclosure and withholding from public inspection, Section 31504, Corporations
22 Code.

23 Fur dealer licensee, confidentiality of records, Section 4041, Fish and Game
24 Code.

25 **Comment.** Section 6276.18 is amended to reflect nonsubstantive reorganization of the statutes
26 governing control of deadly weapons.

27 **Gov't Code § 53071.5 (amended). Imitation firearms**

28 SEC. ____ . Section 53071.5 of the Government Code is amended to read:

29 53071.5. By the enforcement of this section, the Legislature occupies the whole
30 field of regulation of the manufacture, sale, or possession of imitation firearms, as
31 defined in ~~Section 12550~~ subdivision (a) of Section 16700 of the Penal Code, and
32 that ~~section~~ subdivision shall preempt and be exclusive of all regulations relating
33 to the manufacture, sale, or possession of imitation firearms, including regulations
34 governing the manufacture, sale, or possession of BB devices and air rifles
35 described in ~~subdivision (g) of Section 12001~~ Section 16250 of the Penal Code.

36 **Comment.** Section 53071.5 is amended to reflect nonsubstantive reorganization of the statutes
37 governing control of deadly weapons.

HEALTH & SAFETY CODE

1 **Health & Safety Code § 1257.7 (amended). Security and safety assessment and security plan**
2 **by hospitals**

3 SEC. ____ . Section 1257.7 of the Health and Safety Code is amended to read:

4 1257.7. (a) By July 1, 1995, all hospitals licensed pursuant to subdivisions (a),
5 (b), and (f) of Section 1250 shall conduct a security and safety assessment and,
6 using the assessment, develop a security plan with measures to protect personnel,
7 patients, and visitors from aggressive or violent behavior. The security and safety
8 assessment shall examine trends of aggressive or violent behavior at the facility.
9 These hospitals shall track incidents of aggressive or violent behavior as part of
10 the quality assessment and improvement program and for the purposes of
11 developing a security plan to deter and manage further aggressive or violent acts
12 of a similar nature. The plan may include, but shall not be limited to, security
13 considerations relating to all of the following:

14 (1) Physical layout.

15 (2) Staffing.

16 (3) Security personnel availability.

17 (4) Policy and training related to appropriate responses to violent acts.

18 In developing this plan, the hospital shall consider any guidelines or standards
19 on violence in health care facilities issued by the state department, the Division of
20 Occupational Safety and Health, and the federal Occupational Safety and Health
21 Administration. As part of the security plan, a hospital shall adopt security policies
22 including, but not limited to, personnel training policies designed to protect
23 personnel, patients, and visitors from aggressive or violent behavior.

24 (b) The individual or members of a hospital committee responsible for
25 developing the security plan shall be familiar with all of the following:

26 (1) The role of security in hospital operations.

27 (2) Hospital organization.

28 (3) Protective measures, including alarms and access control.

29 (4) The handling of disturbed patients, visitors, and employees.

30 (5) Identification of aggressive and violent predicting factors.

31 (6) Hospital safety and emergency preparedness.

32 (7) The rudiments of documenting and reporting crimes, including, by way of
33 example, not disturbing a crime scene.

34 (c) The hospital shall have sufficient personnel to provide security pursuant to
35 the security plan developed pursuant to subdivision (a). Persons regularly assigned
36 to provide security in a hospital setting shall be trained regarding the role of
37 security in hospital operations, including the identification of aggressive and
38 violent predicting factors, and management of violent disturbances.

39 (d) Any act of assault, as defined in Section 240 of the Penal Code, or battery, as
40 defined in Section 242 of the Penal Code, that results in injury or involves the use
41 of a firearm or other dangerous weapon, against any on-duty hospital personnel

1 shall be reported to the local law enforcement agency within 72 hours of the
2 incident. Any other act of assault, as defined in Section 240 of the Penal Code, or
3 battery as defined in Section 242 of the Penal Code, against any on-duty hospital
4 personnel may be reported to the local law enforcement agency within 72 hours of
5 the incident. No health facility or employee of a health facility who reports a
6 known or suspected instance of assault or battery pursuant to this section shall be
7 civilly or criminally liable for any report required by this section. No health
8 facility or employee of a health facility who reports a known or suspected instance
9 of assault or battery that is authorized, but not required, by this section, shall be
10 civilly or criminally liable for the report authorized by this section unless it can be
11 proven that a false report was made and the health facility or its employee knew
12 that the report was false or was made with reckless disregard of the truth or falsity
13 of the report, and any health facility or employee of a health facility who makes a
14 report known to be false or with reckless disregard of the truth or falsity of the
15 report shall be liable for any damages caused. Any individual knowingly
16 interfering with or obstructing the lawful reporting process shall be guilty of a
17 misdemeanor. “Dangerous weapon,” as used in this section, means any weapon
18 the possession or concealed carrying of which is prohibited by ~~Section 12020~~ any
19 provision listed in Section 16590 of the Penal Code.

20 **Comment.** Subdivision (d) of Section 1257.7 is amended to reflect nonsubstantive
21 reorganization of the statutes governing control of deadly weapons.

22 **Health & Safety Code § 12000 (amended). “Explosives”**

23 SEC. ____ . Section 12000 of the Health and Safety Code is amended to read:

24 12000. For the purposes of this part, “explosives” means any substance, or
25 combination of substances, the primary or common purpose of which is detonation
26 or rapid combustion, and which is capable of a relatively instantaneous or rapid
27 release of gas and heat, or any substance, the primary purpose of which, when
28 combined with others, is to form a substance capable of a relatively instantaneous
29 or rapid release of gas and heat. “Explosives” includes, but is not limited to, any
30 explosives as defined in Section 841 of Title 18 of the United States Code and
31 published pursuant to Section 555.23 of Title 27 of the Code of Federal
32 Regulations, and any of the following:

33 (a) Dynamite, nitroglycerine, picric acid, lead azide, fulminate of mercury, black
34 powder, smokeless powder, propellant explosives, detonating primers, blasting
35 caps, or commercial boosters.

36 (b) Substances determined to be division 1.1, 1.2, 1.3, or 1.6 explosives as
37 classified by the United States Department of Transportation.

38 (c) Nitro carbo nitrate substances (blasting agent) classified as division 1.5
39 explosives by the United States Department of Transportation.

40 (d) Any material designated as an explosive by the State Fire Marshal. The
41 designation shall be made pursuant to the classification standards established by
42 the United States Department of Transportation. The State Fire Marshal shall

1 adopt regulations in accordance with the Government Code to establish procedures
2 for the classification and designation of explosive materials or explosive devices
3 that are not under the jurisdiction of the United States Department of
4 Transportation pursuant to provisions of Section 841 of Title 18 of the United
5 States Code and published pursuant to Section 555.23 of Title 27 of the Code of
6 Federal Regulations that define explosives.

7 (e) Certain division 1.4 explosives as designated by the United States
8 Department of Transportation when listed in regulations adopted by the State Fire
9 Marshal.

10 (f) For the purposes of this part, “explosives” does not include any destructive
11 device, as defined in Section ~~12301~~ 16460 of the Penal Code, nor does it include
12 ammunition or small arms primers manufactured for use in shotguns, rifles, and
13 pistols.

14 **Comment.** Subdivision (f) of Section 12000 is amended to reflect nonsubstantive
15 reorganization of the statutes governing control of deadly weapons.

16 **Health & Safety Code § 12101 (amended). Actions requiring permit**

17 SEC. ____ . Section 12101 of the Health and Safety Code is amended to read:

18 12101. (a) No person shall do any one of the following without first having
19 made application for and received a permit in accordance with this section:

20 (1) Manufacture explosives.

21 (2) Sell, furnish, or give away explosives.

22 (3) Receive, store, or possess explosives.

23 (4) Transport explosives.

24 (5) Use explosives.

25 (6) Operate a terminal for handling explosives.

26 (7) Park or leave standing any vehicle carrying explosives, except when parked
27 or left standing in or at a safe stopping place designated as such by the Department
28 of the California Highway Patrol under Division 14 (commencing with Section
29 31600) of the Vehicle Code.

30 (b) Application for a permit shall be made to the appropriate issuing authority.

31 (c)(1) A permit shall be obtained from the issuing authority having the
32 responsibility in the area where the activity, as specified in subdivision (a), is to be
33 conducted.

34 (2) If the person holding a valid permit for the use or storage of explosives
35 desires to purchase or receive explosives in a jurisdiction other than that of
36 intended use or storage, the person shall first present the permit to the issuing
37 authority in the jurisdiction of purchase or receipt for endorsement. The issuing
38 authority may include any reasonable restrictions or conditions which the authority
39 finds necessary for the prevention of fire and explosion, the preservation of life,
40 safety, or the control and security of explosives within the authority’s jurisdiction.
41 If, for any reason, the issuing authority refuses to endorse the permit previously
42 issued in the area of intended use or storage, the authority shall immediately notify

1 both the issuing authority who issued the permit and the Department of Justice of
2 the fact of the refusal and the reasons for the refusal.

3 (3) Every person who sells, gives away, delivers, or otherwise disposes of
4 explosives to another person shall first be satisfied that the person receiving the
5 explosives has a permit valid for that purpose. When the permit to receive
6 explosives indicates that the intended storage or use of the explosives is other than
7 in that area in which the permittee receives the explosives, the person who sells,
8 gives away, delivers, or otherwise disposes of the explosives shall insure that the
9 permit has been properly endorsed by a local issuing authority and, further, shall
10 immediately send a copy of the record of sale to the issuing authority who
11 originally issued the permit in the area of intended storage or use. The issuing
12 authority in the area in which the explosives are received or sold shall not issue a
13 permit for the possession, use, or storage of explosives in an area not within the
14 authority's jurisdiction.

15 (d) In the event any person desires to receive explosives for use in an area
16 outside of this state, a permit to receive the explosives shall be obtained from the
17 State Fire Marshal.

18 (e) A permit may include any restrictions or conditions which the issuing
19 authority finds necessary for the prevention of fire and explosion, the preservation
20 of life, safety, or the control and security of explosives.

21 (f) A permit shall remain valid only until the time when the act or acts
22 authorized by the permit are performed, but in no event shall the permit remain
23 valid for a period longer than one year from the date of issuance of the permit.

24 (g) Any valid permit which authorizes the performance of any act shall not
25 constitute authorization for the performance of any act not stipulated in the permit.

26 (h) An issuing authority shall not issue a permit authorizing the transportation of
27 explosives pursuant to this section if the display of placards for that transportation
28 is required by Section 27903 of the Vehicle Code, unless the driver possesses a
29 license for the transportation of hazardous materials issued pursuant to Division
30 14.1 (commencing with Section 32000) of the Vehicle Code, or the explosives are
31 a hazardous waste or extremely hazardous waste, as defined in Sections 25117 and
32 25115 of the Health and Safety Code, and the transporter is currently registered as
33 a hazardous waste hauler pursuant to Section 25163 of the Health and Safety
34 Code.

35 (i) An issuing authority shall not issue a permit pursuant to this section
36 authorizing the handling or storage of division 1.1, 1.2, or 1.3 explosives in a
37 building, unless the building has caution placards which meet the standards
38 established pursuant to subdivision (g) of Section 12081.

39 (j)(1) A permit shall not be issued to a person who meets any of the following
40 criteria:

41 (A) He or she has been convicted of a felony.

42 (B) He or she is addicted to a narcotic drug.

1 (C) He or she is in a class prohibited by state or federal law from possessing,
2 receiving, owning, or purchasing a firearm.

3 (2) For purposes of determining whether a person meets any of the criteria set
4 forth in this subdivision, the issuing authority shall obtain two sets of fingerprints
5 on prescribed cards from all persons applying for a permit under this section and
6 shall submit these cards to the Department of Justice. The Department of Justice
7 shall utilize the fingerprint cards to make inquiries both within this state and to the
8 Federal Bureau of Investigation regarding the criminal history of the applicant
9 identified on the fingerprint card.

10 This paragraph does not apply to any person possessing a current certificate of
11 eligibility issued pursuant to ~~paragraph (4) of subdivision (a) of Section 12071~~
12 subdivisions (a) to (c), inclusive, of Section 26710 of the Penal Code or to any
13 holder of a dangerous weapons permit or license issued pursuant to Section ~~12095,~~
14 ~~12230, 12250, 12286, or 12305~~ 31000, 32650, or 33300 of the Penal Code, or
15 pursuant to Sections 18900 to 18910, inclusive, or Sections 32700 to 32720,
16 inclusive, of the Penal Code.

17 (k) An issuing authority shall inquire with the Department of Justice for the
18 purposes of determining whether a person who is applying for a permit meets any
19 of the criteria specified in subdivision (j). The Department of Justice shall
20 determine whether a person who is applying for a permit meets any of the criteria
21 specified in subdivision (j) and shall either grant or deny clearance for a permit to
22 be issued pursuant to the determination. The Department of Justice shall not
23 disclose the contents of a person's records to any person who is not authorized to
24 receive the information in order to ensure confidentiality.

25 **Comment.** Subdivision (j) of Section 12101 is amended to reflect nonsubstantive
26 reorganization of the statutes governing control of deadly weapons.

27 **Staff Note.** The text of Section 12101 reflects the enactment of AB 837 (Feuer), 2008 Cal.
28 Stat. ch. 698.

29 **Health & Safety Code § 12540 (amended). Application of part**

30 SEC. ____ . Section 12540 of the Health and Safety Code is amended to read:

31 12540. The provisions of this part shall not apply to any of the following:

32 (a) Explosives regulated under Part 1 (commencing with Section 12000) of
33 Division 11.

34 (b) Arms and handguns defined as firearms by the Federal Gun Control Act of
35 1968, as well as such devices and weapons classified under Section ~~12020 or~~
36 ~~12301~~ 16460 of the Penal Code or any provision listed in Section 16590 of the
37 Penal Code, including blank cartridge pistols of the type used at sporting events or
38 theatrical productions.

39 (c) Research or experiments with rockets or missiles or the production or
40 transportation of rockets or missiles by the Department of Defense of the United
41 States, or by any agency or organization acting pursuant to a contract with the
42 Department of Defense for the development and production of rockets or missiles.

1 (d) Paper caps which contain less than 0.25 grain of pyrotechnic composition
2 per unit load.

3 **Comment.** Subdivision (b) of Section 12540 is amended to reflect nonsubstantive
4 reorganization of the statutes governing control of deadly weapons.

5 **Staff Note.** Section 12540(b) says:

6 (b) Arms and handguns defined as firearms by the Federal Gun Control Act of 1968, as
7 well as *such* devices and weapons classified under Section 12020 or 12301 of the Penal Code,
8 including blank cartridge pistols of the type used at sporting events or theatrical productions.

9 (Emphasis added.) As a standard practice, the Office of Legislative Counsel deletes the word
10 “such” from statutory text. The Commission generally follows this rule in preparing proposed
11 legislation. In Section 12540(b), however, the staff left the word “such” intact. We could not
12 figure out how to delete “such” from the provision without risking a substantive change.

13 **Health & Safety Code § 12756 (amended). State Fire Marshall regulations and**
14 **flamethrowing devices**

15 SEC. _____. Section 12756 of the Health and Safety Code is amended to read:

16 12756. The State Fire Marshal shall adopt regulations to administer this part and
17 establish standards for the background investigation of an applicant for, and holder
18 of, a flamethrowing device permit, and for the use, storage, and transportation of a
19 flamethrowing device. In adopting these regulations, the State Fire Marshal shall
20 consult with the Department of Justice regarding regulations for the use and
21 possession of destructive devices (Chapter 12.5 (commencing with Section 970) of
22 Division 1 of Title 11 of the California Code of Regulations). These regulations
23 for the use and possession of destructive devices may provide suggestions for
24 potential methods to utilize in developing standards and shall serve as guidance
25 only. At a minimum, the regulations adopted by the State Fire Marshal shall
26 require a permitholder to possess a current, valid certificate of eligibility issued by
27 the Department of Justice pursuant to ~~paragraph (4) of subdivision (a) of Section~~
28 12071 subdivisions (a) to (c), inclusive, of Section 26710 of the Penal Code.

29 **Comment.** Section 12756 is amended to reflect nonsubstantive reorganization of the statutes
30 governing control of deadly weapons.

31 **Health & Safety Code § 12757 (amended). Permit to use and possess flamethrowing device**

32 SEC. _____. Section 12757 of the Health and Safety Code is amended to read:

33 12757. The State Fire Marshal may issue or renew a permit to use and possess a
34 flamethrowing device only if all of the following conditions are met:

35 (a) The applicant or permitholder is not addicted to any controlled substance.

36 (b) The applicant or permitholder possesses a current, valid certificate of
37 eligibility issued by the Department of Justice pursuant to ~~paragraph (4) of~~
38 ~~subdivision (a) of Section 12071~~ subdivisions (a) to (c), inclusive, of Section
39 26710 of the Penal Code.

40 (c) The applicant or permitholder meets the other standards specified in
41 regulations adopted pursuant to Section 12756.

1 **Comment.** Subdivision (b) of Section 12757 is amended to reflect nonsubstantive
2 reorganization of the statutes governing control of deadly weapons.

PENAL CODE

3 **Penal Code § 136.2 (amended). Orders upon belief of, or reasonable likelihood of, harm,**
4 **intimidation, or dissuasion of victim or witness**

5 SEC. ____ . Section 136.2 of the Penal Code is amended to read:

6 136.2. (a) Except as provided in subdivision (c), upon a good cause belief that
7 harm to, or intimidation or dissuasion of, a victim or witness has occurred or is
8 reasonably likely to occur, any court with jurisdiction over a criminal matter may
9 issue orders including, but not limited to, the following:

10 (1) Any order issued pursuant to Section 6320 of the Family Code.

11 (2) An order that a defendant shall not violate any provision of Section 136.1.

12 (3) An order that a person before the court other than a defendant, including, but
13 not limited to, a subpoenaed witness or other person entering the courtroom of the
14 court, shall not violate any provisions of Section 136.1.

15 (4) An order that any person described in this section shall have no
16 communication whatsoever with any specified witness or any victim, except
17 through an attorney under any reasonable restrictions that the court may impose.

18 (5) An order calling for a hearing to determine if an order as described in
19 paragraphs (1) to (4), inclusive, should be issued.

20 (6) An order that a particular law enforcement agency within the jurisdiction of
21 the court provide protection for a victim or a witness, or both, or for immediate
22 family members of a victim or a witness who reside in the same household as the
23 victim or witness or within reasonable proximity of the victim's or witness'
24 household, as determined by the court. The order shall not be made without the
25 consent of the law enforcement agency except for limited and specified periods of
26 time and upon an express finding by the court of a clear and present danger of
27 harm to the victim or witness or immediate family members of the victim or
28 witness.

29 For purposes of this paragraph, "immediate family members" include the
30 spouse, children, or parents of the victim or witness.

31 (7)(A) Any order protecting victims of violent crime from all contact by the
32 defendant, or contact, with the intent to annoy, harass, threaten, or commit acts of
33 violence, by the defendant. The court or its designee shall transmit orders made
34 under this paragraph to law enforcement personnel within one business day of the
35 issuance, modification, extension, or termination of the order, pursuant to
36 subdivision (a) of Section 6380 of the Family Code. It is the responsibility of the
37 court to transmit the modification, extension, or termination orders made under
38 this paragraph to the same agency that entered the original protective order into
39 the Domestic Violence Restraining Order System.

1 (B)(i) If a court does not issue an order pursuant to subparagraph (A) in a case in
2 which the defendant is charged with a crime of domestic violence as defined in
3 Section 13700, the court on its own motion shall consider issuing a protective
4 order upon a good cause belief that harm to, or intimidation or dissuasion of, a
5 victim or witness has occurred or is reasonably likely to occur, that provides as
6 follows:

7 (I) The defendant shall not own, possess, purchase, receive, or attempt to
8 purchase or receive, a firearm while the protective order is in effect.

9 (II) The defendant shall relinquish any firearms that he or she owns or possesses
10 pursuant to Section 527.9 of the Code of Civil Procedure.

11 (ii) Every person who owns, possesses, purchases, or receives, or attempts to
12 purchase or receive, a firearm while this protective order is in effect is punishable
13 pursuant to ~~subdivision (g) of Section 12021~~ Section 29825 of the Penal Code.

14 (C) Any order issued, modified, extended, or terminated by a court pursuant to
15 this paragraph shall be issued on forms adopted by the Judicial Council of
16 California and that have been approved by the Department of Justice pursuant to
17 subdivision (i) of Section 6380 of the Family Code. However, the fact that an
18 order issued by a court pursuant to this section was not issued on forms adopted by
19 the Judicial Council and approved by the Department of Justice shall not, in and of
20 itself, make the order unenforceable.

21 (b) Any person violating any order made pursuant to paragraphs (1) to (7),
22 inclusive, of subdivision (a) may be punished for any substantive offense
23 described in Section 136.1, or for a contempt of the court making the order. A
24 finding of contempt shall not be a bar to prosecution for a violation of Section
25 136.1. However, any person so held in contempt shall be entitled to credit for any
26 punishment imposed therein against any sentence imposed upon conviction of an
27 offense described in Section 136.1. Any conviction or acquittal for any substantive
28 offense under Section 136.1 shall be a bar to a subsequent punishment for
29 contempt arising out of the same act.

30 (c)(1) Notwithstanding subdivisions (a) and (e), an emergency protective order
31 issued pursuant to Chapter 2 (commencing with Section 6250) of Part 3 of
32 Division 10 of the Family Code or Section 646.91 of the Penal Code shall have
33 precedence in enforcement over any other restraining or protective order, provided
34 the emergency protective order meets all of the following requirements:

35 (A) The emergency protective order is issued to protect one or more individuals
36 who are already protected persons under another restraining or protective order.

37 (B) The emergency protective order restrains the individual who is the restrained
38 person in the other restraining or protective order specified in subparagraph (A).

39 (C) The provisions of the emergency protective order are more restrictive in
40 relation to the restrained person than are the provisions of the other restraining or
41 protective order specified in subparagraph (A).

42 (2) An emergency protective order that meets the requirements of paragraph (1)
43 shall have precedence in enforcement over the provisions of any other restraining

1 or protective order only with respect to those provisions of the emergency
2 protective order that are more restrictive in relation to the restrained person.

3 (d)(1) A person subject to a protective order issued under this section shall not
4 own, possess, purchase, receive, or attempt to purchase or receive a firearm while
5 the protective order is in effect.

6 (2) The court shall order a person subject to a protective order issued under this
7 section to relinquish any firearms he or she owns or possesses pursuant to Section
8 527.9 of the Code of Civil Procedure.

9 (3) Every person who owns, possesses, purchases or receives, or attempts to
10 purchase or receive a firearm while the protective order is in effect is punishable
11 pursuant to ~~subdivision (g) of Section 12021~~ Section 29825 of the Penal Code.

12 (e)(1) In all cases where the defendant is charged with a crime of domestic
13 violence, as defined in Section 13700, the court shall consider issuing the above-
14 described orders on its own motion. All interested parties shall receive a copy of
15 those orders. In order to facilitate this, the court's records of all criminal cases
16 involving domestic violence shall be marked to clearly alert the court to this issue.

17 (2) In those cases in which a complaint, information, or indictment charging a
18 crime of domestic violence, as defined in Section 13700, has been issued, a
19 restraining order or protective order against the defendant issued by the criminal
20 court in that case has precedence in enforcement over any civil court order against
21 the defendant, unless a court issues an emergency protective order pursuant to
22 Chapter 2 (commencing with Section 6250) of Part 3 of Division 10 of the Family
23 Code or Section 646.91 of the Penal Code, in which case the emergency protective
24 order shall have precedence in enforcement over any other restraining or
25 protective order, provided the emergency protective order meets the following
26 requirements:

27 (A) The emergency protective order is issued to protect one or more individuals
28 who are already protected persons under another restraining or protective order.

29 (B) The emergency protective order restrains the individual who is the restrained
30 person in the other restraining or protective order specified in subparagraph (A).

31 (C) The provisions of the emergency protective order are more restrictive in
32 relation to the restrained person than are the provisions of the other restraining or
33 protective order specified in subparagraph (A).

34 (3) Custody and visitation with respect to the defendant and his or her minor
35 children may be ordered by a family or juvenile court consistent with the protocol
36 established pursuant to subdivision (f), but if ordered after a criminal protective
37 order has been issued pursuant to this section, the custody and visitation order
38 shall make reference to, and acknowledge the precedence of enforcement of, any
39 appropriate criminal protective order. On or before July 1, 2006, the Judicial
40 Council shall modify the criminal and civil court forms consistent with this
41 subdivision.

42 (f) On or before January 1, 2003, the Judicial Council shall promulgate a
43 protocol, for adoption by each local court in substantially similar terms, to provide

1 for the timely coordination of all orders against the same defendant and in favor of
2 the same named victim or victims. The protocol shall include, but shall not be
3 limited to, mechanisms for assuring appropriate communication and information
4 sharing between criminal, family, and juvenile courts concerning orders and cases
5 that involve the same parties, and shall permit a family or juvenile court order to
6 coexist with a criminal court protective order subject to the following conditions:

7 (1) Any order that permits contact between the restrained person and his or her
8 children shall provide for the safe exchange of the children and shall not contain
9 language either printed or handwritten that violates a “no contact order” issued by
10 a criminal court.

11 (2) Safety of all parties shall be the courts’ paramount concern. The family or
12 juvenile court shall specify the time, day, place, and manner of transfer of the
13 child, as provided in Section 3100 of the Family Code.

14 (g) On or before January 1, 2003, the Judicial Council shall modify the criminal
15 and civil court protective order forms consistent with this section.

16 (h) In any case in which a complaint, information, or indictment charging a
17 crime of domestic violence, as defined in Section 13700, has been filed, the court
18 may consider, in determining whether good cause exists to issue an order under
19 paragraph (1) of subdivision (a), the underlying nature of the offense charged, and
20 the information provided to the court pursuant to Section 273.75.

21 **Comment.** Subdivisions (a) and (d) of Section 136.2 are amended to reflect nonsubstantive
22 reorganization of the statutes governing control of deadly weapons.

23 **Staff Note.** The text of Section 136.2 reflects the enactment of AB 1711 (Ma), 2008 Cal. Stat.
24 ch. 86.

25 **Penal Code § 139 (amended). Punishment for threat to witness or victim by convicted felon**

26 SEC. ____ . Section 139 of the Penal Code is amended to read:

27 139. (a) Except as provided in Sections 71 and 136.1, any person who has been
28 convicted of any felony offense specified in ~~Section 12021.4~~ Chapter 3
29 (commencing with Section 29900) of Division 9 of Title 4 of Part 6 who willfully
30 and maliciously communicates to a witness to, or a victim of, the crime for which
31 the person was convicted, a credible threat to use force or violence upon that
32 person or that person’s immediate family, shall be punished by imprisonment in
33 the county jail not exceeding one year or by imprisonment in the state prison for
34 two, three, or four years.

35 (b) Any person who is convicted of violating subdivision (a) who subsequently
36 is convicted of making a credible threat, as defined in subdivision (c), which
37 constitutes a threat against the life of, or a threat to cause great bodily injury to, a
38 person described in subdivision (a), shall be sentenced to consecutive terms of
39 imprisonment as prescribed in Section 1170.13.

40 (c) As used in this section, “a credible threat” is a threat made with the intent
41 and the apparent ability to carry out the threat so as to cause the target of the threat
42 to reasonably fear for his or her safety or the safety of his or her immediate family.

1 (d) The present incarceration of the person making the threat shall not be a bar
2 to prosecution under this section.

3 (e) As used in this section, “malice,” “witness,” and “victim” have the meanings
4 given in Section 136.

5 **Comment.** Subdivision (a) of Section 139 is amended to reflect nonsubstantive reorganization
6 of the statutes governing control of deadly weapons.

7 For guidance in applying this section, see Section 16015 (determining existence of prior
8 conviction).

9 **Penal Code § 166 (amended). Contempt of court**

10 SEC. ____ . Section 166 of the Penal Code is amended to read:

11 166. (a) Except as provided in subdivisions (b), (c), and (d), every person guilty
12 of any contempt of court, of any of the following kinds, is guilty of a
13 misdemeanor:

14 (1) Disorderly, contemptuous, or insolent behavior committed during the sitting
15 of any court of justice, in the immediate view and presence of the court, and
16 directly tending to interrupt its proceedings or to impair the respect due to its
17 authority.

18 (2) Behavior as specified in paragraph (1) committed in the presence of any
19 referee, while actually engaged in any trial or hearing, pursuant to the order of any
20 court, or in the presence of any jury while actually sitting for the trial of a cause,
21 or upon any inquest or other proceedings authorized by law.

22 (3) Any breach of the peace, noise, or other disturbance directly tending to
23 interrupt the proceedings of any court.

24 (4) Willful disobedience of the terms as written of any process or court order or
25 out-of-state court order, lawfully issued by any court, including orders pending
26 trial.

27 (5) Resistance willfully offered by any person to the lawful order or process of
28 any court.

29 (6) The contumacious and unlawful refusal of any person to be sworn as a
30 witness; or, when so sworn, the like refusal to answer any material question.

31 (7) The publication of a false or grossly inaccurate report of the proceedings of
32 any court.

33 (8) Presenting to any court having power to pass sentence upon any prisoner
34 under conviction, or to any member of the court, any affidavit or testimony or
35 representation of any kind, verbal or written, in aggravation or mitigation of the
36 punishment to be imposed upon the prisoner, except as provided in this code.

37 (b)(1) Any person who is guilty of contempt of court under paragraph (4) of
38 subdivision (a) by willfully contacting a victim by telephone or mail, or directly,
39 and who has been previously convicted of a violation of Section 646.9 shall be
40 punished by imprisonment in a county jail for not more than one year, by a fine of
41 five thousand dollars (\$5,000), or by both that fine and imprisonment.

1 (2) For the purposes of sentencing under this subdivision, each contact shall
2 constitute a separate violation of this subdivision.

3 (3) The present incarceration of a person who makes contact with a victim in
4 violation of paragraph (1) is not a defense to a violation of this subdivision.

5 (c)(1) Notwithstanding paragraph (4) of subdivision (a), any willful and
6 knowing violation of any protective order or stay-away court order issued pursuant
7 to Section 136.2, in a pending criminal proceeding involving domestic violence, as
8 defined in Section 13700, or issued as a condition of probation after a conviction
9 in a criminal proceeding involving domestic violence, as defined in Section 13700,
10 or elder or dependent adult abuse, as defined in Section 368, or that is an order
11 described in paragraph (3), shall constitute contempt of court, a misdemeanor,
12 punishable by imprisonment in a county jail for not more than one year, by a fine
13 of not more than one thousand dollars (\$1,000), or by both that imprisonment and
14 fine.

15 (2) If a violation of paragraph (1) results in a physical injury, the person shall be
16 imprisoned in a county jail for at least 48 hours, whether a fine or imprisonment is
17 imposed, or the sentence is suspended.

18 (3) Paragraphs (1) and (2) apply to the following court orders:

19 (A) Any order issued pursuant to Section 6320 or 6389 of the Family Code.

20 (B) An order excluding one party from the family dwelling or from the dwelling
21 of the other.

22 (C) An order enjoining a party from specified behavior that the court determined
23 was necessary to effectuate the orders described in paragraph (1).

24 (4) A second or subsequent conviction for a violation of any order described in
25 paragraph (1) occurring within seven years of a prior conviction for a violation of
26 any of those orders and involving an act of violence or “a credible threat” of
27 violence, as provided in subdivisions (c) and (d) of Section 139, is punishable by
28 imprisonment in a county jail not to exceed one year, or in the state prison for 16
29 months or two or three years.

30 (5) The prosecuting agency of each county shall have the primary responsibility
31 for the enforcement of the orders described in paragraph (1).

32 (d)(1) A person who owns, possesses, purchases, or receives a firearm knowing
33 he or she is prohibited from doing so by the provisions of a protective order as
34 defined in Section 136.2 of this code, Section 6218 of the Family Code, or
35 Sections 527.6 or 527.8 of the Code of Civil Procedure, shall be punished under
36 the provisions of ~~subdivision (g) of Section 12021~~ Section 29825 of the Penal
37 Code.

38 (2) A person subject to a protective order described in paragraph (1) shall not be
39 prosecuted under this section for owning, possessing, purchasing, or receiving a
40 firearm to the extent that firearm is granted an exemption pursuant to subdivision
41 (h) of Section 6389 of the Family Code.

1 (e)(1) If probation is granted upon conviction of a violation of subdivision (c),
2 the court shall impose probation consistent with the provisions of Section
3 1203.097 of the Penal Code.

4 (2) If probation is granted upon conviction of a violation of subdivision (c), the
5 conditions of probation may include, in lieu of a fine, one or both of the following
6 requirements:

7 (A) That the defendant make payments to a battered women’s shelter, up to a
8 maximum of one thousand dollars (\$1,000).

9 (B) That the defendant provide restitution to reimburse the victim for reasonable
10 costs of counseling and other reasonable expenses that the court finds are the
11 direct result of the defendant’s offense.

12 (3) For any order to pay a fine, make payments to a battered women’s shelter, or
13 pay restitution as a condition of probation under this subdivision or subdivision
14 (c), the court shall make a determination of the defendant’s ability to pay. In no
15 event shall any order to make payments to a battered women’s shelter be made if it
16 would impair the ability of the defendant to pay direct restitution to the victim or
17 court-ordered child support.

18 (4) If the injury to a married person is caused in whole or in part by the criminal
19 acts of his or her spouse in violation of subdivision (c), the community property
20 may not be used to discharge the liability of the offending spouse for restitution to
21 the injured spouse required by Section 1203.04, as operative on or before August
22 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured
23 spouse and dependents required by this subdivision, until all separate property of
24 the offending spouse is exhausted.

25 (5) Any person violating any order described in subdivision (c) may be punished
26 for any substantive offenses described under Section 136.1 or 646.9. No finding of
27 contempt shall be a bar to prosecution for a violation of Section 136.1 or 646.9.
28 However, any person held in contempt for a violation of subdivision (c) shall be
29 entitled to credit for any punishment imposed as a result of that violation against
30 any sentence imposed upon conviction of an offense described in Section 136.1 or
31 646.9. Any conviction or acquittal for any substantive offense under Section 136.1
32 or 646.9 shall be a bar to a subsequent punishment for contempt arising out of the
33 same act.

34 **Comment.** Subdivision (d) of Section 166 is amended to reflect nonsubstantive reorganization
35 of the statutes governing control of deadly weapons.

36 **Staff Note.** The text of Section 166 reflects the enactment of AB 1424 (Davis), 2008 Cal.
37 Stat. ch. 152.

38 **Penal Code § 171b (amended). Unauthorized possession of weapons in public building or at**
39 **public meeting**

40 SEC. ____. Section 171b of the Penal Code is amended to read:

41 171b. (a) Any person who brings or possesses within any state or local public
42 building or at any meeting required to be open to the public pursuant to Chapter 9

1 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of, or Article
2 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2
3 of, the Government Code, any of the following is guilty of a public offense
4 punishable by imprisonment in a county jail for not more than one year, or in the
5 state prison:

6 (1) Any firearm.

7 (2) Any deadly weapon described in Section ~~653k or 12010~~ Section 17235 or in
8 any provision listed in Section 16590.

9 (3) Any knife with a blade length in excess of four inches, the blade of which is
10 fixed or is capable of being fixed in an unguarded position by the use of one or
11 two hands.

12 (4) Any unauthorized tear gas weapon.

13 (5) Any taser or stun gun, as defined in Section 244.5.

14 (6) Any instrument that expels a metallic projectile, such as a BB or pellet,
15 through the force of air pressure, CO2 pressure, or spring action, or any spot
16 marker gun or paint gun.

17 (b) Subdivision (a) shall not apply to, or affect, any of the following:

18 (1) A person who possesses weapons in, or transports weapons into, a court of
19 law to be used as evidence.

20 (2)(A) A duly appointed peace officer as defined in Chapter 4.5 (commencing
21 with Section 830) of Title 3 of Part 2, a retired peace officer with authorization to
22 carry concealed weapons as described in ~~subdivision (a) of Section 12027~~ Article
23 2 (commencing with Section 25450) of Chapter 2 of Division 5 of Title 4 of Part
24 6, a full-time paid peace officer of another state or the federal government who is
25 carrying out official duties while in California, or any person summoned by any of
26 these officers to assist in making arrests or preserving the peace while he or she is
27 actually engaged in assisting the officer.

28 (B) Notwithstanding subparagraph (A), subdivision (a) shall apply to any person
29 who brings or possesses any weapon specified therein within any courtroom if he
30 or she is a party to an action pending before the court.

31 (3) A person holding a valid license to carry the firearm pursuant to ~~Article 3~~
32 ~~(commencing with Section 12050) of Chapter 1 of Title 2 of Part 4~~ Chapter 4
33 (commencing with Section 26150) of Division 5 of Title 4 of Part 6.

34 (4) A person who has permission to possess that weapon granted in writing by a
35 duly authorized official who is in charge of the security of the state or local
36 government building.

37 (5) A person who lawfully resides in, lawfully owns, or is in lawful possession
38 of, that building with respect to those portions of the building that are not owned
39 or leased by the state or local government.

40 (6) A person licensed or registered in accordance with, and acting within the
41 course and scope of, Chapter 11.5 (commencing with Section 7512) or Chapter
42 11.6 (commencing with Section 7590) of Division 3 of the Business and

1 Professions Code who has been hired by the owner or manager of the building if
2 the person has permission pursuant to paragraph (5).

3 (7)(A) A person who, for the purpose of sale or trade, brings any weapon that
4 may otherwise be lawfully transferred, into a gun show conducted pursuant to
5 Sections 12071.1 and 12071.4 Article 1 (commencing with Section 27200) and
6 Article 2 (commencing with Section 27300) of Chapter 3 of Division 6 of Title 4
7 of Part 6.

8 (B) A person who, for purposes of an authorized public exhibition, brings any
9 weapon that may otherwise be lawfully possessed, into a gun show conducted
10 pursuant to Sections 12071.1 and 12071.4 Article 1 (commencing with Section
11 27200) and Article 2 (commencing with Section 27300) of Chapter 3 of Division 6
12 of Title 4 of Part 6.

13 (c) As used in this section, “state or local public building” means a building that
14 meets all of the following criteria:

15 (1) It is a building or part of a building owned or leased by the state or local
16 government, if state or local public employees are regularly present for the
17 purposes of performing their official duties. A state or local public building
18 includes, but is not limited to, a building that contains a courtroom.

19 (2) It is not a building or facility, or a part thereof, that is referred to in Section
20 171c, 171d, 626.9, 626.95, or 626.10 of this code, or in Section 18544 of the
21 Elections Code.

22 (3) It is a building not regularly used, and not intended to be used, by state or
23 local employees as a place of residence.

24 **Comment.** Subdivisions (a) and (b) of Section 171b are amended to reflect nonsubstantive
25 reorganization of the statutes governing control of deadly weapons.

26 **Penal Code § 171c (amended). Punishment for bringing or possessing loaded firearm within**
27 **State Capitol and other specified locations**

28 SEC. ____. Section 171c of the Penal Code is amended to read:

29 171c. Any person, except a duly appointed peace officer as defined in Chapter
30 4.5 (commencing with Section 830) of Title 3 of Part 2, a full-time paid peace
31 officer of another state or the federal government who is carrying out official
32 duties while in California, any person summoned by ~~any such officer~~ one of those
33 officers to assist in making arrests or preserving the peace while ~~he is~~ actually
34 engaged in assisting ~~such that~~ that officer, a member of the military forces of this state
35 or the United States engaged in the performance of ~~his~~ duties, or a person holding
36 a valid license to carry the firearm pursuant to ~~Article 3 (commencing with~~
37 ~~Section 12050) of Chapter 1 of Title 2 of Part 4 Chapter 4 (commencing with~~
38 Section 26150) of Division 5 of Title 4 of Part 6, who brings a loaded firearm into,
39 or possesses a loaded firearm within, the State Capitol, any legislative office, any
40 office of the Governor or other constitutional officer, or any hearing room in
41 which any committee of the Senate or Assembly is conducting a hearing, or upon
42 the grounds of the State Capitol, which is bounded by 10th, L, 15th, and N Streets

1 in the City of Sacramento, shall be punished by imprisonment in the county jail for
2 a period of not more than one year, a fine of not more than one thousand dollars
3 (\$1,000), or both ~~such~~ that imprisonment and fine, or by imprisonment in the state
4 prison.

5 **Comment.** Section 171c is amended to reflect nonsubstantive reorganization of the statutes
6 governing control of deadly weapons. The section is also amended to make it gender neutral and
7 to make other technical revisions.

8 **Penal Code § 171d (amended). Punishment for bringing or possessing loaded firearm within**
9 **Governor’s Mansion and other specified locations**

10 SEC. _____. Section 171d of the Penal Code is amended to read:

11 171d. Any person, except a duly appointed peace officer as defined in Chapter
12 4.5 (commencing with Section 830) of Title 3 of Part 2, a full-time paid peace
13 officer of another state or the federal government who is carrying out official
14 duties while in California, any person summoned by that officer to assist in
15 making arrests or preserving the peace while he or she is actually engaged in
16 assisting the officer, a member of the military forces of this state or of the United
17 States engaged in the performance of his or her duties, a person holding a valid
18 license to carry the firearm pursuant to ~~Article 3 (commencing with Section~~
19 ~~12050) of Chapter 1 of Title 2 of Part 4~~ Chapter 4 (commencing with Section
20 26150) of Division 5 of Title 4 of Part 6, the Governor or a member of his or her
21 immediate family or a person acting with his or her permission with respect to the
22 Governor’s Mansion or any other residence of the Governor, any other
23 constitutional officer or a member of his or her immediate family or a person
24 acting with his or her permission with respect to the officer’s residence, or a
25 Member of the Legislature or a member of his or her immediate family or a person
26 acting with his or her permission with respect to the Member’s residence, shall be
27 punished by imprisonment in a county jail for not more than one year, by fine of
28 not more than one thousand dollars (\$1,000), or by both the fine and
29 imprisonment, or by imprisonment in the state prison, if he or she does any of the
30 following:

31 (a) Brings a loaded firearm into, or possesses a loaded firearm within, the
32 Governor’s Mansion, or any other residence of the Governor, the residence of any
33 other constitutional officer, or the residence of any Member of the Legislature.

34 (b) Brings a loaded firearm upon, or possesses a loaded firearm upon, the
35 grounds of the Governor’s Mansion or any other residence of the Governor, the
36 residence of any other constitutional officer, or the residence of any Member of
37 the Legislature.

38 **Comment.** Section 171d is amended to reflect nonsubstantive reorganization of the statutes
39 governing control of deadly weapons.

40 **Penal Code § 171.5 (amended). Items prohibited in airports and passenger terminals**

41 SEC. _____. Section 171.5 of the Penal Code is amended to read:

1 171.5. (a) For purposes of this section:

2 (1) “Airport” means an airport, with a secured area, that regularly serves an air
3 carrier holding a certificate issued by the United States Secretary of
4 Transportation.

5 (2) “Passenger vessel terminal” means only that portion of a harbor or port
6 facility, as described in Section 105.105(a)(2) of Title 33 of the Code of Federal
7 Regulations, with a secured area that regularly serves scheduled commuter or
8 passenger operations.

9 (3) “Sterile area” means a portion of an airport defined in the airport security
10 program to which access generally is controlled through the screening of persons
11 and property, as specified in Section 1540.5 of Title 49 of the Code of Federal
12 Regulations, or a portion of any passenger vessel terminal to which, pursuant to
13 the requirements set forth in Sections 105.255(a)(1), 105.255(c)(1), and
14 105.260(a) of Title 33 of the Code of Federal Regulations, access is generally
15 controlled in a manner consistent with the passenger vessel terminal’s security
16 plan and the MARSEC level in effect at the time.

17 (b) It is unlawful for any person to knowingly possess, within any sterile area of
18 an airport or a passenger vessel terminal, any of the items listed in subdivision (c).

19 (c) The following items are unlawful to possess as provided in subdivision (b):

20 (1) Any firearm.

21 (2) Any knife with a blade length in excess of four inches, the blade of which is
22 fixed, or is capable of being fixed, in an unguarded position by the use of one or
23 two hands.

24 (3) Any box cutter or straight razor.

25 (4) Any metal military practice hand grenade.

26 (5) Any metal replica hand grenade.

27 (6) Any plastic replica hand grenade.

28 (7) Any imitation firearm as defined in Section 417.4.

29 (8) Any frame, receiver, barrel, or magazine of a firearm.

30 (9) Any unauthorized tear gas weapon.

31 (10) Any taser or stun gun, as defined in Section 244.5.

32 (11) Any instrument that expels a metallic projectile, such as a BB or pellet,
33 through the force of air pressure, CO2 pressure, or spring action, or any spot
34 marker gun or paint gun.

35 (12) Any ammunition as defined in Section ~~12316~~ 16150.

36 (d) Subdivision (b) shall not apply to, or affect, any of the following:

37 (1) A duly appointed peace officer, as defined in Chapter 4.5 (commencing with
38 Section 830) of Title 3 of Part 2, a retired peace officer with authorization to carry
39 concealed weapons as described in ~~subdivision (a) of Section 12027~~ Article 2
40 (commencing with Section 25450) of Chapter 2 of Division 5 of Title 4 of Part 6,
41 a full-time paid peace officer of another state or the federal government who is
42 carrying out official duties while in California, or any person summoned by any of

1 these officers to assist in making arrests or preserving the peace while he or she is
2 actually engaged in assisting the officer.

3 (2) A person who has authorization to possess a weapon specified in subdivision
4 (c), granted in writing by an airport security coordinator who is designated as
5 specified in Section 1542.3 of Title 49 of the Code of Federal Regulations, and
6 who is responsible for the security of the airport.

7 (3) A person, including an employee of a licensed contract guard service, who
8 has authorization to possess a weapon specified in subdivision (c) granted in
9 writing by a person discharging the duties of Facility Security Officer or Company
10 Security Officer pursuant to an approved United States Coast Guard facility
11 security plan, and who is responsible for the security of the passenger vessel
12 terminal.

13 (e) A violation of this section is punishable by imprisonment in a county jail for
14 a period not exceeding six months, or by a fine not exceeding one thousand dollars
15 (\$1,000), or by both that fine and imprisonment.

16 (f) The provisions of this section are cumulative, and shall not be construed as
17 restricting the application of any other law. However, an act or omission that is
18 punishable in different ways by this and any other provision of law shall not be
19 punished under more than one provision.

20 (g) Nothing in this section is intended to affect existing state or federal law
21 regarding the transportation of firearms on airplanes in checked luggage, or the
22 possession of the items listed in subdivision (c) in areas that are not “sterile areas.”

23 **Comment.** Subdivisions (c) and (d) of Section 171.5 are amended to reflect nonsubstantive
24 reorganization of the statutes governing control of deadly weapons.

25 **Penal Code § 186.22 (amended). Promotion, furtherance, or assistance in felonious conduct**
26 **by gang member**

27 SEC. ____ . Section 186.22 of the Penal Code is amended to read:

28 186.22. (a) Any person who actively participates in any criminal street gang
29 with knowledge that its members engage in or have engaged in a pattern of
30 criminal gang activity, and who willfully promotes, furthers, or assists in any
31 felonious criminal conduct by members of that gang, shall be punished by
32 imprisonment in a county jail for a period not to exceed one year, or by
33 imprisonment in the state prison for 16 months, or two or three years.

34 (b)(1) Except as provided in paragraphs (4) and (5), any person who is convicted
35 of a felony committed for the benefit of, at the direction of, or in association with
36 any criminal street gang, with the specific intent to promote, further, or assist in
37 any criminal conduct by gang members, shall, upon conviction of that felony, in
38 addition and consecutive to the punishment prescribed for the felony or attempted
39 felony of which he or she has been convicted, be punished as follows:

40 (A) Except as provided in subparagraphs (B) and (C), the person shall be
41 punished by an additional term of two, three, or four years at the court’s
42 discretion.

1 (B) If the felony is a serious felony, as defined in subdivision (c) of Section
2 1192.7, the person shall be punished by an additional term of five years.

3 (C) If the felony is a violent felony, as defined in subdivision (c) of Section
4 667.5, the person shall be punished by an additional term of 10 years.

5 (2) If the underlying felony described in paragraph (1) is committed on the
6 grounds of, or within 1,000 feet of, a public or private elementary, vocational,
7 junior high, or high school, during hours in which the facility is open for classes or
8 school-related programs or when minors are using the facility, that fact shall be a
9 circumstance in aggravation of the crime in imposing a term under paragraph (1).

10 (3) The court shall order the imposition of the middle term of the sentence
11 enhancement, unless there are circumstances in aggravation or mitigation. The
12 court shall state the reasons for its choice of sentencing enhancements on the
13 record at the time of the sentencing.

14 (4) Any person who is convicted of a felony enumerated in this paragraph
15 committed for the benefit of, at the direction of, or in association with any criminal
16 street gang, with the specific intent to promote, further, or assist in any criminal
17 conduct by gang members, shall, upon conviction of that felony, be sentenced to
18 an indeterminate term of life imprisonment with a minimum term of the
19 indeterminate sentence calculated as the greater of:

20 (A) The term determined by the court pursuant to Section 1170 for the
21 underlying conviction, including any enhancement applicable under Chapter 4.5
22 (commencing with Section 1170) of Title 7 of Part 2, or any period prescribed by
23 Section 3046, if the felony is any of the offenses enumerated in subparagraph (B)
24 or (C) of this paragraph.

25 (B) Imprisonment in the state prison for 15 years, if the felony is a home
26 invasion robbery, in violation of subparagraph (A) of paragraph (1) of subdivision
27 (a) of Section 213; carjacking, as defined in Section 215; a felony violation of
28 Section 246; or a violation of Section 12022.55.

29 (C) Imprisonment in the state prison for seven years, if the felony is extortion, as
30 defined in Section 519; or threats to victims and witnesses, as defined in Section
31 136.1.

32 (5) Except as provided in paragraph (4), any person who violates this
33 subdivision in the commission of a felony punishable by imprisonment in the state
34 prison for life shall not be paroled until a minimum of 15 calendar years have been
35 served.

36 (c) If the court grants probation or suspends the execution of sentence imposed
37 upon the defendant for a violation of subdivision (a), or in cases involving a true
38 finding of the enhancement enumerated in subdivision (b), the court shall require
39 that the defendant serve a minimum of 180 days in a county jail as a condition
40 thereof.

41 (d) Any person who is convicted of a public offense punishable as a felony or a
42 misdemeanor, which is committed for the benefit of, at the direction of or in
43 association with, any criminal street gang with the specific intent to promote,

1 further, or assist in any criminal conduct by gang members, shall be punished by
2 imprisonment in the county jail not to exceed one year, or by imprisonment in the
3 state prison for one, two, or three years, provided that any person sentenced to
4 imprisonment in the county jail shall be imprisoned for a period not to exceed one
5 year, but not less than 180 days, and shall not be eligible for release upon
6 completion of sentence, parole, or any other basis, until he or she has served 180
7 days. If the court grants probation or suspends the execution of sentence imposed
8 upon the defendant, it shall require as a condition thereof that the defendant serve
9 180 days in a county jail.

10 (e) As used in this chapter, “pattern of criminal gang activity” means the
11 commission of, attempted commission of, conspiracy to commit, or solicitation of,
12 sustained juvenile petition for, or conviction of two or more of the following
13 offenses, provided at least one of these offenses occurred after the effective date of
14 this chapter and the last of those offenses occurred within three years after a prior
15 offense, and the offenses were committed on separate occasions, or by two or
16 more persons:

17 (1) Assault with a deadly weapon or by means of force likely to produce great
18 bodily injury, as defined in Section 245.

19 (2) Robbery, as defined in Chapter 4 (commencing with Section 211) of Title 8
20 of Part 1.

21 (3) Unlawful homicide or manslaughter, as defined in Chapter 1 (commencing
22 with Section 187) of Title 8 of Part 1.

23 (4) The sale, possession for sale, transportation, manufacture, offer for sale, or
24 offer to manufacture controlled substances as defined in Sections 11054, 11055,
25 11056, 11057, and 11058 of the Health and Safety Code.

26 (5) Shooting at an inhabited dwelling or occupied motor vehicle, as defined in
27 Section 246.

28 (6) Discharging or permitting the discharge of a firearm from a motor vehicle, as
29 defined in subdivisions (a) and (b) of Section ~~42034~~ 26100.

30 (7) Arson, as defined in Chapter 1 (commencing with Section 450) of Title 13.

31 (8) The intimidation of witnesses and victims, as defined in Section 136.1.

32 (9) Grand theft, as defined in subdivision (a) or (c) of Section 487.

33 (10) Grand theft of any firearm, vehicle, trailer, or vessel.

34 (11) Burglary, as defined in Section 459.

35 (12) Rape, as defined in Section 261.

36 (13) Looting, as defined in Section 463.

37 (14) Money laundering, as defined in Section 186.10.

38 (15) Kidnapping, as defined in Section 207.

39 (16) Mayhem, as defined in Section 203.

40 (17) Aggravated mayhem, as defined in Section 205.

41 (18) Torture, as defined in Section 206.

42 (19) Felony extortion, as defined in Sections 518 and 520.

1 (20) Felony vandalism, as defined in paragraph (1) of subdivision (b) of Section
2 594.

3 (21) Carjacking, as defined in Section 215.

4 (22) The sale, delivery, or transfer of a firearm, as defined in ~~Section 12072~~
5 Article 1 (commencing with Section 27500) of Chapter 4 of Division 6 of Title 4
6 of Part 6.

7 (23) Possession of a pistol, revolver, or other firearm capable of being concealed
8 upon the person in violation of ~~paragraph (1) of subdivision (a) of Section 12101~~
9 Section 29610.

10 (24) Threats to commit crimes resulting in death or great bodily injury, as
11 defined in Section 422.

12 (25) Theft and unlawful taking or driving of a vehicle, as defined in Section
13 10851 of the Vehicle Code.

14 (26) Felony theft of an access card or account information, as defined in Section
15 484e.

16 (27) Counterfeiting, designing, using, attempting to use an access card, as
17 defined in Section 484f.

18 (28) Felony fraudulent use of an access card or account information, as defined
19 in Section 484g.

20 (29) Unlawful use of personal identifying information to obtain credit, goods,
21 services, or medical information, as defined in Section 530.5.

22 (30) Wrongfully obtaining Department of Motor Vehicles documentation, as
23 defined in Section 529.7.

24 (31) Prohibited possession of a firearm in violation of ~~Section 12021~~ Chapter 2
25 (commencing with Section 29800) of Division 9 of Title 4 of Part 6.

26 (32) Carrying a concealed firearm in violation of Section ~~12025~~ 25400.

27 (33) Carrying a loaded firearm in violation of Section ~~12031~~ 25850.

28 (f) As used in this chapter, “criminal street gang” means any ongoing
29 organization, association, or group of three or more persons, whether formal or
30 informal, having as one of its primary activities the commission of one or more of
31 the criminal acts enumerated in paragraphs (1) to (25), inclusive, or (31) to (33),
32 inclusive, of subdivision (e), having a common name or common identifying sign
33 or symbol, and whose members individually or collectively engage in or have
34 engaged in a pattern of criminal gang activity.

35 (g) Notwithstanding any other law, the court may strike the additional
36 punishment for the enhancements provided in this section or refuse to impose the
37 minimum jail sentence for misdemeanors in an unusual case where the interests of
38 justice would best be served, if the court specifies on the record and enters into the
39 minutes the circumstances indicating that the interests of justice would best be
40 served by that disposition.

41 (h) Notwithstanding any other provision of law, for each person committed to
42 the Division of Juvenile Facilities for a conviction pursuant to subdivision (a) or
43 (b) of this section, the offense shall be deemed one for which the state shall pay

1 the rate of 100 percent of the per capita institutional cost of the Division of
2 Juvenile Facilities, pursuant to Section 912.5 of the Welfare and Institutions Code.

3 (i) In order to secure a conviction or sustain a juvenile petition, pursuant to
4 subdivision (a) it is not necessary for the prosecution to prove that the person
5 devotes all, or a substantial part, of his or her time or efforts to the criminal street
6 gang, nor is it necessary to prove that the person is a member of the criminal street
7 gang. Active participation in the criminal street gang is all that is required.

8 (j) A pattern of gang activity may be shown by the commission of one or more
9 of the offenses enumerated in paragraphs (26) to (30), inclusive, of subdivision
10 (e), and the commission of one or more of the offenses enumerated in paragraphs
11 (1) to (25), inclusive, or (31) to (33), inclusive of subdivision (e). A pattern of
12 gang activity cannot be established solely by proof of commission of offenses
13 enumerated in paragraphs (26) to (30), inclusive, of subdivision (e), alone.

14 **Comment.** Subdivision (e) of Section 186.22 is amended to reflect nonsubstantive
15 reorganization of the statutes governing control of deadly weapons.

16 For guidance in applying this section, see Section 16015 (determining existence of prior
17 conviction).

18 **Penal Code § 186.22a (amended). Building or place where gang commits offense**

19 SEC. ____ . Section 186.22a of the Penal Code is amended to read:

20 186.22a. (a) Every building or place used by members of a criminal street gang
21 for the purpose of the commission of the offenses listed in subdivision (e) of
22 Section 186.22 or any offense involving dangerous or deadly weapons, burglary,
23 or rape, and every building or place wherein or upon which that criminal conduct
24 by gang members takes place, is a nuisance which shall be enjoined, abated, and
25 prevented, and for which damages may be recovered, whether it is a public or
26 private nuisance.

27 (b) Any action for injunction or abatement filed pursuant to subdivision (a),
28 including an action filed by the Attorney General, shall proceed according to the
29 provisions of Article 3 (commencing with Section 11570) of Chapter 10 of
30 Division 10 of the Health and Safety Code, except that all of the following shall
31 apply:

32 (1) The court shall not assess a civil penalty against any person unless that
33 person knew or should have known of the unlawful acts.

34 (2) No order of eviction or closure may be entered.

35 (3) All injunctions issued shall be limited to those necessary to protect the health
36 and safety of the residents or the public or those necessary to prevent further
37 criminal activity.

38 (4) Suit may not be filed until 30-day notice of the unlawful use or criminal
39 conduct has been provided to the owner by mail, return receipt requested, postage
40 prepaid, to the last known address.

41 (c) Whenever an injunction is issued pursuant to subdivision (a), or Section
42 3479 of the Civil Code, to abate gang activity constituting a nuisance, the Attorney

1 General or any district attorney or any prosecuting city attorney may maintain an
2 action for money damages on behalf of the community or neighborhood injured by
3 that nuisance. Any money damages awarded shall be paid by or collected from
4 assets of the criminal street gang or its members. Only members of the criminal
5 street gang who created, maintained, or contributed to the creation or maintenance
6 of the nuisance shall be personally liable for the payment of the damages awarded.
7 In a civil action for damages brought pursuant to this subdivision, the Attorney
8 General, district attorney, or city attorney may use, but is not limited to the use of,
9 the testimony of experts to establish damages suffered by the community or
10 neighborhood injured by the nuisance. The damages recovered pursuant to this
11 subdivision shall be deposited into a separate segregated fund for payment to the
12 governing body of the city or county in whose political subdivision the community
13 or neighborhood is located, and that governing body shall use those assets solely
14 for the benefit of the community or neighborhood that has been injured by the
15 nuisance.

16 (d) No nonprofit or charitable organization which is conducting its affairs with
17 ordinary care or skill, and no governmental entity, shall be abated pursuant to
18 subdivisions (a) and (b).

19 (e) Nothing in this chapter shall preclude any aggrieved person from seeking any
20 other remedy provided by law.

21 (f)(1) Any firearm, ammunition which may be used with the firearm, or any
22 deadly or dangerous weapon which is owned or possessed by a member of a
23 criminal street gang for the purpose of the commission of any of the offenses listed
24 in subdivision (e) of Section 186.22, or the commission of any burglary or rape,
25 may be confiscated by any law enforcement agency or peace officer.

26 (2) In those cases where a law enforcement agency believes that the return of the
27 firearm, ammunition, or deadly weapon confiscated pursuant to this subdivision, is
28 or will be used in criminal street gang activity or that the return of the item would
29 be likely to result in endangering the safety of others, the law enforcement agency
30 shall initiate a petition in the superior court to determine if the item confiscated
31 should be returned or declared a nuisance.

32 (3) No firearm, ammunition, or deadly weapon shall be sold or destroyed unless
33 reasonable notice is given to its lawful owner if his or her identity and address can
34 be reasonably ascertained. The law enforcement agency shall inform the lawful
35 owner, at that person's last known address by registered mail, that he or she has 30
36 days from the date of receipt of the notice to respond to the court clerk to confirm
37 his or her desire for a hearing and that the failure to respond shall result in a
38 default order forfeiting the confiscated firearm, ammunition, or deadly weapon as
39 a nuisance.

40 (4) If the person requests a hearing, the court clerk shall set a hearing no later
41 than 30 days from receipt of that request. The court clerk shall notify the person,
42 the law enforcement agency involved, and the district attorney of the date, time,
43 and place of the hearing.

1 (5) At the hearing, the burden of proof is upon the law enforcement agency or
2 peace officer to show by a preponderance of the evidence that the seized item is or
3 will be used in criminal street gang activity or that return of the item would be
4 likely to result in endangering the safety of others. All returns of firearms shall be
5 subject to ~~Section 12021.3~~ Chapter 2 (commencing with Section 33850) of
6 Division 11 of Title 4 of Part 6.

7 (6) If the person does not request a hearing within 30 days of the notice or the
8 lawful owner cannot be ascertained, the law enforcement agency may file a
9 petition that the confiscated firearm, ammunition, or deadly weapon be declared a
10 nuisance. If the items are declared to be a nuisance, the law enforcement agency
11 shall dispose of the items as provided in ~~Section 12028~~ Sections 18000 and 18005.

12 **Comment.** Subdivision (f) of Section 186.22a is amended to reflect nonsubstantive
13 reorganization of the statutes governing control of deadly weapons.

14 **Staff Note.** The text of Section 186.22a reflects the enactment of SB 1126 (Cedillo), 2008
15 Cal. Stat. ch. 38.

16 **Penal Code § 189 (amended). First and second degree murder**

17 SEC. ____ . Section 189 of the Penal Code is amended to read:

18 189. All murder which is perpetrated by means of a destructive device or
19 explosive, a weapon of mass destruction, knowing use of ammunition designed
20 primarily to penetrate metal or armor, poison, lying in wait, torture, or by any
21 other kind of willful, deliberate, and premeditated killing, or which is committed
22 in the perpetration of, or attempt to perpetrate, arson, rape, carjacking, robbery,
23 burglary, mayhem, kidnapping, train wrecking, or any act punishable under
24 Section 206, 286, 288, 288a, or 289, or any murder which is perpetrated by means
25 of discharging a firearm from a motor vehicle, intentionally at another person
26 outside of the vehicle with the intent to inflict death, is murder of the first degree.
27 All other kinds of murders are of the second degree.

28 As used in this section, “destructive device” means any destructive device as
29 defined in Section ~~12301~~ 16460, and “explosive” means any explosive as defined
30 in Section 12000 of the Health and Safety Code.

31 As used in this section, “weapon of mass destruction” means any item defined in
32 Section 11417.

33 To prove the killing was “deliberate and premeditated,” it shall not be necessary
34 to prove the defendant maturely and meaningfully reflected upon the gravity of his
35 or her act.

36 **Comment.** Section 189 is amended to reflect nonsubstantive reorganization of the statutes
37 governing control of deadly weapons.

38 **Penal Code § 244.5 (amended). Stun gun or less lethal weapon**

39 SEC. ____ . Section 244.5 of the Penal Code is amended to read:

40 244.5. (a) As used in this section, “stun gun” means any item, except a less
41 lethal weapon, as defined in Section ~~12601~~ 16780, used or intended to be used as

1 either an offensive or defensive weapon that is capable of temporarily
2 immobilizing a person by the infliction of an electrical charge.

3 (b) Every person who commits an assault upon the person of another with a stun
4 gun or less lethal weapon, as defined in Section ~~12601~~ 16780, shall be punished by
5 imprisonment in a county jail for a term not exceeding one year, or by
6 imprisonment in the state prison for 16 months, two, or three years.

7 (c) Every person who commits an assault upon the person of a peace officer or
8 firefighter with a stun gun or less lethal weapon, as defined in Section ~~12601~~
9 16780, who knows or reasonably should know that the person is a peace officer or
10 firefighter engaged in the performance of his or her duties, when the peace officer
11 or firefighter is engaged in the performance of his or her duties, shall be punished
12 by imprisonment in the county jail for a term not exceeding one year, or by
13 imprisonment in the state prison for two, three, or four years.

14 (d) This section shall not be construed to preclude or in any way limit the
15 applicability of Section 245 in any criminal prosecution.

16 **Comment.** Section 244.5 is amended to reflect nonsubstantive reorganization of the statutes
17 governing control of deadly weapons.

18 **Staff Note.** The text of Section 244.5 reflects the enactment of AB 2973 (Soto), 2008 Cal.
19 Stat. ch. 556.

20 **Penal Code § 245 (amended). Assault with weapons**

21 SEC. ____ . Section 245 of the Penal Code is amended to read:

22 245. (a)(1) Any person who commits an assault upon the person of another with
23 a deadly weapon or instrument other than a firearm or by any means of force
24 likely to produce great bodily injury shall be punished by imprisonment in the
25 state prison for two, three, or four years, or in a county jail for not exceeding one
26 year, or by a fine not exceeding ten thousand dollars (\$10,000), or by both the fine
27 and imprisonment.

28 (2) Any person who commits an assault upon the person of another with a
29 firearm shall be punished by imprisonment in the state prison for two, three, or
30 four years, or in a county jail for not less than six months and not exceeding one
31 year, or by both a fine not exceeding ten thousand dollars (\$10,000) and
32 imprisonment.

33 (3) Any person who commits an assault upon the person of another with a
34 machinegun, as defined in Section ~~12200~~ 16880, or an assault weapon, as defined
35 in Section ~~12276 or 12276.1~~ 30510 or 30515, or a .50 BMG rifle, as defined in
36 Section ~~12278~~ 16110, shall be punished by imprisonment in the state prison for 4,
37 8, or 12 years.

38 (b) Any person who commits an assault upon the person of another with a
39 semiautomatic firearm shall be punished by imprisonment in the state prison for
40 three, six, or nine years.

41 (c) Any person who commits an assault with a deadly weapon or instrument,
42 other than a firearm, or by any means likely to produce great bodily injury upon

1 the person of a peace officer or firefighter, and who knows or reasonably should
2 know that the victim is a peace officer or firefighter engaged in the performance of
3 his or her duties, when the peace officer or firefighter is engaged in the
4 performance of his or her duties, shall be punished by imprisonment in the state
5 prison for three, four, or five years.

6 (d)(1) Any person who commits an assault with a firearm upon the person of a
7 peace officer or firefighter, and who knows or reasonably should know that the
8 victim is a peace officer or firefighter engaged in the performance of his or her
9 duties, when the peace officer or firefighter is engaged in the performance of his
10 or her duties, shall be punished by imprisonment in the state prison for four, six, or
11 eight years.

12 (2) Any person who commits an assault upon the person of a peace officer or
13 firefighter with a semiautomatic firearm and who knows or reasonably should
14 know that the victim is a peace officer or firefighter engaged in the performance of
15 his or her duties, when the peace officer or firefighter is engaged in the
16 performance of his or her duties, shall be punished by imprisonment in the state
17 prison for five, seven, or nine years.

18 (3) Any person who commits an assault with a machinegun, as defined in
19 Section ~~12200~~ 16880, or an assault weapon, as defined in Section ~~12276~~ ~~or~~
20 ~~12276.1~~ 30510 or 30515, or a .50 BMG rifle, as defined in Section ~~12278~~ 16110,
21 upon the person of a peace officer or firefighter, and who knows or reasonably
22 should know that the victim is a peace officer or firefighter engaged in the
23 performance of his or her duties, shall be punished by imprisonment in the state
24 prison for 6, 9, or 12 years.

25 (e) When a person is convicted of a violation of this section in a case involving
26 use of a deadly weapon or instrument or firearm, and the weapon or instrument or
27 firearm is owned by that person, the court shall order that the weapon or
28 instrument or firearm be deemed a nuisance, and it shall be confiscated and
29 disposed of in the manner provided by ~~Section 12028~~ Sections 18000 and 18005.

30 (f) As used in this section, “peace officer” refers to any person designated as a
31 peace officer in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

32 **Comment.** Section 245 is amended to reflect nonsubstantive reorganization of the statutes
33 governing control of deadly weapons.

34 **Penal Code § 245.3 (amended). Assault with deadly weapon on custodial officer**

35 SEC. ____ . Section 245.3 of the Penal Code is amended to read:

36 245.3. Every person who commits an assault with a deadly weapon or
37 instrument or by any means likely to produce great bodily injury upon the person
38 of a custodial officer as defined in Section 831 or 831.5, and who knows or
39 reasonably should know that ~~such~~ the victim is ~~such~~ a custodial officer engaged in
40 the performance of ~~his~~ duties, shall be punished by imprisonment in the state
41 prison for three, four, or five years.

1 When a person is convicted of a violation of this section in a case involving use
2 of a deadly weapon or instrument, and ~~such~~ that weapon or instrument is owned
3 by ~~such~~ that person, the court may, in its discretion, order that the weapon or
4 instrument be deemed a nuisance and shall be confiscated and destroyed in the
5 manner provided by ~~Section 12028~~ Sections 18000 and 18005.

6 **Comment.** Section 245.3 is amended to reflect nonsubstantive reorganization of the statutes
7 governing control of deadly weapons. The section is also amended to make it gender neutral and
8 to make other technical revisions.

9 **Penal Code § 273.6 (amended). Violation of protective order and other orders**

10 SEC. ____ . Section 273.6 of the Penal Code is amended to read:

11 273.6. (a) Any intentional and knowing violation of a protective order, as
12 defined in Section 6218 of the Family Code, or of an order issued pursuant to
13 Section 527.6 or 527.8 of the Code of Civil Procedure, or Section 15657.03 of the
14 Welfare and Institutions Code, is a misdemeanor punishable by a fine of not more
15 than one thousand dollars (\$1,000), or by imprisonment in a county jail for not
16 more than one year, or by both that fine and imprisonment.

17 (b) In the event of a violation of subdivision (a) which results in physical injury,
18 the person shall be punished by a fine of not more than two thousand dollars
19 (\$2,000), or by imprisonment in a county jail for not less than 30 days nor more
20 than one year, or by both that fine and imprisonment. However, if the person is
21 imprisoned in a county jail for at least 48 hours, the court may, in the interest of
22 justice and for reasons stated on the record, reduce or eliminate the 30-day
23 minimum imprisonment required by this subdivision. In determining whether to
24 reduce or eliminate the minimum imprisonment pursuant to this subdivision, the
25 court shall consider the seriousness of the facts before the court, whether there are
26 additional allegations of a violation of the order during the pendency of the case
27 before the court, the probability of future violations, the safety of the victim, and
28 whether the defendant has successfully completed or is making progress with
29 counseling.

30 (c) Subdivisions (a) and (b) shall apply to the following court orders:

31 (1) Any order issued pursuant to Section 6320 or 6389 of the Family Code.

32 (2) An order excluding one party from the family dwelling or from the dwelling
33 of the other.

34 (3) An order enjoining a party from specified behavior which the court
35 determined was necessary to effectuate the order described in subdivision (a).

36 (4) Any order issued by another state that is recognized under Part 5
37 (commencing with Section 6400) of Division 10 of the Family Code.

38 (d) A subsequent conviction for a violation of an order described in subdivision
39 (a), occurring within seven years of a prior conviction for a violation of an order
40 described in subdivision (a) and involving an act of violence or “a credible threat”
41 of violence, as defined in subdivision (c) of Section 139, is punishable by
42 imprisonment in a county jail not to exceed one year, or in the state prison.

1 (e) In the event of a subsequent conviction for a violation of an order described
2 in subdivision (a) for an act occurring within one year of a prior conviction for a
3 violation of an order described in subdivision (a) that results in physical injury to a
4 victim, the person shall be punished by a fine of not more than two thousand
5 dollars (\$2,000), or by imprisonment in a county jail for not less than six months
6 nor more than one year, by both that fine and imprisonment, or by imprisonment
7 in the state prison. However, if the person is imprisoned in a county jail for at least
8 30 days, the court may, in the interest of justice and for reasons stated in the
9 record, reduce or eliminate the six-month minimum imprisonment required by this
10 subdivision. In determining whether to reduce or eliminate the minimum
11 imprisonment pursuant to this subdivision, the court shall consider the seriousness
12 of the facts before the court, whether there are additional allegations of a violation
13 of the order during the pendency of the case before the court, the probability of
14 future violations, the safety of the victim, and whether the defendant has
15 successfully completed or is making progress with counseling.

16 (f) The prosecuting agency of each county shall have the primary responsibility
17 for the enforcement of orders described in subdivisions (a), (b), (d), and (e).

18 (g)(1) Every person who owns, possesses, purchases, or receives a firearm
19 knowing he or she is prohibited from doing so by the provisions of a protective
20 order as defined in Section 136.2 of this code, Section 6218 of the Family Code, or
21 Section 527.6 or 527.8 of the Code of Civil Procedure, or Section 15657.03 of the
22 Welfare and Institutions Code, shall be punished under the provisions of
23 ~~subdivision (g) of Section 12021~~ Section 29825.

24 (2) Every person subject to a protective order described in paragraph (1) shall
25 not be prosecuted under this section for owning, possessing, purchasing, or
26 receiving a firearm to the extent that firearm is granted an exemption pursuant to
27 subdivision (f) of Section 527.9 of the Code of Civil Procedure, or subdivision (h)
28 of Section 6389 of the Family Code.

29 (h) If probation is granted upon conviction of a violation of subdivision (a), (b),
30 (c), (d), or (e), the court shall impose probation consistent with the provisions of
31 Section 1203.097, and the conditions of probation may include, in lieu of a fine,
32 one or both of the following requirements:

33 (1) That the defendant make payments to a battered women's shelter or to a
34 shelter for abused elder persons or dependent adults, up to a maximum of five
35 thousand dollars (\$5,000), pursuant to Section 1203.097.

36 (2) That the defendant reimburse the victim for reasonable costs of counseling
37 and other reasonable expenses that the court finds are the direct result of the
38 defendant's offense.

39 (i) For any order to pay a fine, make payments to a battered women's shelter, or
40 pay restitution as a condition of probation under subdivision (e), the court shall
41 make a determination of the defendant's ability to pay. In no event shall any order
42 to make payments to a battered women's shelter be made if it would impair the
43 ability of the defendant to pay direct restitution to the victim or court-ordered child

1 support. Where the injury to a married person is caused in whole or in part by the
2 criminal acts of his or her spouse in violation of this section, the community
3 property may not be used to discharge the liability of the offending spouse for
4 restitution to the injured spouse, required by Section 1203.04, as operative on or
5 before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to
6 the injured spouse and dependents, required by this section, until all separate
7 property of the offending spouse is exhausted.

8 **Comment.** Subdivision (g) of Section 273.6 is amended to reflect nonsubstantive
9 reorganization of the statutes governing control of deadly weapons.

10 **Penal Code § 417.4 (amended). Punishment for drawing or exhibiting imitation firearm**

11 SEC. _____. Section 417.4 of the Penal Code is amended to read:

12 417.4. Every person who, except in self-defense, draws or exhibits an imitation
13 firearm, as defined in ~~Section 12550~~ subdivision (a) of Section 16700, in a
14 threatening manner against another in such a way as to cause a reasonable person
15 apprehension or fear of bodily harm is guilty of a misdemeanor punishable by
16 imprisonment in a county jail for a term of not less than 30 days.

17 **Comment.** Section 417.4 is amended to reflect nonsubstantive reorganization of the statutes
18 governing control of deadly weapons. The section is also amended to make a technical revision.

19 **Penal Code § 417.6 (amended). Intentional infliction of serious bodily injury by drawing or**
20 **exhibiting firearm or deadly weapon**

21 SEC. _____. Section 417.6 of the Penal Code is amended to read:

22 417.6. (a) If, in the commission of a violation of Section 417 or 417.8, serious
23 bodily injury is intentionally inflicted by the person drawing or exhibiting the
24 firearm or deadly weapon, the offense shall be punished by imprisonment in the
25 county jail not exceeding one year or by imprisonment in the state prison.

26 (b) As used in this section, “serious bodily injury” means a serious impairment
27 of physical condition, including, but not limited to, the following: loss of
28 consciousness; concussion; bone fracture; protracted loss or impairment of
29 function of any bodily member or organ; a wound requiring extensive suturing;
30 and serious disfigurement.

31 (c) When a person is convicted of a violation of Section 417 or 417.8 and the
32 deadly weapon or firearm used by the person is owned by that person, the court
33 shall order that the weapon or firearm be deemed a nuisance and disposed of in the
34 manner provided by ~~Section 12028~~ Sections 18000 and 18005.

35 **Comment.** Subdivision (c) of Section 417.6 is amended to reflect nonsubstantive
36 reorganization of the statutes governing control of deadly weapons.

37 **Penal Code § 626.9 (amended). Gun-Free School Zone Act of 1995**

38 SEC. _____. Section 626.9 of the Penal Code is amended to read:

39 626.9. (a) This section shall be known, and may be cited, as the Gun-Free
40 School Zone Act of 1995.

1 (b) Any person who possesses a firearm in a place that the person knows, or
2 reasonably should know, is a school zone, as defined in paragraph (1) of
3 subdivision (e), unless it is with the written permission of the school district
4 superintendent, his or her designee, or equivalent school authority, shall be
5 punished as specified in subdivision (f).

6 (c) Subdivision (b) does not apply to the possession of a firearm under any of
7 the following circumstances:

8 (1) Within a place of residence or place of business or on private property, if the
9 place of residence, place of business, or private property is not part of the school
10 grounds and the possession of the firearm is otherwise lawful.

11 (2) When the firearm is an unloaded pistol, revolver, or other firearm capable of
12 being concealed on the person and is in a locked container or within the locked
13 trunk of a motor vehicle.

14 This section does not prohibit or limit the otherwise lawful transportation of any
15 other firearm, other than a pistol, revolver, or other firearm capable of being
16 concealed on the person, in accordance with state law.

17 (3) When the person possessing the firearm reasonably believes that he or she is
18 in grave danger because of circumstances forming the basis of a current restraining
19 order issued by a court against another person or persons who has or have been
20 found to pose a threat to his or her life or safety. This subdivision may not apply
21 when the circumstances involve a mutual restraining order issued pursuant to
22 Division 10 (commencing with Section 6200) of the Family Code absent a factual
23 finding of a specific threat to the person's life or safety. Upon a trial for violating
24 subdivision (b), the trier of a fact shall determine whether the defendant was acting
25 out of a reasonable belief that he or she was in grave danger.

26 (4) When the person is exempt from the prohibition against carrying a concealed
27 firearm pursuant to ~~subdivision (b), (d), (e), or (h) of Section 12027~~ Section
28 25615, 25625, 25630, or 25645.

29 (d) Except as provided in subdivision (b), it shall be unlawful for any person,
30 with reckless disregard for the safety of another, to discharge, or attempt to
31 discharge, a firearm in a school zone, as defined in paragraph (1) of subdivision
32 (e).

33 The prohibition contained in this subdivision does not apply to the discharge of
34 a firearm to the extent that the conditions of paragraph (1) of subdivision (c) are
35 satisfied.

36 (e) As used in this section, the following definitions shall apply:

37 (1) "School zone" means an area in, or on the grounds of, a public or private
38 school providing instruction in kindergarten or grades 1 to 12, inclusive, or within
39 a distance of 1,000 feet from the grounds of the public or private school.

40 (2) "Firearm" has the same meaning as that term is given in ~~Section 12001~~
41 subdivisions (a) to (d), inclusive, of Section 16520.

42 (3) "Locked container" has the same meaning as that term is given in
43 subdivision (c) of Section 12026.1 Section 16850.

1 (4) “Concealed firearm” has the same meaning as that term is given in Sections
2 ~~12025 and 12026.1~~ 25400 and 25610.

3 (f)(1) Any person who violates subdivision (b) by possessing a firearm in, or on
4 the grounds of, a public or private school providing instruction in kindergarten or
5 grades 1 to 12, inclusive, shall be punished by imprisonment in the state prison for
6 two, three, or five years.

7 (2) Any person who violates subdivision (b) by possessing a firearm within a
8 distance of 1,000 feet from the grounds of a public or private school providing
9 instruction in kindergarten or grades 1 to 12, inclusive, shall be punished as
10 follows:

11 (A) By imprisonment in the state prison for two, three, or five years, if any of
12 the following circumstances apply:

13 (i) If the person previously has been convicted of any felony, or of any crime
14 made punishable by ~~Chapter 1 (commencing with Section 12000) of Title 2 of~~
15 ~~Part 4~~ any provision listed in Section 16580.

16 (ii) If the person is within a class of persons prohibited from possessing or
17 acquiring a firearm pursuant to ~~Section 12021 or 12021.1~~ Chapter 2 (commencing
18 with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9
19 of Title 4 of Part 6 of this code or Section 8100 or 8103 of the Welfare and
20 Institutions Code.

21 (iii) If the firearm is any pistol, revolver, or other firearm capable of being
22 concealed upon the person and the offense is punished as a felony pursuant to
23 Section ~~12025~~ 25400.

24 (B) By imprisonment in a county jail for not more than one year or by
25 imprisonment in the state prison for two, three, or five years, in all cases other than
26 those specified in subparagraph (A).

27 (3) Any person who violates subdivision (d) shall be punished by imprisonment
28 in the state prison for three, five, or seven years.

29 (g)(1) Every person convicted under this section for a misdemeanor violation of
30 subdivision (b) who has been convicted previously of a misdemeanor offense
31 enumerated in Section ~~12001.6~~ 23515 shall be punished by imprisonment in a
32 county jail for not less than three months, or if probation is granted or if the
33 execution or imposition of sentence is suspended, it shall be a condition thereof
34 that he or she be imprisoned in a county jail for not less than three months.

35 (2) Every person convicted under this section of a felony violation of
36 subdivision (b) or (d) who has been convicted previously of a misdemeanor
37 offense enumerated in Section ~~12001.6~~ 23515, if probation is granted or if the
38 execution of sentence is suspended, it shall be a condition thereof that he or she be
39 imprisoned in a county jail for not less than three months.

40 (3) Every person convicted under this section for a felony violation of
41 subdivision (b) or (d) who has been convicted previously of any felony, or of any
42 crime made punishable by ~~Chapter 1 (commencing with Section 12000) of Title 2~~
43 ~~of Part 4~~ any provision listed in Section 16580, if probation is granted or if the

1 execution or imposition of sentence is suspended, it shall be a condition thereof
2 that he or she be imprisoned in a county jail for not less than three months.

3 (4) The court shall apply the three-month minimum sentence specified in this
4 subdivision, except in unusual cases where the interests of justice would best be
5 served by granting probation or suspending the execution or imposition of
6 sentence without the minimum imprisonment required in this subdivision or by
7 granting probation or suspending the execution or imposition of sentence with
8 conditions other than those set forth in this subdivision, in which case the court
9 shall specify on the record and shall enter on the minutes the circumstances
10 indicating that the interests of justice would best be served by this disposition.

11 (h) Notwithstanding Section ~~12026~~ 25605, any person who brings or possesses a
12 loaded firearm upon the grounds of a campus of, or buildings owned or operated
13 for student housing, teaching, research, or administration by, a public or private
14 university or college, that are contiguous or are clearly marked university
15 property, unless it is with the written permission of the university or college
16 president, his or her designee, or equivalent university or college authority, shall
17 be punished by imprisonment in the state prison for two, three, or four years.
18 Notwithstanding subdivision (k), a university or college shall post a prominent
19 notice at primary entrances on noncontiguous property stating that firearms are
20 prohibited on that property pursuant to this subdivision.

21 (i) Notwithstanding Section ~~12026~~ 25605, any person who brings or possesses a
22 firearm upon the grounds of a campus of, or buildings owned or operated for
23 student housing, teaching, research, or administration by, a public or private
24 university or college, that are contiguous or are clearly marked university
25 property, unless it is with the written permission of the university or college
26 president, his or her designee, or equivalent university or college authority, shall
27 be punished by imprisonment in the state prison for one, two, or three years.
28 Notwithstanding subdivision (k), a university or college shall post a prominent
29 notice at primary entrances on noncontiguous property stating that firearms are
30 prohibited on that property pursuant to this subdivision.

31 (j) For purposes of this section, a firearm shall be deemed to be loaded when
32 there is an unexpended cartridge or shell, consisting of a case that holds a charge
33 of powder and a bullet or shot, in, or attached in any manner to, the firearm,
34 including, but not limited to, in the firing chamber, magazine, or clip thereof
35 attached to the firearm. A muzzle-loader firearm shall be deemed to be loaded
36 when it is capped or primed and has a powder charge and ball or shot in the barrel
37 or cylinder.

38 (k) This section does not require that notice be posted regarding the proscribed
39 conduct.

40 (l) This section does not apply to a duly appointed peace officer as defined in
41 Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a full-time paid
42 peace officer of another state or the federal government who is carrying out
43 official duties while in California, any person summoned by any of these officers

1 to assist in making arrests or preserving the peace while he or she is actually
2 engaged in assisting the officer, a member of the military forces of this state or of
3 the United States who is engaged in the performance of his or her duties, a person
4 holding a valid license to carry the firearm pursuant to ~~Article 3 (commencing~~
5 ~~with Section 12050) of Chapter 1 of Title 2 of Part 4~~ Chapter 4 (commencing with
6 Section 26150) of Division 5 of Title 4 of Part 6, or an armored vehicle guard,
7 engaged in the performance of his or her duties, as defined in subdivision (e) of
8 Section 7521 of the Business and Professions Code.

9 (m) This section does not apply to a security guard authorized to carry a loaded
10 firearm pursuant to ~~Section 12031~~ Article 4 (commencing with Section 26000) of
11 Chapter 3 of Division 5 of Title 4 of Part 6.

12 (n) This section does not apply to an existing shooting range at a public or
13 private school or university or college campus.

14 (o) This section does not apply to an honorably retired peace officer authorized
15 to carry a concealed or loaded firearm pursuant to ~~subdivision (a) or (i) of Section~~
16 ~~12027 or paragraph (1) or (8) of subdivision (b) of Section 12031~~ any of the
17 following:

18 (1) Article 2 (commencing with Section 25450) of Chapter 2 of Division 5 of
19 Title 4 of Part 6.

20 (2) Section 25650.

21 (3) Sections 25900 to 25910, inclusive.

22 (4) Section 26020.

23 **Comment.** Section 626.9 is amended to reflect nonsubstantive reorganization of the statutes
24 governing control of deadly weapons.

25 Subdivision (c) is amended to make a technical revision.

26 For guidance in applying this section, see Section 16015 (determining existence of prior
27 conviction).

28 **Penal Code § 626.95 (amended). Firearm at playground or youth center**

29 SEC. ____ . Section 626.95 of the Penal Code is amended to read:

30 626.95. (a) Any person who is in violation of paragraph (2) of subdivision (a), or
31 subdivision (b), of Section 417, or Section ~~12025 or 12031~~ 25400 or 25850, upon
32 the grounds of or within a playground, or a public or private youth center during
33 hours in which the facility is open for business, classes, or school-related
34 programs, or at any time when minors are using the facility, knowing that he or
35 she is on or within those grounds, shall be punished by imprisonment in the state
36 prison for one, two, or three years, or in a county jail not exceeding one year.

37 (b) State and local authorities are encouraged to cause signs to be posted around
38 playgrounds and youth centers giving warning of prohibition of the possession of
39 firearms upon the grounds of or within playgrounds or youth centers.

40 (c) For purposes of this section, the following definitions shall apply:

41 (1) "Playground" means any park or recreational area specifically designed to be
42 used by children that has play equipment installed, including public grounds
43 designed for athletic activities such as baseball, football, soccer, or basketball, or

1 any similar facility located on public or private school grounds, or on city or
2 county parks.

3 (2) “Youth center” means any public or private facility that is used to host
4 recreational or social activities for minors while minors are present.

5 (d) It is the Legislature’s intent that only an actual conviction of a felony of one
6 of the offenses specified in this section would subject the person to firearms
7 disabilities under the federal Gun Control Act of 1968 (P.L. 90-618; 18 U.S.C.
8 Sec. 921).

9 **Comment.** Subdivision (a) of Section 626.95 is amended to reflect nonsubstantive
10 reorganization of the statutes governing control of deadly weapons.

11 **Penal Code § 626.10 (amended). Bringing or possessing weapons on school grounds**

12 SEC. ____ . Section 626.10 of the Penal Code is amended to read:

13 626.10. (a) Any person, except a duly appointed peace officer as defined in
14 Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a full-time paid
15 peace officer of another state or the federal government who is carrying out
16 official duties while in this state, a person summoned by any officer to assist in
17 making arrests or preserving the peace while the person is actually engaged in
18 assisting any officer, or a member of the military forces of this state or the United
19 States who is engaged in the performance of his or her duties, who brings or
20 possesses any dirk, dagger, ice pick, knife having a blade longer than 2½ inches,
21 folding knife with a blade that locks into place, a razor with an unguarded blade, a
22 taser, or a stun gun, as defined in subdivision (a) of Section 244.5, any instrument
23 that expels a metallic projectile such as a BB or a pellet, through the force of air
24 pressure, CO₂ pressure, or spring action, or any spot marker gun, upon the grounds
25 of, or within, any public or private school providing instruction in kindergarten or
26 any of grades 1 to 12, inclusive, is guilty of a public offense, punishable by
27 imprisonment in a county jail not exceeding one year, or by imprisonment in the
28 state prison.

29 (b) Any person, except a duly appointed peace officer as defined in Chapter 4.5
30 (commencing with Section 830) of Title 3 of Part 2, a full-time paid peace officer
31 of another state or the federal government who is carrying out official duties while
32 in this state, a person summoned by any officer to assist in making arrests or
33 preserving the peace while the person is actually engaged in assisting any officer,
34 or a member of the military forces of this state or the United States who is engaged
35 in the performance of his or her duties, who brings or possesses any dirk, dagger,
36 ice pick, or knife having a fixed blade longer than 2½ inches upon the grounds of,
37 or within, any private university, the University of California, the California State
38 University, or the California Community Colleges is guilty of a public offense,
39 punishable by imprisonment in a county jail not exceeding one year, or by
40 imprisonment in the state prison.

41 (c) Subdivisions (a) and (b) do not apply to any person who brings or possesses
42 a knife having a blade longer than 2½ inches or a razor with an unguarded blade

1 upon the grounds of, or within, a public or private school providing instruction in
2 kindergarten or any of grades 1 to 12, inclusive, or any private university, state
3 university, or community college at the direction of a faculty member of the
4 private university, state university, or community college, or a certificated or
5 classified employee of the school for use in a private university, state university,
6 community college, or school-sponsored activity or class.

7 (d) Subdivisions (a) and (b) do not apply to any person who brings or possesses
8 an ice pick, a knife having a blade longer than 2½ inches, or a razor with an
9 unguarded blade upon the grounds of, or within, a public or private school
10 providing instruction in kindergarten or any of grades 1 to 12, inclusive, or any
11 private university, state university, or community college for a lawful purpose
12 within the scope of the person's employment.

13 (e) Subdivision (b) does not apply to any person who brings or possesses an ice
14 pick or a knife having a fixed blade longer than 2½ inches upon the grounds of, or
15 within, any private university, state university, or community college for lawful
16 use in or around a residence or residential facility located upon those grounds or
17 for lawful use in food preparation or consumption.

18 (f) Subdivision (a) does not apply to any person who brings an instrument that
19 expels a metallic projectile such as a BB or a pellet, through the force of air
20 pressure, CO₂ pressure, or spring action, or any spot marker gun upon the grounds
21 of, or within, a public or private school providing instruction in kindergarten or
22 any of grades 1 to 12, inclusive, if the person has the written permission of the
23 school principal or his or her designee.

24 (g) Any certificated or classified employee or school peace officer of a public or
25 private school providing instruction in kindergarten or any of grades 1 to 12,
26 inclusive, may seize any of the weapons described in subdivision (a), and any
27 certificated or classified employee or school peace officer of any private
28 university, state university, or community college may seize any of the weapons
29 described in subdivision (b), from the possession of any person upon the grounds
30 of, or within, the school if he or she knows, or has reasonable cause to know, the
31 person is prohibited from bringing or possessing the weapon upon the grounds of,
32 or within, the school.

33 (h) As used in this section, "dirk" or "dagger" means a knife or other instrument
34 with or without a handguard that is capable of ready use as a stabbing weapon that
35 may inflict great bodily injury or death.

36 (i) Any person who, without the written permission of the college or university
37 president or chancellor or his or her designee, brings or possesses a less lethal
38 weapon, as defined in Section ~~12604~~ 16780, or a stun gun, as defined in Section
39 ~~12650~~ 17230, upon the grounds of or within, a public or private college or
40 university campus is guilty of a misdemeanor.

41 **Comment.** Subdivision (i) of Section 626.10 is amended to reflect nonsubstantive
42 reorganization of the statutes governing control of deadly weapons.

1 **Staff Note.** The text of Section 626.10 reflects the enactment of AB 2470 (Karnette), 2008
2 Cal. Stat. ch. 676.

3 **Penal Code § 629.52 (amended). Ex parte order authorizing interception of specified**
4 **communications**

5 SEC. ____ . Section 629.52 of the Penal Code is amended to read:

6 629.52. Upon application made under Section 629.50, the judge may enter an ex
7 parte order, as requested or modified, authorizing interception of wire, electronic
8 pager, or electronic cellular telephone communications initially intercepted within
9 the territorial jurisdiction of the court in which the judge is sitting, if the judge
10 determines, on the basis of the facts submitted by the applicant, all of the
11 following:

12 (a) There is probable cause to believe that an individual is committing, has
13 committed, or is about to commit, one of the following offenses:

14 (1) Importation, possession for sale, transportation, manufacture, or sale of
15 controlled substances in violation of Section 11351, 11351.5, 11352, 11370.6,
16 11378, 11378.5, 11379, 11379.5, or 11379.6 of the Health and Safety Code with
17 respect to a substance containing heroin, cocaine, PCP, methamphetamine, or their
18 precursors or analogs where the substance exceeds 10 gallons by liquid volume or
19 three pounds of solid substance by weight.

20 (2) Murder, solicitation to commit murder, the commission of a felony involving
21 a destructive device in violation of Section ~~12303, 12303.1, 12303.2, 12303.3,~~
22 ~~12303.6, 12308, 12309, 12310, or 12312~~ 18710, 18715, 18720, 18725, 18730,
23 18740, 18745, 18750, or 18755, or a violation of Section 209.

24 (3) Any felony violation of Section 186.22.

25 (4) Any felony violation of Section 11418, relating to weapons of mass
26 destruction, Section 11418.5, relating to threats to use weapons of mass
27 destruction, or Section 11419, relating to restricted biological agents.

28 (5) An attempt or conspiracy to commit any of the above-mentioned crimes.

29 (b) There is probable cause to believe that particular communications
30 concerning the illegal activities will be obtained through that interception,
31 including, but not limited to, communications that may be utilized for locating or
32 rescuing a kidnap victim.

33 (c) There is probable cause to believe that the facilities from which, or the place
34 where, the wire, electronic pager, or electronic cellular telephone communications
35 are to be intercepted are being used, or are about to be used, in connection with the
36 commission of the offense, or are leased to, listed in the name of, or commonly
37 used by the person whose communications are to be intercepted.

38 (d) Normal investigative procedures have been tried and have failed or
39 reasonably appear either to be unlikely to succeed if tried or to be too dangerous.

40 **Comment.** Subdivision (a) of Section 629.52 is amended to reflect nonsubstantive
41 reorganization of the statutes governing control of deadly weapons.

1 **Penal Code § 667.5 (amended). Enhancement for prior prison terms**

2 SEC. ____ . Section 667.5 of the Penal Code is amended to read:

3 667.5. Enhancement of prison terms for new offenses because of prior prison
4 terms shall be imposed as follows:

5 (a) Where one of the new offenses is one of the violent felonies specified in
6 subdivision (c), in addition to and consecutive to any other prison terms therefor,
7 the court shall impose a three-year term for each prior separate prison term served
8 by the defendant where the prior offense was one of the violent felonies specified
9 in subdivision (c). However, no additional term shall be imposed under this
10 subdivision for any prison term served prior to a period of 10 years in which the
11 defendant remained free of both prison custody and the commission of an offense
12 which results in a felony conviction.

13 (b) Except where subdivision (a) applies, where the new offense is any felony
14 for which a prison sentence is imposed, in addition and consecutive to any other
15 prison terms therefor, the court shall impose a one-year term for each prior
16 separate prison term served for any felony; provided that no additional term shall
17 be imposed under this subdivision for any prison term served prior to a period of
18 five years in which the defendant remained free of both prison custody and the
19 commission of an offense which results in a felony conviction.

20 (c) For the purpose of this section, “violent felony” shall mean any of the
21 following:

22 (1) Murder or voluntary manslaughter.

23 (2) Mayhem.

24 (3) Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or
25 paragraph (1) or (4) of subdivision (a) of Section 262.

26 (4) Sodomy as defined in subdivision (c) or (d) of Section 286.

27 (5) Oral copulation as defined in subdivision (c) or (d) of Section 288a.

28 (6) Lewd or lascivious act as defined in subdivision (a) or (b) of Section 288.

29 (7) Any felony punishable by death or imprisonment in the state prison for life.

30 (8) Any felony in which the defendant inflicts great bodily injury on any person
31 other than an accomplice which has been charged and proved as provided for in
32 Section 12022.7, 12022.8, or 12022.9 on or after July 1, 1977, or as specified prior
33 to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the
34 defendant uses a firearm which use has been charged and proved as provided in
35 subdivision (a) of Section 12022.3, or Section 12022.5 or 12022.55.

36 (9) Any robbery.

37 (10) Arson, in violation of subdivision (a) or (b) of Section 451.

38 (11) Sexual penetration as defined in subdivision (a) or (j) of Section 289.

39 (12) Attempted murder.

40 (13) A violation of Section ~~12308, 12309, or 12310~~ 18745, 18750, or 18755.

41 (14) Kidnapping.

42 (15) Assault with the intent to commit a specified felony, in violation of Section
43 220.

1 (16) Continuous sexual abuse of a child, in violation of Section 288.5.

2 (17) Carjacking, as defined in subdivision (a) of Section 215.

3 (18) Rape, spousal rape, or sexual penetration, in concert, in violation of Section
4 264.1.

5 (19) Extortion, as defined in Section 518, which would constitute a felony
6 violation of Section 186.22 of the Penal Code.

7 (20) Threats to victims or witnesses, as defined in Section 136.1, which would
8 constitute a felony violation of Section 186.22 of the Penal Code.

9 (21) Any burglary of the first degree, as defined in subdivision (a) of Section
10 460, wherein it is charged and proved that another person, other than an
11 accomplice, was present in the residence during the commission of the burglary.

12 (22) Any violation of Section 12022.53.

13 (23) A violation of subdivision (b) or (c) of Section 11418. The Legislature finds
14 and declares that these specified crimes merit special consideration when imposing
15 a sentence to display society's condemnation for these extraordinary crimes of
16 violence against the person.

17 (d) For the purposes of this section, the defendant shall be deemed to remain in
18 prison custody for an offense until the official discharge from custody or until
19 release on parole, whichever first occurs, including any time during which the
20 defendant remains subject to reimprisonment for escape from custody or is
21 reimprisoned on revocation of parole. The additional penalties provided for prior
22 prison terms shall not be imposed unless they are charged and admitted or found
23 true in the action for the new offense.

24 (e) The additional penalties provided for prior prison terms shall not be imposed
25 for any felony for which the defendant did not serve a prior separate term in state
26 prison.

27 (f) A prior conviction of a felony shall include a conviction in another
28 jurisdiction for an offense which, if committed in California, is punishable by
29 imprisonment in the state prison if the defendant served one year or more in prison
30 for the offense in the other jurisdiction. A prior conviction of a particular felony
31 shall include a conviction in another jurisdiction for an offense which includes all
32 of the elements of the particular felony as defined under California law if the
33 defendant served one year or more in prison for the offense in the other
34 jurisdiction.

35 (g) A prior separate prison term for the purposes of this section shall mean a
36 continuous completed period of prison incarceration imposed for the particular
37 offense alone or in combination with concurrent or consecutive sentences for other
38 crimes, including any reimprisonment on revocation of parole which is not
39 accompanied by a new commitment to prison, and including any reimprisonment
40 after an escape from incarceration.

41 (h) Serving a prison term includes any confinement time in any state prison or
42 federal penal institution as punishment for commission of an offense, including

1 confinement in a hospital or other institution or facility credited as service of
2 prison time in the jurisdiction of the confinement.

3 (i) For the purposes of this section, a commitment to the State Department of
4 Mental Health as a mentally disordered sex offender following a conviction of a
5 felony, which commitment exceeds one year in duration, shall be deemed a prior
6 prison term.

7 (j) For the purposes of this section, when a person subject to the custody,
8 control, and discipline of the Director of Corrections is incarcerated at a facility
9 operated by the Department of the Youth Authority, that incarceration shall be
10 deemed to be a term served in state prison.

11 (k) Notwithstanding subdivisions (d) and (g) or any other provision of law,
12 where one of the new offenses is committed while the defendant is temporarily
13 removed from prison pursuant to Section 2690 or while the defendant is
14 transferred to a community facility pursuant to Section 3416, 6253, or 6263, or
15 while the defendant is on furlough pursuant to Section 6254, the defendant shall be
16 subject to the full enhancements provided for in this section.

17 This subdivision shall not apply when a full, separate, and consecutive term is
18 imposed pursuant to any other provision of law.

19 **Comment.** Subdivision (c) of Section 667.5 is amended to reflect nonsubstantive
20 reorganization of the statutes governing control of deadly weapons.

21 For guidance in applying this section, see Section 16015 (determining existence of prior
22 conviction).

23 **Penal Code § 667.7 (amended). Punishment for habitual offenders**

24 SEC. ____ . Section 667.7 of the Penal Code is amended to read:

25 667.7. (a) Any person convicted of a felony in which the person inflicted great
26 bodily injury as provided in Section 12022.53 or 12022.7, or personally used force
27 which was likely to produce great bodily injury, who has served two or more prior
28 separate prison terms as defined in Section 667.5 for the crime of murder;
29 attempted murder; voluntary manslaughter; mayhem; rape by force, violence, or
30 fear of immediate and unlawful bodily injury on the victim or another person; oral
31 copulation by force, violence, duress, menace, or fear of immediate and unlawful
32 bodily injury on the victim or another person; sodomy by force, violence, duress,
33 menace, or fear of immediate and unlawful bodily injury on the victim or another
34 person; lewd acts on a child under the age of 14 years by use of force, violence,
35 duress, menace, or fear of immediate and unlawful bodily injury on the victim or
36 another person; a violation of subdivision (a) of Section 289 where the act is
37 accomplished against the victim's will by means of force, violence, duress,
38 menace, or fear of immediate and unlawful bodily injury on the victim or another
39 person; kidnapping as punished in former subdivision (d) of Section 208, or for
40 ransom, extortion, or robbery; robbery involving the use of force or a deadly
41 weapon; carjacking involving the use of a deadly weapon; assault with intent to
42 commit murder; assault with a deadly weapon; assault with a force likely to

1 produce great bodily injury; assault with intent to commit rape, sodomy, oral
2 copulation, sexual penetration in violation of Section 289, or lewd and lascivious
3 acts on a child; arson of a structure; escape or attempted escape by an inmate with
4 force or violence in violation of subdivision (a) of Section 4530, or of Section
5 4532; exploding a destructive device with intent to murder in violation of Section
6 ~~42308~~ 18745; exploding a destructive device which causes bodily injury in
7 violation of Section ~~42309~~ 18750, or mayhem or great bodily injury in violation of
8 Section ~~42310~~ 18755; exploding a destructive device with intent to injure,
9 intimidate, or terrify, in violation of Section ~~42303.3~~ 18740; any felony in which
10 the person inflicted great bodily injury as provided in Section 12022.53 or
11 12022.7; or any felony punishable by death or life imprisonment with or without
12 the possibility of parole is a habitual offender and shall be punished as follows:

13 (1) A person who served two prior separate prison terms shall be punished by
14 imprisonment in the state prison for life and shall not be eligible for release on
15 parole for 20 years, or the term determined by the court pursuant to Section 1170
16 for the underlying conviction, including any enhancement applicable under
17 Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, or any period
18 prescribed by Section 190 or 3046, whichever is greatest. Article 2.5 (commencing
19 with Section 2930) of Chapter 7 of Title 1 of Part 3 shall apply to reduce any
20 minimum term in a state prison imposed pursuant to this section, but the person
21 shall not otherwise be released on parole prior to that time.

22 (2) Any person convicted of a felony specified in this subdivision who has
23 served three or more prior separate prison terms, as defined in Section 667.5, for
24 the crimes specified in subdivision (a) of this section shall be punished by
25 imprisonment in the state prison for life without the possibility of parole.

26 (b) This section shall not prevent the imposition of the punishment of death or
27 imprisonment for life without the possibility of parole. No prior prison term shall
28 be used for this determination which was served prior to a period of 10 years in
29 which the person remained free of both prison custody and the commission of an
30 offense which results in a felony conviction. As used in this section, a
31 commitment to the Department of the Youth Authority after conviction for a
32 felony shall constitute a prior prison term. The term imposed under this section
33 shall be imposed only if the prior prison terms are alleged under this section in the
34 accusatory pleading, and either admitted by the defendant in open court, or found
35 to be true by the jury trying the issue of guilt or by the court where guilt is
36 established by a plea of guilty or nolo contendere or by a trial by the court sitting
37 without a jury.

38 **Comment.** Subdivision (a) of Section 667.7 is amended to reflect nonsubstantive
39 reorganization of the statutes governing control of deadly weapons.

40 For guidance in applying this section, see Section 16015 (determining existence of prior
41 conviction).

1 **Penal Code § 679.03 (amended). Notice of release, escape, scheduled execution, or death of**
2 **specified violent offender**

3 SEC. ____ . Section 679.03 of the Penal Code is amended to read:

4 679.03. (a) With respect to the conviction of a defendant involving a violent
5 offense, as defined in ~~subdivision (b) of Section 12021.1~~ Section 29905, the
6 county district attorney, probation department, and victim-witness coordinator
7 shall confer and establish an annual policy within existing resources to decide
8 which one of their agencies shall inform each witness involved in the conviction
9 who was threatened by the defendant following the defendant's arrest and each
10 victim or next of kin of the victim of that offense of the right to request and
11 receive a notice pursuant to Section 3058.8 or 3605. If no agreement is reached,
12 the presiding judge shall designate the appropriate county agency or department to
13 provide this notification.

14 (b) The Department of Corrections shall supply a form to the agency designated
15 pursuant to subdivision (a) in order to enable persons specified in subdivision (a)
16 to request and receive notification from the department of the release, escape,
17 scheduled execution, or death of the violent offender. That agency shall give the
18 form to the victim, witness, or next of kin of the victim for completion, explain to
19 that person or persons the right to be so notified, and forward the completed form
20 to the department. The department or the Board of Prison Terms is responsible for
21 notifying all victims, witnesses, or next of kin of victims who request to be
22 notified of a violent offender's release or scheduled execution, as provided by
23 Sections 3058.8 and 3605.

24 (c) All information relating to any person receiving notice pursuant to
25 subdivision (b) shall remain confidential and is not subject to disclosure pursuant
26 to the California Public Records Act (Chapter 3.5 (commencing with Section
27 6250) of Title 7 of Division 1 of the Government Code).

28 **Comment.** Subdivision (a) of Section 679.03 is amended to reflect nonsubstantive
29 reorganization of the statutes governing control of deadly weapons.

30 **Penal Code § 830.5 (amended). Authority of peace officers to carry firearms**

31 SEC. ____ . Section 830.5 of the Penal Code is amended to read:

32 830.5. The following persons are peace officers whose authority extends to any
33 place in the state while engaged in the performance of the duties of their respective
34 employment and for the purpose of carrying out the primary function of their
35 employment or as required under Sections 8597, 8598, and 8617 of the
36 Government Code. Except as specified in this section, these peace officers may
37 carry firearms only if authorized and under those terms and conditions specified
38 by their employing agency:

39 (a) A parole officer of the Department of Corrections or the Department of the
40 Youth Authority, probation officer, deputy probation officer, or a board
41 coordinating parole agent employed by the Youthful Offender Parole Board.

1 Except as otherwise provided in this subdivision, the authority of these parole or
2 probation officers shall extend only as follows:

3 (1) To conditions of parole or of probation by any person in this state on parole
4 or probation.

5 (2) To the escape of any inmate or ward from a state or local institution.

6 (3) To the transportation of persons on parole or probation.

7 (4) To violations of any penal provisions of law which are discovered while
8 performing the usual or authorized duties of his or her employment.

9 (5) To the rendering of mutual aid to any other law enforcement agency.

10 For the purposes of this subdivision, “parole agent” shall have the same meaning
11 as parole officer of the Department of Corrections or of the Department of the
12 Youth Authority.

13 Any parole officer of the Department of Corrections, the Department of the
14 Youth Authority, or the Youthful Offender Parole Board is authorized to carry
15 firearms, but only as determined by the director on a case-by-case or unit-by-unit
16 basis and only under those terms and conditions specified by the director or
17 chairperson. The Department of the Youth Authority shall develop a policy for
18 arming peace officers of the Department of the Youth Authority who comprise
19 “high-risk transportation details” or “high-risk escape details” no later than June
20 30, 1995. This policy shall be implemented no later than December 31, 1995.

21 The Department of the Youth Authority shall train and arm those peace officers
22 who comprise tactical teams at each facility for use during “high-risk escape
23 details.”

24 (b) A correctional officer employed by the Department of Corrections or any
25 employee of the Department of the Youth Authority having custody of wards or
26 the Inspector General of the Youth and Adult Correctional Agency or any internal
27 affairs investigator under the authority of the Inspector General or any employee
28 of the Department of Corrections designated by the Director of Corrections or any
29 correctional counselor series employee of the Department of Corrections or any
30 medical technical assistant series employee designated by the Director of
31 Corrections or designated by the Director of Corrections and employed by the
32 State Department of Mental Health or employee of the Board of Prison Terms
33 designated by the Secretary of the Youth and Adult Correctional Agency or
34 employee of the Department of the Youth Authority designated by the Director of
35 the Youth Authority or any superintendent, supervisor, or employee having
36 custodial responsibilities in an institution operated by a probation department, or
37 any transportation officer of a probation department.

38 (c) The following persons may carry a firearm while not on duty: a parole
39 officer of the Department of Corrections or the Department of the Youth
40 Authority, a correctional officer or correctional counselor employed by the
41 Department of Corrections or any employee of the Department of the Youth
42 Authority having custody of wards or any employee of the Department of
43 Corrections designated by the Director of Corrections. A parole officer of the

1 Youthful Offender Parole Board may carry a firearm while not on duty only when
2 so authorized by the chairperson of the board and only under the terms and
3 conditions specified by the chairperson. Nothing in this section shall be interpreted
4 to require licensure pursuant to Section ~~42025~~ 25400. The director or chairperson
5 may deny, suspend, or revoke for good cause a person's right to carry a firearm
6 under this subdivision. That person shall, upon request, receive a hearing, as
7 provided for in the negotiated grievance procedure between the exclusive
8 employee representative and the Department of Corrections, the Department of the
9 Youth Authority, or the Youthful Offender Parole Board, to review the director's
10 or the chairperson's decision.

11 (d) Persons permitted to carry firearms pursuant to this section, either on or off
12 duty, shall meet the training requirements of Section 832 and shall qualify with the
13 firearm at least quarterly. It is the responsibility of the individual officer or
14 designee to maintain his or her eligibility to carry concealable firearms off duty.
15 Failure to maintain quarterly qualifications by an officer or designee with any
16 concealable firearms carried off duty shall constitute good cause to suspend or
17 revoke that person's right to carry firearms off duty.

18 (e) The Department of Corrections shall allow reasonable access to its ranges for
19 officers and designees of either department to qualify to carry concealable
20 firearms off duty. The time spent on the range for purposes of meeting the
21 qualification requirements shall be the person's own time during the person's off-
22 duty hours.

23 (f) The Director of Corrections shall promulgate regulations consistent with this
24 section.

25 (g) "High-risk transportation details" and "high-risk escape details" as used in
26 this section shall be determined by the Director of the Youth Authority, or his or
27 her designee. The director, or his or her designee, shall consider at least the
28 following in determining "high-risk transportation details" and "high-risk escape
29 details": protection of the public, protection of officers, flight risk, and violence
30 potential of the wards.

31 (h) "Transportation detail" as used in this section shall include transportation of
32 wards outside the facility, including, but not limited to, court appearances, medical
33 trips, and interfacility transfers.

34 **Comment.** Subdivision (c) of Section 830.5 is amended to reflect nonsubstantive
35 reorganization of the statutes governing control of deadly weapons.

36 **Penal Code § 830.8 (amended). Federal employees and Washoe tribal law enforcement**
37 **officers**

38 SEC. ____ . Section 830.8 of the Penal Code is amended to read:

39 830.8. (a) Federal criminal investigators and law enforcement officers are not
40 California peace officers, but may exercise the powers of arrest of a peace officer
41 in any of the following circumstances:

1 (1) Any circumstances specified in Section 836 or Section 5150 of the Welfare
2 and Institutions Code for violations of state or local laws.

3 (2) When these investigators and law enforcement officers are engaged in the
4 enforcement of federal criminal laws and exercise the arrest powers only
5 incidental to the performance of these duties.

6 (3) When requested by a California law enforcement agency to be involved in a
7 joint task force or criminal investigation.

8 (4) When probable cause exists to believe that a public offense that involves
9 immediate danger to persons or property has just occurred or is being committed.

10 In all of these instances, the provisions of Section 847 shall apply. These
11 investigators and law enforcement officers, prior to the exercise of these arrest
12 powers, shall have been certified by their agency heads as having satisfied the
13 training requirements of Section 832, or the equivalent thereof.

14 This subdivision does not apply to federal officers of the Bureau of Land
15 Management or the Forest Service of the Department of Agriculture. These
16 officers have no authority to enforce California statutes without the written
17 consent of the sheriff or the chief of police in whose jurisdiction they are assigned.

18 (b) Duly authorized federal employees who comply with the training
19 requirements set forth in Section 832 are peace officers when they are engaged in
20 enforcing applicable state or local laws on property owned or possessed by the
21 United States government, or on any street, sidewalk, or property adjacent thereto,
22 and with the written consent of the sheriff or the chief of police, respectively, in
23 whose jurisdiction the property is situated.

24 (c) National park rangers are not California peace officers but may exercise the
25 powers of arrest of a peace officer as specified in Section 836 and the powers of a
26 peace officer specified in Section 5150 of the Welfare and Institutions Code for
27 violations of state or local laws provided these rangers are exercising the arrest
28 powers incidental to the performance of their federal duties or providing or
29 attempting to provide law enforcement services in response to a request initiated
30 by California state park rangers to assist in preserving the peace and protecting
31 state parks and other property for which California state park rangers are
32 responsible. National park rangers, prior to the exercise of these arrest powers,
33 shall have been certified by their agency heads as having satisfactorily completed
34 the training requirements of Section 832.3, or the equivalent thereof.

35 (d) Notwithstanding any other provision of law, during a state of war emergency
36 or a state of emergency, as defined in Section 8558 of the Government Code,
37 federal criminal investigators and law enforcement officers who are assisting
38 California law enforcement officers in carrying out emergency operations are not
39 deemed California peace officers, but may exercise the powers of arrest of a peace
40 officer as specified in Section 836 and the powers of a peace officer specified in
41 Section 5150 of the Welfare and Institutions Code for violations of state or local
42 laws. In these instances, the provisions of Section 847 and of Section 8655 of the
43 Government Code shall apply.

1 (e)(1) Any qualified person who is appointed as a Washoe tribal law
2 enforcement officer is not a California peace officer, but may exercise the powers
3 of a Washoe tribal peace officer when engaged in the enforcement of Washoe
4 tribal criminal laws against any person who is an Indian, as defined in subsection
5 (a) of Section 450b of Title 25 of the United States Code, on Washoe tribal land.
6 The respective prosecuting authorities, in consultation with law enforcement
7 agencies, may agree on who shall have initial responsibility for prosecution of
8 specified infractions. This subdivision is not meant to confer cross-deputized
9 status as California peace officers, nor to confer California peace officer status
10 upon Washoe tribal law enforcement officers when enforcing state or local laws in
11 the State of California. Nothing in this section shall be construed to impose
12 liability upon or to require indemnification by the County of Alpine or the State of
13 California for any act performed by an officer of the Washoe Tribe. Washoe tribal
14 law enforcement officers shall have the right to travel to and from Washoe tribal
15 lands within California in order to carry out tribal duties.

16 (2) Washoe tribal law enforcement officers are exempted from the provisions of
17 subdivision (a) of Section ~~12025~~ and subdivision (a) of Section ~~12031~~ 25400 and
18 subdivisions (a) and (c) to (h), inclusive, of Section 25850 while performing their
19 official duties on their tribal lands or while proceeding by a direct route to or from
20 the tribal lands. Tribal law enforcement vehicles are deemed to be emergency
21 vehicles within the meaning of Section 30 of the Vehicle Code while performing
22 official police services.

23 (3) As used in this subdivision, the term “Washoe tribal lands” includes the
24 following:

25 (A) All lands located in the County of Alpine within the limits of the reservation
26 created for the Washoe Tribe of Nevada and California, notwithstanding the
27 issuance of any patent and including rights-of-way running through the reservation
28 and all tribal trust lands.

29 (B) All Indian allotments, the Indian titles to which have not been extinguished,
30 including rights-of-way running through the same.

31 (4) As used in this subdivision, the term “Washoe tribal law” refers to the laws
32 codified in the Law and Order Code of the Washoe Tribe of Nevada and
33 California, as adopted by the Tribal Council of the Washoe Tribe of Nevada and
34 California.

35 **Comment.** Subdivision (e) of Section 830.8 is amended to reflect nonsubstantive
36 reorganization of the statutes governing control of deadly weapons.

37 **Penal Code § 833.5 (amended). Detention by peace officer to determine whether crime**
38 **relating to firearms or deadly weapons was committed**

39 SEC. ____ . Section 833.5 of the Penal Code is amended to read:

40 833.5. (a) In addition to any other detention permitted by law, if a peace officer
41 has reasonable cause to believe that a person has a firearm or other deadly weapon
42 with him or her in violation of any provision of law relating to firearms or deadly

1 weapons the peace officer may detain that person to determine whether a crime
2 relating to firearms or deadly weapons has been committed.

3 For purposes of this section “reasonable cause to detain” requires that the
4 circumstances known or apparent to the officer must include specific and
5 articulable facts causing him or her to suspect that some offense relating to
6 firearms or deadly weapons has taken place or is occurring or is about to occur and
7 that the person he or she intends to detain is involved in that offense. The
8 circumstances must be such as would cause any reasonable peace officer in like
9 position, drawing when appropriate on his or her training and experience, to
10 suspect the same offense and the same involvement by the person in question.

11 (b) Incident to any detention permitted pursuant to subdivision (a), a peace
12 officer may conduct a limited search of the person for firearms or weapons if the
13 peace officer reasonably concludes that the person detained may be armed and
14 presently dangerous to the peace officer or others. Any firearm or weapon seized
15 pursuant to a valid detention or search pursuant to this section shall be admissible
16 in evidence in any proceeding for any purpose permitted by law.

17 (c) This section shall not be construed to otherwise limit the authority of a peace
18 officer to detain any person or to make an arrest based on reasonable cause.

19 (d) This section shall not be construed to permit a peace officer to conduct a
20 detention or search of any person at the person’s residence or place of business
21 absent a search warrant or other reasonable cause to detain or search.

22 (e) If a firearm or weapon is seized pursuant to this section and the person from
23 whom it was seized owned the firearm or weapon and is convicted of a violation
24 of any offense relating to the possession of ~~such~~ the firearm or weapon, the court
25 shall order the firearm or weapon to be deemed a nuisance and disposed of in the
26 manner provided by ~~Section 12028~~ Sections 18000 and 18005.

27 **Comment.** Subdivision (e) of Section 833.5 is amended to reflect nonsubstantive
28 reorganization of the statutes governing control of deadly weapons. That subdivision is also
29 amended to make a technical revision.

30 **Penal Code § 836 (amended). Arrest**

31 SEC. ____ . Section 836 of the Penal Code is amended to read:

32 836. (a) A peace officer may arrest a person in obedience to a warrant, or,
33 pursuant to the authority granted to him or her by Chapter 4.5 (commencing with
34 Section 830) of Title 3 of Part 2, without a warrant, may arrest a person whenever
35 any of the following circumstances occur:

36 (1) The officer has probable cause to believe that the person to be arrested has
37 committed a public offense in the officer’s presence.

38 (2) The person arrested has committed a felony, although not in the officer’s
39 presence.

40 (3) The officer has probable cause to believe that the person to be arrested has
41 committed a felony, whether or not a felony, in fact, has been committed.

1 (b) Any time a peace officer is called out on a domestic violence call, it shall be
2 mandatory that the officer make a good faith effort to inform the victim of his or
3 her right to make a citizen's arrest. This information shall include advising the
4 victim how to safely execute the arrest.

5 (c)(1) When a peace officer is responding to a call alleging a violation of a
6 domestic violence protective or restraining order issued under Section 527.6 of the
7 Code of Civil Procedure, the Family Code, Section 136.2, 646.91, or paragraph (2)
8 of subdivision (a) of Section 1203.097 of this code, Section 213.5 or 15657.03 of
9 the Welfare and Institutions Code, or of a domestic violence protective or
10 restraining order issued by the court of another state, tribe, or territory and the
11 peace officer has probable cause to believe that the person against whom the order
12 is issued has notice of the order and has committed an act in violation of the order,
13 the officer shall, consistent with subdivision (b) of Section 13701, make a lawful
14 arrest of the person without a warrant and take that person into custody whether or
15 not the violation occurred in the presence of the arresting officer. The officer shall,
16 as soon as possible after the arrest, confirm with the appropriate authorities or the
17 Domestic Violence Protection Order Registry maintained pursuant to Section 6380
18 of the Family Code that a true copy of the protective order has been registered,
19 unless the victim provides the officer with a copy of the protective order.

20 (2) The person against whom a protective order has been issued shall be deemed
21 to have notice of the order if the victim presents to the officer proof of service of
22 the order, the officer confirms with the appropriate authorities that a true copy of
23 the proof of service is on file, or the person against whom the protective order was
24 issued was present at the protective order hearing or was informed by a peace
25 officer of the contents of the protective order.

26 (3) In situations where mutual protective orders have been issued under Division
27 10 (commencing with Section 6200) of the Family Code, liability for arrest under
28 this subdivision applies only to those persons who are reasonably believed to have
29 been the primary aggressor. In those situations, prior to making an arrest under
30 this subdivision, the peace officer shall make reasonable efforts to identify, and
31 may arrest, the primary aggressor involved in the incident. The primary aggressor
32 is the person determined to be the most significant, rather than the first, aggressor.
33 In identifying the primary aggressor, an officer shall consider (A) the intent of the
34 law to protect victims of domestic violence from continuing abuse, (B) the threats
35 creating fear of physical injury, (C) the history of domestic violence between the
36 persons involved, and (D) whether either person involved acted in self-defense.

37 (d) Notwithstanding paragraph (1) of subdivision (a), if a suspect commits an
38 assault or battery upon a current or former spouse, fiance, fiancée, a current or
39 former cohabitant as defined in Section 6209 of the Family Code, a person with
40 whom the suspect currently is having or has previously had an engagement or
41 dating relationship, as defined in paragraph (10) of subdivision (f) of Section 243,
42 a person with whom the suspect has parented a child, or is presumed to have
43 parented a child pursuant to the Uniform Parentage Act (Part 3 (commencing with

1 Section 7600) of Division 12 of the Family Code), a child of the suspect, a child
2 whose parentage by the suspect is the subject of an action under the Uniform
3 Parentage Act, a child of a person in one of the above categories, any other person
4 related to the suspect by consanguinity or affinity within the second degree, or any
5 person who is 65 years of age or older and who is related to the suspect by blood
6 or legal guardianship, a peace officer may arrest the suspect without a warrant
7 where both of the following circumstances apply:

8 (1) The peace officer has probable cause to believe that the person to be arrested
9 has committed the assault or battery, whether or not it has in fact been committed.

10 (2) The peace officer makes the arrest as soon as probable cause arises to believe
11 that the person to be arrested has committed the assault or battery, whether or not
12 it has in fact been committed.

13 (e) In addition to the authority to make an arrest without a warrant pursuant to
14 paragraphs (1) and (3) of subdivision (a), a peace officer may, without a warrant,
15 arrest a person for a violation of Section ~~12025~~ 25400 when all of the following
16 apply:

17 (1) The officer has reasonable cause to believe that the person to be arrested has
18 committed the violation of Section ~~12025~~ 25400.

19 (2) The violation of Section ~~12025~~ 25400 occurred within an airport, as defined
20 in Section 21013 of the Public Utilities Code, in an area to which access is
21 controlled by the inspection of persons and property.

22 (3) The peace officer makes the arrest as soon as reasonable cause arises to
23 believe that the person to be arrested has committed the violation of Section ~~12025~~
24 25400.

25 **Comment.** Subdivision (e) of Section 836 is amended to reflect nonsubstantive reorganization
26 of the statutes governing control of deadly weapons.

27 **Penal Code § 999e (amended). Career criminal prosecution**

28 SEC. ____ . Section 999e of the Penal Code is amended to read:

29 999e. (a) An individual who is under arrest for the commission or attempted
30 commission of one or more of the felonies listed in paragraph (1) and who is either
31 being prosecuted for three or more separate offenses not arising out of the same
32 transaction involving one or more of those felonies, or has been convicted during
33 the preceding 10 years for any felony listed in paragraph (2) of this subdivision, or
34 at least two convictions during the preceding 10 years for any felony listed in
35 paragraph (3) of this subdivision shall be the subject of career criminal prosecution
36 efforts.

37 (1) Murder, manslaughter, rape, sexual assault, child molestation, robbery,
38 carjacking, burglary, arson, receiving stolen property, grand theft, grand theft auto,
39 lewd and lascivious conduct upon a child, assault with a firearm, discharging a
40 firearm into an inhabited structure or vehicle, owning, possessing, or having
41 custody or control of a firearm, as specified in subdivision (a) or (b) of Section

1 ~~12021 29800~~, or any unlawful act relating to controlled substances in violation of
2 Sections ~~Section~~ 11351, 11351.5, 11352, or 11378 of the Health and Safety Code.

3 (2) Robbery of the first degree, carjacking, burglary of the first degree, arson as
4 defined in Section 451, unlawfully causing a fire as defined in Section 452,
5 forcible rape, sodomy or oral copulation committed with force, lewd or lascivious
6 conduct committed upon a child, kidnapping as defined in Section 209 or 209.5,
7 murder, or manslaughter.

8 (3) Grand theft, grand theft auto, receiving stolen property, robbery of the
9 second degree, burglary of the second degree, kidnapping as defined in Section
10 207, assault with a deadly weapon or instrument, or any unlawful act relating to
11 controlled substances in violation of Section 11351 or 11352 of the Health and
12 Safety Code.

13 For purposes of this chapter, the 10-year periods specified in this section shall be
14 exclusive of any time which the arrested person has served in state prison.

15 (b) In applying the career criminal selection criteria set forth above, a district
16 attorney may elect to limit career criminal prosecution efforts to persons arrested
17 for any one or more of the felonies listed in subdivision (a) of this section if crime
18 statistics demonstrate that the incidence of one or more of these felonies presents a
19 particularly serious problem in the county.

20 (c) In exercising the prosecutorial discretion granted by Section 999g, the
21 district attorney shall consider the character, background, and prior criminal
22 background of the defendant, and the number and the seriousness of the offenses
23 currently charged against the defendant.

24 **Comment.** Subdivision (a) of Section 999e is amended to reflect nonsubstantive reorganization
25 of the statutes governing control of deadly weapons. That subdivision is also amended to make a
26 technical revision.

27 For guidance in applying this section, see Section 16015 (determining existence of prior
28 conviction).

29 **Penal Code § 1170.11 (amended). Specific enhancement defined for purposes of Section**
30 **1170.1**

31 SEC. ____ . Section 1170.11 of the Penal Code is amended to read:

32 1170.11. As used in Section 1170.1, the term “specific enhancement” means an
33 enhancement that relates to the circumstances of the crime. It includes, but is not
34 limited to, the enhancements provided in Sections 186.10, 186.11, 186.22, 186.26,
35 186.33, 192.5, 273.4, 289.5, 290.4, 290.45, 290.46, 347, and 368, subdivisions (a)
36 and (b) of Section 422.75, paragraphs (2), (3), (4), and (5) of subdivision (a) of
37 Section 451.1, paragraphs (2), (3), and (4) of subdivision (a) of Section 452.1,
38 subdivision (g) of Section 550, Sections 593a, 600, 667.8, 667.85, 667.9, 667.10,
39 667.15, 667.16, 667.17, 674, 675, 12021.5, 12022, 12022.2, 12022.3, 12022.4,
40 12022.5, 12022.53, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, 12022.85,
41 12022.9, 12022.95, ~~12072 and 12280~~ 27590, 30600, and 30615 of this code, and
42 in Sections 1522.01 and 11353.1, subdivision (b) of Section 11353.4, Sections
43 11353.6, 11356.5, 11370.4, 11379.7, 11379.8, 11379.9, 11380.1, 11380.7,

1 25189.5, and 25189.7 of the Health and Safety Code, and in Sections 20001 and
2 23558 of the Vehicle Code, and in Sections 10980 and 14107 of the Welfare and
3 Institutions Code.

4 **Comment.** Section 1170.11 is amended to reflect nonsubstantive reorganization of the statutes
5 governing control of deadly weapons.

6 **Staff Note.** The text of Section 1170.11 reflects the enactment of SB 1241 (Margett), 2008
7 Cal. Stat. ch. 699.

8 **Penal Code § 1174.4 (amended). Persons eligible for alternative sentencing program**

9 SEC. ____ . Section 1174.4 of the Penal Code is amended to read:

10 1174.4. (a) Persons eligible for participation in this alternative sentencing
11 program shall meet all of the following criteria:

12 (1) Pregnant women with an established history of substance abuse, or pregnant
13 or parenting women with an established history of substance abuse who have one
14 or more children under six years old at the time of entry into the program. For
15 women with children, at least one eligible child shall reside with the mother in the
16 facility.

17 (2) Never served a prior prison term for, nor been convicted in the present
18 proceeding of, committing or attempting to commit, any of the following offenses:

19 (A) Murder or voluntary manslaughter.

20 (B) Mayhem.

21 (C) Rape.

22 (D) Kidnapping.

23 (E) Sodomy by force, violence, duress, menace, or fear of immediate and
24 unlawful bodily injury on the victim or another person.

25 (F) Oral copulation by force, violence, duress, menace, or fear of immediate and
26 unlawful bodily injury on the victim or another person.

27 (G) Lewd acts on a child under 14 years of age, as defined in Section 288.

28 (H) Any felony punishable by death or imprisonment in the state prison for life.

29 (I) Any felony in which the defendant inflicts great bodily injury on any person,
30 other than an accomplice, that has been charged and proved as provided for in
31 Section 12022.53, 12022.7, or 12022.9, or any felony in which the defendant uses
32 a firearm, as provided in Section 12022.5, 12022.53, or 12022.55, in which the use
33 has been charged and proved.

34 (J) Robbery.

35 (K) Any robbery perpetrated in an inhabited dwelling house or trailer coach as
36 defined in the Vehicle Code, or in the inhabited portion of any other building,
37 wherein it is charged and proved that the defendant personally used a deadly or
38 dangerous weapon, as provided in subdivision (b) of Section 12022, in the
39 commission of that robbery.

40 (L) Arson in violation of subdivision (a) of Section 451.

1 (M) Sexual penetration in violation of subdivision (a) of Section 289 if the act is
2 accomplished against the victim's will by force, violence, duress, menace, or fear
3 of immediate and unlawful bodily injury on the victim or another person.

4 (N) Rape or sexual penetration in concert, in violation of Section 264.1.

5 (O) Continual sexual abuse of a child in violation of Section 288.5.

6 (P) Assault with intent to commit mayhem, rape, sodomy, oral copulation, rape
7 in concert with another, lascivious acts upon a child, or sexual penetration.

8 (Q) Assault with a deadly weapon or with force likely to produce great bodily
9 injury in violation of subdivision (a) of Section 245.

10 (R) Any violent felony defined in Section 667.5.

11 (S) A violation of Section 12022.

12 (T) A violation of Section ~~12308~~ 18745.

13 (U) Burglary of the first degree.

14 (V) A violation of Section 11351, 11351.5, 11352, 11353, 11358, 11359, 11360,
15 11370.1, 11370.6, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, or 11383 of
16 the Health and Safety Code.

17 (3) Has not been sentenced to state prison for a term exceeding 36 months.

18 (b) Prior to sentencing, if the court proposes to give consideration to a
19 placement, the court shall consider a written evaluation by the probation
20 department, which shall include the following:

21 (1) Whether the defendant is eligible for participation pursuant to this section.

22 (2) Whether participation by the defendant and her eligible children is deemed to
23 be in the best interests of the children.

24 (3) Whether the defendant is amenable to treatment for substance abuse and
25 would benefit from participation in the program.

26 (4) Whether the program is deemed to be in the best interests of an eligible child
27 of the defendant, as determined by a representative of the appropriate child
28 welfare services agency of the county if the child is a dependent child of the
29 juvenile court pursuant to Section 300 of the Welfare and Institutions Code.

30 (c) The district attorney shall make a recommendation to the court as to whether
31 or not the defendant would benefit from the program, which the court shall
32 consider in making its decision. If the court's decision is without the concurrence
33 of the district attorney, the court shall specify its reasons in writing and enter them
34 into the record.

35 (d) If the court determines that the defendant may benefit from participation in
36 this program, the court may impose a state prison sentence with the
37 recommendation that the defendant participate in the program pursuant to this
38 chapter. The court shall notify the department within 48 hours of imposition of this
39 sentence.

40 (e) The Director of Corrections shall consider the court's recommendation in
41 making a determination on the inmate's placement in the program.

42 (f) Women accepted for the program by the Director of Corrections shall be
43 delivered by the county, pursuant to Section 1202a, to the facility selected by the

1 department. Before the director accepts a woman for the program, the county shall
2 provide to the director the necessary information to determine her eligibility and
3 appropriate placement status. Priority for services and aftercare shall be given to
4 inmates who are incarcerated in a county, or adjacent to a county, in which a
5 program facility is located.

6 (g) Prior to being admitted to the program, each participant shall voluntarily sign
7 an agreement specifying the terms and conditions of participation in the program.

8 (h) The department may refer inmates back to the sentencing court if the
9 department determines that an eligible inmate has not been recommended for the
10 program. The department shall refer the inmate to the court by an evaluative report
11 so stating the department's assessment of eligibility, and requesting a
12 recommendation by the court.

13 (i) Women who successfully complete the program, including the minimum of
14 one year of transition services under intensive parole supervision, shall be
15 discharged from parole. Women who do not successfully complete the program
16 shall be returned to the state prison where they shall serve their original sentences.
17 These persons shall receive full credit against their original sentences for the time
18 served in the program, pursuant to Section 2933.

19 **Comment.** Subdivision (a) of Section 1174.4 is amended to reflect nonsubstantive
20 reorganization of the statutes governing control of deadly weapons.

21 For guidance in applying this section, see Section 16015 (determining existence of prior
22 conviction).

23 **Penal Code § 1192.7 (amended). Prosecution of sex crimes**

24 SEC. ____ . Section 1192.7 of the Penal Code is amended to read:

25 1192.7. (a)(1) It is the intent of the Legislature that district attorneys prosecute
26 violent sex crimes under statutes that provide sentencing under a "one strike,"
27 "three strikes" or habitual sex offender statute instead of engaging in plea
28 bargaining over those offenses.

29 (2) Plea bargaining in any case in which the indictment or information charges
30 any serious felony, any felony in which it is alleged that a firearm was personally
31 used by the defendant, or any offense of driving while under the influence of
32 alcohol, drugs, narcotics, or any other intoxicating substance, or any combination
33 thereof, is prohibited, unless there is insufficient evidence to prove the people's
34 case, or testimony of a material witness cannot be obtained, or a reduction or
35 dismissal would not result in a substantial change in sentence.

36 (3) If the indictment or information charges the defendant with a violent sex
37 crime, as listed in subdivision (c) of Section 667.61, that could be prosecuted
38 under Sections 269, 288.7, subdivisions (b) through (i) of Section 667, Section
39 667.61, or 667.71, plea bargaining is prohibited unless there is insufficient
40 evidence to prove the people's case, or testimony of a material witness cannot be
41 obtained, or a reduction or dismissal would not result in a substantial change in
42 sentence. At the time of presenting the agreement to the court, the district attorney

1 shall state on the record why a sentence under one of those sections was not
2 sought.

3 (b) As used in this section “plea bargaining” means any bargaining, negotiation,
4 or discussion between a criminal defendant, or his or her counsel, and a
5 prosecuting attorney or judge, whereby the defendant agrees to plead guilty or
6 nolo contendere, in exchange for any promises, commitments, concessions,
7 assurances, or consideration by the prosecuting attorney or judge relating to any
8 charge against the defendant or to the sentencing of the defendant.

9 (c) As used in this section, “serious felony” means any of the following:

10 (1) Murder or voluntary manslaughter; (2) mayhem; (3) rape; (4) sodomy by
11 force, violence, duress, menace, threat of great bodily injury, or fear of immediate
12 and unlawful bodily injury on the victim or another person; (5) oral copulation by
13 force, violence, duress, menace, threat of great bodily injury, or fear of immediate
14 and unlawful bodily injury on the victim or another person; (6) lewd or lascivious
15 act on a child under 14 years of age; (7) any felony punishable by death or
16 imprisonment in the state prison for life; (8) any felony in which the defendant
17 personally inflicts great bodily injury on any person, other than an accomplice, or
18 any felony in which the defendant personally uses a firearm; (9) attempted murder;
19 (10) assault with intent to commit rape or robbery; (11) assault with a deadly
20 weapon or instrument on a peace officer; (12) assault by a life prisoner on a
21 noninmate; (13) assault with a deadly weapon by an inmate; (14) arson; (15)
22 exploding a destructive device or any explosive with intent to injure; (16)
23 exploding a destructive device or any explosive causing bodily injury, great bodily
24 injury, or mayhem; (17) exploding a destructive device or any explosive with
25 intent to murder; (18) any burglary of the first degree; (19) robbery or bank
26 robbery; (20) kidnapping; (21) holding of a hostage by a person confined in a state
27 prison; (22) attempt to commit a felony punishable by death or imprisonment in
28 the state prison for life; (23) any felony in which the defendant personally used a
29 dangerous or deadly weapon; (24) selling, furnishing, administering, giving, or
30 offering to sell, furnish, administer, or give to a minor any heroin, cocaine,
31 phencyclidine (PCP), or any methamphetamine-related drug, as described in
32 paragraph (2) of subdivision (d) of Section 11055 of the Health and Safety Code,
33 or any of the precursors of methamphetamines, as described in subparagraph (A)
34 of paragraph (1) of subdivision (f) of Section 11055 or subdivision (a) of Section
35 11100 of the Health and Safety Code; (25) any violation of subdivision (a) of
36 Section 289 where the act is accomplished against the victim’s will by force,
37 violence, duress, menace, or fear of immediate and unlawful bodily injury on the
38 victim or another person; (26) grand theft involving a firearm; (27) carjacking;
39 (28) any felony offense, which would also constitute a felony violation of Section
40 186.22; (29) assault with the intent to commit mayhem, rape, sodomy, or oral
41 copulation, in violation of Section 220; (30) throwing acid or flammable
42 substances, in violation of Section 244; (31) assault with a deadly weapon,
43 firearm, machinegun, assault weapon, or semiautomatic firearm or assault on a

1 peace officer or firefighter, in violation of Section 245; (32) assault with a deadly
2 weapon against a public transit employee, custodial officer, or school employee, in
3 violation of ~~Sections~~ Section 245.2, 245.3, or 245.5; (33) discharge of a firearm at
4 an inhabited dwelling, vehicle, or aircraft, in violation of Section 246; (34)
5 commission of rape or sexual penetration in concert with another person, in
6 violation of Section 264.1; (35) continuous sexual abuse of a child, in violation of
7 Section 288.5; (36) shooting from a vehicle, in violation of subdivision (c) or (d)
8 of Section ~~12034~~ 26100; (37) intimidation of victims or witnesses, in violation of
9 Section 136.1; (38) criminal threats, in violation of Section 422; (39) any attempt
10 to commit a crime listed in this subdivision other than an assault; (40) any
11 violation of Section 12022.53; (41) a violation of subdivision (b) or (c) of Section
12 11418; and (42) any conspiracy to commit an offense described in this
13 subdivision.

14 (d) As used in this section, “bank robbery” means to take or attempt to take, by
15 force or violence, or by intimidation from the person or presence of another any
16 property or money or any other thing of value belonging to, or in the care, custody,
17 control, management, or possession of, any bank, credit union, or any savings and
18 loan association.

19 As used in this subdivision, the following terms have the following meanings:

20 (1) “Bank” means any member of the Federal Reserve System, and any bank,
21 banking association, trust company, savings bank, or other banking institution
22 organized or operating under the laws of the United States, and any bank the
23 deposits of which are insured by the Federal Deposit Insurance Corporation.

24 (2) “Savings and loan association” means any federal savings and loan
25 association and any “insured institution” as defined in Section 401 of the National
26 Housing Act, as amended, and any federal credit union as defined in Section 2 of
27 the Federal Credit Union Act.

28 (3) “Credit union” means any federal credit union and any state-chartered credit
29 union the accounts of which are insured by the Administrator of the National
30 Credit Union administration.

31 (e) The provisions of this section shall not be amended by the Legislature except
32 by statute passed in each house by rollcall vote entered in the journal, two-thirds
33 of the membership concurring, or by a statute that becomes effective only when
34 approved by the electors.

35 **Comment.** Subdivision (c) of Section 1192.7 is amended to reflect nonsubstantive
36 reorganization of the statutes governing control of deadly weapons. That subdivision is also
37 amended to make a technical revision.

38 **Penal Code § 1203 (amended). Probation and conditional sentence**

39 SEC. ____ . Section 1203 of the Penal Code is amended to read:

40 1203. (a) As used in this code, “probation” means the suspension of the
41 imposition or execution of a sentence and the order of conditional and revocable
42 release in the community under the supervision of a probation officer. As used in

1 this code, “conditional sentence” means the suspension of the imposition or
2 execution of a sentence and the order of revocable release in the community
3 subject to conditions established by the court without the supervision of a
4 probation officer. It is the intent of the Legislature that both conditional sentence
5 and probation are authorized whenever probation is authorized in any code as a
6 sentencing option for infractions or misdemeanors.

7 (b)(1) Except as provided in subdivision (j), if a person is convicted of a felony
8 and is eligible for probation, before judgment is pronounced, the court shall
9 immediately refer the matter to a probation officer to investigate and report to the
10 court, at a specified time, upon the circumstances surrounding the crime and the
11 prior history and record of the person, which may be considered either in
12 aggravation or mitigation of the punishment.

13 (2)(A) The probation officer shall immediately investigate and make a written
14 report to the court of his or her findings and recommendations, including his or her
15 recommendations as to the granting or denying of probation and the conditions of
16 probation, if granted.

17 (B) Pursuant to Section 828 of the Welfare and Institutions Code, the probation
18 officer shall include in his or her report any information gathered by a law
19 enforcement agency relating to the taking of the defendant into custody as a minor,
20 which shall be considered for purposes of determining whether adjudications of
21 commissions of crimes as a juvenile warrant a finding that there are circumstances
22 in aggravation pursuant to Section 1170 or to deny probation.

23 (C) If the person was convicted of an offense that requires him or her to register
24 as a sex offender pursuant to Section 290, the probation officer’s report shall
25 include the results of the State-Authorized Risk Assessment Tool for Sex
26 Offenders (SARATSO) administered pursuant to Sections 290.04 to 290.06,
27 inclusive, if applicable.

28 (D) The probation officer shall also include in the report his or her
29 recommendation of both of the following:

30 (i) The amount the defendant should be required to pay as a restitution fine
31 pursuant to subdivision (b) of Section 1202.4.

32 (ii) Whether the court shall require, as a condition of probation, restitution to the
33 victim or to the Restitution Fund and the amount thereof.

34 (E) The report shall be made available to the court and the prosecuting and
35 defense attorneys at least five days, or upon request of the defendant or
36 prosecuting attorney nine days, prior to the time fixed by the court for the hearing
37 and determination of the report, and shall be filed with the clerk of the court as a
38 record in the case at the time of the hearing. The time within which the report shall
39 be made available and filed may be waived by written stipulation of the
40 prosecuting and defense attorneys that is filed with the court or an oral stipulation
41 in open court that is made and entered upon the minutes of the court.

42 (3) At a time fixed by the court, the court shall hear and determine the
43 application, if one has been made, or, in any case, the suitability of probation in

1 the particular case. At the hearing, the court shall consider any report of the
2 probation officer, including the results of the SARATSO, if applicable, and shall
3 make a statement that it has considered the report, which shall be filed with the
4 clerk of the court as a record in the case. If the court determines that there are
5 circumstances in mitigation of the punishment prescribed by law or that the ends
6 of justice would be served by granting probation to the person, it may place the
7 person on probation. If probation is denied, the clerk of the court shall
8 immediately send a copy of the report to the Department of Corrections and
9 Rehabilitation at the prison or other institution to which the person is delivered.

10 (4) The preparation of the report or the consideration of the report by the court
11 may be waived only by a written stipulation of the prosecuting and defense
12 attorneys that is filed with the court or an oral stipulation in open court that is
13 made and entered upon the minutes of the court, except that there shall be no
14 waiver unless the court consents thereto. However, if the defendant is ultimately
15 sentenced and committed to the state prison, a probation report shall be completed
16 pursuant to Section 1203c.

17 (c) If a defendant is not represented by an attorney, the court shall order the
18 probation officer who makes the probation report to discuss its contents with the
19 defendant.

20 (d) If a person is convicted of a misdemeanor, the court may either refer the
21 matter to the probation officer for an investigation and a report or summarily
22 pronounce a conditional sentence. If the person was convicted of an offense that
23 requires him or her to register as a sex offender pursuant to Section 290, the court
24 shall refer the matter to the probation officer for the purpose of obtaining a report
25 on the results of the State-Authorized Risk Assessment Tool for Sex Offenders
26 administered pursuant to Sections 290.04 to 290.06, inclusive, if applicable, which
27 the court shall consider. If the case is not referred to the probation officer, in
28 sentencing the person, the court may consider any information concerning the
29 person that could have been included in a probation report. The court shall inform
30 the person of the information to be considered and permit him or her to answer or
31 controvert the information. For this purpose, upon the request of the person, the
32 court shall grant a continuance before the judgment is pronounced.

33 (e) Except in unusual cases where the interests of justice would best be served if
34 the person is granted probation, probation shall not be granted to any of the
35 following persons:

36 (1) Unless the person had a lawful right to carry a deadly weapon, other than a
37 firearm, at the time of the perpetration of the crime or his or her arrest, any person
38 who has been convicted of arson, robbery, carjacking, burglary, burglary with
39 explosives, rape with force or violence, torture, aggravated mayhem, murder,
40 attempt to commit murder, trainwrecking, kidnapping, escape from the state
41 prison, or a conspiracy to commit one or more of those crimes and who was armed
42 with the weapon at either of those times.

1 (2) Any person who used, or attempted to use, a deadly weapon upon a human
2 being in connection with the perpetration of the crime of which he or she has been
3 convicted.

4 (3) Any person who willfully inflicted great bodily injury or torture in the
5 perpetration of the crime of which he or she has been convicted.

6 (4) Any person who has been previously convicted twice in this state of a felony
7 or in any other place of a public offense which, if committed in this state, would
8 have been punishable as a felony.

9 (5) Unless the person has never been previously convicted once in this state of a
10 felony or in any other place of a public offense which, if committed in this state,
11 would have been punishable as a felony, any person who has been convicted of
12 burglary with explosives, rape with force or violence, torture, aggravated mayhem,
13 murder, attempt to commit murder, trainwrecking, extortion, kidnapping, escape
14 from the state prison, a violation of Section 286, 288, 288a, or 288.5, or a
15 conspiracy to commit one or more of those crimes.

16 (6) Any person who has been previously convicted once in this state of a felony
17 or in any other place of a public offense which, if committed in this state, would
18 have been punishable as a felony, if he or she committed any of the following acts:

19 (A) Unless the person had a lawful right to carry a deadly weapon at the time of
20 the perpetration of the previous crime or his or her arrest for the previous crime, he
21 or she was armed with a weapon at either of those times.

22 (B) The person used, or attempted to use, a deadly weapon upon a human being
23 in connection with the perpetration of the previous crime.

24 (C) The person willfully inflicted great bodily injury or torture in the
25 perpetration of the previous crime.

26 (7) Any public official or peace officer of this state or any city, county, or other
27 political subdivision who, in the discharge of the duties of his or her public office
28 or employment, accepted or gave or offered to accept or give any bribe, embezzled
29 public money, or was guilty of extortion.

30 (8) Any person who knowingly furnishes or gives away phencyclidine.

31 (9) Any person who intentionally inflicted great bodily injury in the commission
32 of arson under subdivision (a) of Section 451 or who intentionally set fire to,
33 burned, or caused the burning of, an inhabited structure or inhabited property in
34 violation of subdivision (b) of Section 451.

35 (10) Any person who, in the commission of a felony, inflicts great bodily injury
36 or causes the death of a human being by the discharge of a firearm from or at an
37 occupied motor vehicle proceeding on a public street or highway.

38 (11) Any person who possesses a short-barreled rifle or a short-barreled shotgun
39 under Section ~~42020~~ 33215, a machinegun under Section ~~42220~~ 32625, or a
40 silencer under Section ~~42520~~ 33410.

41 (12) Any person who is convicted of violating Section 8101 of the Welfare and
42 Institutions Code.

1 (13) Any person who is described in ~~paragraph (2) or (3) of subdivision (g) of~~
2 ~~Section 12072 subdivision (b) or (c) of Section 27590.~~

3 (f) When probation is granted in a case which comes within subdivision (e), the
4 court shall specify on the record and shall enter on the minutes the circumstances
5 indicating that the interests of justice would best be served by that disposition.

6 (g) If a person is not eligible for probation, the judge shall refer the matter to the
7 probation officer for an investigation of the facts relevant to determination of the
8 amount of a restitution fine pursuant to subdivision (b) of Section 1202.4 in all
9 cases where the determination is applicable. The judge, in his or her discretion,
10 may direct the probation officer to investigate all facts relevant to the sentencing
11 of the person. Upon that referral, the probation officer shall immediately
12 investigate the circumstances surrounding the crime and the prior record and
13 history of the person and make a written report to the court of his or her findings.
14 The findings shall include a recommendation of the amount of the restitution fine
15 as provided in subdivision (b) of Section 1202.4.

16 (h) If a defendant is convicted of a felony and a probation report is prepared
17 pursuant to subdivision (b) or (g), the probation officer may obtain and include in
18 the report a statement of the comments of the victim concerning the offense. The
19 court may direct the probation officer not to obtain a statement if the victim has in
20 fact testified at any of the court proceedings concerning the offense.

21 (i) No probationer shall be released to enter another state unless his or her case
22 has been referred to the Administrator of the Interstate Probation and Parole
23 Compacts, pursuant to the Uniform Act for Out-of-State Probationer or Parolee
24 Supervision (Article 3 (commencing with Section 11175) of Chapter 2 of Title 1
25 of Part 4) and the probationer has reimbursed the county that has jurisdiction over
26 his or her probation case the reasonable costs of processing his or her request for
27 interstate compact supervision. The amount and method of reimbursement shall be
28 in accordance with Section 1203.1b.

29 (j) In any court where a county financial evaluation officer is available, in
30 addition to referring the matter to the probation officer, the court may order the
31 defendant to appear before the county financial evaluation officer for a financial
32 evaluation of the defendant's ability to pay restitution, in which case the county
33 financial evaluation officer shall report his or her findings regarding restitution
34 and other court-related costs to the probation officer on the question of the
35 defendant's ability to pay those costs.

36 Any order made pursuant to this subdivision may be enforced as a violation of
37 the terms and conditions of probation upon willful failure to pay and at the
38 discretion of the court, may be enforced in the same manner as a judgment in a
39 civil action, if any balance remains unpaid at the end of the defendant's
40 probationary period.

41 (k) Probation shall not be granted to, nor shall the execution of, or imposition of
42 sentence be suspended for, any person who is convicted of a violent felony, as
43 defined in subdivision (c) of Section 667.5, or a serious felony, as defined in

1 subdivision (c) of Section 1192.7, and who was on probation for a felony offense
2 at the time of the commission of the new felony offense.

3 **Comment.** Subdivision (e) of Section 1203 is amended to reflect nonsubstantive
4 reorganization of the statutes governing control of deadly weapons.

5 **Penal Code § 1203.1 (amended). Terms and conditions of probation**

6 SEC. ____ . Section 1203.1 of the Penal Code is amended to read:

7 1203.1. (a) The court, or judge thereof, in the order granting probation, may
8 suspend the imposing or the execution of the sentence and may direct that the
9 suspension may continue for a period of time not exceeding the maximum possible
10 term of the sentence, except as hereinafter set forth, and upon those terms and
11 conditions as it shall determine. The court, or judge thereof, in the order granting
12 probation and as a condition thereof, may imprison the defendant in a county jail
13 for a period not exceeding the maximum time fixed by law in the case.

14 However, where the maximum possible term of the sentence is five years or
15 less, then the period of suspension of imposition or execution of sentence may, in
16 the discretion of the court, continue for not over five years. The following shall
17 apply to this subdivision:

18 (1) The court may fine the defendant in a sum not to exceed the maximum fine
19 provided by law in the case.

20 (2) The court may, in connection with granting probation, impose either
21 imprisonment in a county jail or a fine, both, or neither.

22 (3) The court shall provide for restitution in proper cases. The restitution order
23 shall be fully enforceable as a civil judgment forthwith and in accordance with
24 Section 1202.4 of the Penal Code.

25 (4) The court may require bonds for the faithful observance and performance of
26 any or all of the conditions of probation.

27 (b) The court shall consider whether the defendant as a condition of probation
28 shall make restitution to the victim or the Restitution Fund. Any restitution
29 payment received by a probation department in the form of cash or money order
30 shall be forwarded to the victim within 30 days from the date the payment is
31 received by the department. Any restitution payment received by a probation
32 department in the form of a check or draft shall be forwarded to the victim within
33 45 days from the date the payment is received by the department, provided, that
34 payment need not be forwarded to a victim until 180 days from the date the first
35 payment is received, if the restitution payments for that victim received by the
36 probation department total less than fifty dollars (\$50). In cases where the court
37 has ordered the defendant to pay restitution to multiple victims and where the
38 administrative cost of disbursing restitution payments to multiple victims involves
39 a significant cost, any restitution payment received by a probation department
40 shall be forwarded to multiple victims when it is cost-effective to do so, but in no
41 event shall restitution disbursements be delayed beyond 180 days from the date the
42 payment is received by the probation department.

1 (c) In counties or cities and counties where road camps, farms, or other public
2 work is available the court may place the probationer in the road camp, farm, or
3 other public work instead of in jail. In this case, Section 25359 of the Government
4 Code shall apply to probation and the court shall have the same power to require
5 adult probationers to work, as prisoners confined in the county jail are required to
6 work, at public work. Each county board of supervisors may fix the scale of
7 compensation of the adult probationers in that county.

8 (d) In all cases of probation the court may require as a condition of probation
9 that the probationer go to work and earn money for the support of his or her
10 dependents or to pay any fine imposed or reparation condition, to keep an account
11 of his or her earnings, to report them to the probation officer and apply those
12 earnings as directed by the court.

13 (e) The court shall also consider whether the defendant as a condition of
14 probation shall make restitution to a public agency for the costs of an emergency
15 response pursuant to Article 8 (commencing with Section 53150) of Chapter 1 of
16 Part 1 of Division 2 of the Government Code.

17 (f) In all felony cases in which, as a condition of probation, a judge of the
18 superior court sitting by authority of law elsewhere than at the county seat requires
19 a convicted person to serve his or her sentence at intermittent periods the sentence
20 may be served on the order of the judge at the city jail nearest to the place at which
21 the court is sitting, and the cost of his or her maintenance shall be a county charge.

22 (g)(1) The court and prosecuting attorney shall consider whether any defendant
23 who has been convicted of a nonviolent or nonserious offense and ordered to
24 participate in community service as a condition of probation shall be required to
25 engage in the removal of graffiti in the performance of the community service. For
26 the purpose of this subdivision, a nonserious offense shall not include the
27 following:

28 (A) Offenses in violation of the Dangerous ~~Weapons~~^{Weapons} Control Law
29 (~~Chapter 1 (commencing with Section 12000) of Title 2 of Part 4~~), as defined in
30 Section 23500.

31 (B) Offenses involving the use of a dangerous or deadly weapon, including all
32 violations of Section 417.

33 (C) Offenses involving the use or attempted use of violence against the person
34 of another or involving injury to a victim.

35 (D) Offenses involving annoying or molesting children.

36 (2) Notwithstanding subparagraph (A) of paragraph (1), any person who violates
37 ~~Section 12101 Chapter 1 (commencing with Section 29610) of Division 9 of Title~~
38 4 of Part 6 shall be ordered to perform not less than 100 hours and not more than
39 500 hours of community service as a condition of probation.

40 (3) The court and the prosecuting attorney need not consider a defendant
41 pursuant to paragraph (1) if the following circumstances exist:

42 (A) The defendant was convicted of any offense set forth in subdivision (c) of
43 Section 667.5 or subdivision (c) of Section 1192.7.

1 (B) The judge believes that the public safety may be endangered if the person is
2 ordered to do community service or the judge believes that the facts or
3 circumstances or facts and circumstances call for imposition of a more substantial
4 penalty.

5 (h) The probation officer or his or her designated representative shall consider
6 whether any defendant who has been convicted of a nonviolent and nonserious
7 offense and ordered to participate in community service as a condition of
8 probation shall be required to engage in the performance of house repairs or yard
9 services for senior citizens and the performance of repairs to senior centers
10 through contact with local senior service organizations in the performance of the
11 community service.

12 (i)(1) Upon conviction of any offense involving child abuse or neglect, the court
13 may require, in addition to any or all of the above-mentioned terms of
14 imprisonment, fine, and other reasonable conditions, that the defendant shall
15 participate in counseling or education programs, or both, including, but not limited
16 to, parent education or parenting programs operated by community colleges,
17 school districts, other public agencies, or private agencies.

18 (2) Upon conviction of any sex offense subjecting the defendant to the
19 registration requirements of Section 290, the court may order as a condition of
20 probation, at the request of the victim or in the court's discretion, that the
21 defendant stay away from the victim and the victim's residence or place of
22 employment, and that the defendant have no contact with the victim in person, by
23 telephone or electronic means, or by mail.

24 (j) The court may impose and require any or all of the above-mentioned terms of
25 imprisonment, fine, and conditions, and other reasonable conditions, as it may
26 determine are fitting and proper to the end that justice may be done, that amends
27 may be made to society for the breach of the law, for any injury done to any
28 person resulting from that breach, and generally and specifically for the
29 reformation and rehabilitation of the probationer, and that should the probationer
30 violate any of the terms or conditions imposed by the court in the matter, it shall
31 have authority to modify and change any and all the terms and conditions and to
32 reimprison the probationer in the county jail within the limitations of the penalty
33 of the public offense involved. Upon the defendant being released from the county
34 jail under the terms of probation as originally granted or any modification
35 subsequently made, and in all cases where confinement in a county jail has not
36 been a condition of the grant of probation, the court shall place the defendant or
37 probationer in and under the charge of the probation officer of the court, for the
38 period or term fixed for probation. However, upon the payment of any fine
39 imposed and the fulfillment of all conditions of probation, probation shall cease at
40 the end of the term of probation, or sooner, in the event of modification. In
41 counties and cities and counties in which there are facilities for taking fingerprints,
42 those of each probationer shall be taken and a record of them kept and preserved.

1 (k) Notwithstanding any other provisions of law to the contrary, except as
2 provided in Section 13967, as operative on or before September 28, 1994, of the
3 Government Code and Section 13967.5 of the Government Code and Sections
4 1202.4, 1463.16, paragraph (1) of subdivision (a) of Section 1463.18, and Section
5 1464, and Section 1203.04, as operative on or before August 2, 1995, all fines
6 collected by a county probation officer in any of the courts of this state, as a
7 condition of the granting of probation or as a part of the terms of probation, shall
8 be paid into the county treasury and placed in the general fund for the use and
9 benefit of the county.

10 (l) If the court orders restitution to be made to the victim, the board of
11 supervisors may add a fee to cover the actual administrative cost of collecting
12 restitution but not to exceed 10 percent of the total amount ordered to be paid. The
13 fees shall be paid into the general fund of the county treasury for the use and
14 benefit of the county.

15 **Comment.** Subdivision (g) of Section 1203.1 is amended to reflect nonsubstantive
16 reorganization of the statutes governing control of deadly weapons. That subdivision is also
17 amended to make a technical revision.

18 **Penal Code § 1203.4 (amended). Dismissal of information or accusation**

19 SEC. ____ . Section 1203.4 of the Penal Code is amended to read:

20 1203.4. (a) In any case in which a defendant has fulfilled the conditions of
21 probation for the entire period of probation, or has been discharged prior to the
22 termination of the period of probation, or in any other case in which a court, in its
23 discretion and the interests of justice, determines that a defendant should be
24 granted the relief available under this section, the defendant shall, at any time after
25 the termination of the period of probation, if he or she is not then serving a
26 sentence for any offense, on probation for any offense, or charged with the
27 commission of any offense, be permitted by the court to withdraw his or her plea
28 of guilty or plea of nolo contendere and enter a plea of not guilty; or, if he or she
29 has been convicted after a plea of not guilty, the court shall set aside the verdict of
30 guilty; and, in either case, the court shall thereupon dismiss the accusations or
31 information against the defendant and except as noted below, he or she shall
32 thereafter be released from all penalties and disabilities resulting from the offense
33 of which he or she has been convicted, except as provided in Section 13555 of the
34 Vehicle Code. The probationer shall be informed, in his or her probation papers, of
35 this right and privilege and his or her right, if any, to petition for a certificate of
36 rehabilitation and pardon. The probationer may make the application and change
37 of plea in person or by attorney, or by the probation officer authorized in writing.
38 However, in any subsequent prosecution of the defendant for any other offense,
39 the prior conviction may be pleaded and proved and shall have the same effect as
40 if probation had not been granted or the accusation or information dismissed. The
41 order shall state, and the probationer shall be informed, that the order does not
42 relieve him or her of the obligation to disclose the conviction in response to any

1 direct question contained in any questionnaire or application for public office, for
2 licensure by any state or local agency, or for contracting with the California State
3 Lottery.

4 Dismissal of an accusation or information pursuant to this section does not
5 permit a person to own, possess, or have in his or her custody or control any
6 firearm or prevent his or her conviction under ~~Section 12021~~ Chapter 2
7 (commencing with Section 29800) of Division 9 of Title 4 of Part 6.

8 Dismissal of an accusation or information underlying a conviction pursuant to
9 this section does not permit a person prohibited from holding public office as a
10 result of that conviction to hold public office.

11 This subdivision shall apply to all applications for relief under this section which
12 are filed on or after November 23, 1970.

13 (b) Subdivision (a) of this section does not apply to any misdemeanor that is
14 within the provisions of subdivision (b) of Section 42001 of the Vehicle Code, to
15 any violation of subdivision (c) of Section 286, Section 288, subdivision (c) of
16 Section 288a, Section 288.5, or subdivision (j) of Section 289, any felony
17 conviction pursuant to subdivision (d) of Section 261.5, or to any infraction.

18 (c)(1) Except as provided in paragraph (2), subdivision (a) does not apply to a
19 person who receives a notice to appear or is otherwise charged with a violation of
20 an offense described in subdivisions (a) to (e), inclusive, of Section 12810 of the
21 Vehicle Code.

22 (2) If a defendant who was convicted of a violation listed in paragraph (1)
23 petitions the court, the court in its discretion and in the interests of justice, may
24 order the relief provided pursuant to subdivision (a) to that defendant.

25 (d) A person who petitions for a change of plea or setting aside of a verdict
26 under this section may be required to reimburse the court for the actual costs of
27 services rendered, whether or not the petition is granted and the records are sealed
28 or expunged, at a rate to be determined by the court not to exceed one hundred
29 twenty dollars (\$120), and to reimburse the county for the actual costs of services
30 rendered, whether or not the petition is granted and the records are sealed or
31 expunged, at a rate to be determined by the county board of supervisors not to
32 exceed one hundred twenty dollars (\$120), and to reimburse any city for the actual
33 costs of services rendered, whether or not the petition is granted and the records
34 are sealed or expunged, at a rate to be determined by the city council not to exceed
35 one hundred twenty dollars (\$120). Ability to make this reimbursement shall be
36 determined by the court using the standards set forth in paragraph (2) of
37 subdivision (g) of Section 987.8 and shall not be a prerequisite to a person's
38 eligibility under this section. The court may order reimbursement in any case in
39 which the petitioner appears to have the ability to pay, without undue hardship, all
40 or any portion of the costs for services established pursuant to this subdivision.

41 (e) Relief shall not be granted under this section unless the prosecuting attorney
42 has been given 15 days' notice of the petition for relief. The probation officer shall
43 notify the prosecuting attorney when a petition is filed, pursuant to this section.

1 It shall be presumed that the prosecuting attorney has received notice if proof of
2 service is filed with the court.

3 (f) If, after receiving notice pursuant to subdivision (e), the prosecuting attorney
4 fails to appear and object to a petition for dismissal, the prosecuting attorney may
5 not move to set aside or otherwise appeal the grant of that petition.

6 (g) Notwithstanding the above provisions or any other provision of law, the
7 Governor shall have the right to pardon a person convicted of a violation of
8 subdivision (c) of Section 286, Section 288, subdivision (c) of Section 288a,
9 Section 288.5, or subdivision (j) of Section 289, if there are extraordinary
10 circumstances.

11 **Comment.** Subdivision (a) of Section 1203.4 is amended to reflect nonsubstantive
12 reorganization of the statutes governing control of deadly weapons.

13 **Staff Note.** The text of Section 1203.4 reflects the enactment of AB 2092 (De La Torre),
14 2008 Cal. Stat. ch. 94.

15 **Penal Code § 1203.4a (amended). Withdrawal of plea to misdemeanor**

16 SEC. ____ . Section 1203.4a of the Penal Code is amended to read:

17 1203.4a. (a) Every defendant convicted of a misdemeanor and not granted
18 probation shall, at any time after the lapse of one year from the date of
19 pronouncement of judgment, if he or she has fully complied with and performed
20 the sentence of the court, is not then serving a sentence for any offense and is not
21 under charge of commission of any crime and has, since the pronouncement of
22 judgment, lived an honest and upright life and has conformed to and obeyed the
23 laws of the land, be permitted by the court to withdraw his or her plea of guilty or
24 nolo contendere and enter a plea of not guilty; or if he or she has been convicted
25 after a plea of not guilty, the court shall set aside the verdict of guilty; and in either
26 case the court shall thereupon dismiss the accusatory pleading against the
27 defendant, who shall thereafter be released from all penalties and disabilities
28 resulting from the offense of which he or she has been convicted, except as
29 provided in ~~Section 12021.1~~ Chapter 3 (commencing with Section 29900) of
30 Division 9 of Title 4 of Part 6 of this code or Section 13555 of the Vehicle Code.
31 The defendant shall be informed of the provisions of this section, either orally or
32 in writing, at the time he or she is sentenced. The defendant may make an
33 application and change of plea in person or by attorney, or by the probation officer
34 authorized in writing; provided, that in any subsequent prosecution of the
35 defendant for any other offense, the prior conviction may be pleaded and proved
36 and shall have the same effect as if relief had not been granted pursuant to this
37 section.

38 This subdivision applies to convictions which occurred before as well as those
39 occurring after, the effective date of this section.

40 (b) Subdivision (a) does not apply to any misdemeanor falling within the
41 provisions of subdivision (b) of Section 42001 of the Vehicle Code, or to any
42 infraction.

1 (c) A person who petitions for a dismissal of a charge under this section may be
2 required to reimburse the county and the court for the cost of services rendered at
3 a rate to be determined by the county board of supervisors for the county and by
4 the court for the court, not to exceed sixty dollars (\$60), and to reimburse any city
5 for the cost of services rendered at a rate to be determined by the city council not
6 to exceed sixty dollars (\$60). Ability to make this reimbursement shall be
7 determined by the court using the standards set forth in paragraph (2) of
8 subdivision (g) of Section 987.8 and shall not be a prerequisite to a person's
9 eligibility under this section. The court may order reimbursement in any case in
10 which the petitioner appears to have the ability to pay, without undue hardship, all
11 or any portion of the cost for services established pursuant to this subdivision.

12 (d) Any determination of amount made by a court under this section shall be
13 valid only if either (1) made under procedures adopted by the Judicial Council or
14 (2) approved by the Judicial Council.

15 **Comment.** Subdivision (a) of Section 1203.4a is amended to reflect nonsubstantive
16 reorganization of the statutes governing control of deadly weapons.

17 **Penal Code § 1210.1 (amended). Probation for nonviolent drug possession**

18 SEC. ____ . Section 1210.1 of the Penal Code is amended to read:

19 1210.1. (a) Notwithstanding any other provision of law, and except as provided
20 in subdivision (b), any person convicted of a nonviolent drug possession offense
21 shall receive probation. As a condition of probation the court shall require
22 participation in and completion of an appropriate drug treatment program. The
23 court shall impose appropriate drug testing as a condition of probation. The court
24 may also impose, as a condition of probation, participation in vocational training,
25 family counseling, literacy training and/or community service. A court may not
26 impose incarceration as an additional condition of probation. Aside from the
27 limitations imposed in this subdivision, the trial court is not otherwise limited in
28 the type of probation conditions it may impose. Probation shall be imposed by
29 suspending the imposition of sentence. No person shall be denied the opportunity
30 to benefit from the provisions of the Substance Abuse and Crime Prevention Act
31 of 2000 based solely upon evidence of a co-occurring psychiatric or
32 developmental disorder. To the greatest extent possible, any person who is
33 convicted of, and placed on probation pursuant to this section for a nonviolent
34 drug possession offense shall be monitored by the court through the use of a
35 dedicated court calendar and the incorporation of a collaborative court model of
36 oversight that includes close collaboration with treatment providers and probation,
37 drug testing commensurate with treatment needs, and supervision of progress
38 through review hearings.

39 In addition to any fine assessed under other provisions of law, the trial judge
40 may require any person convicted of a nonviolent drug possession offense who is
41 reasonably able to do so to contribute to the cost of his or her own placement in a
42 drug treatment program.

1 (b) Subdivision (a) shall not apply to any of the following:

2 (1) Any defendant who previously has been convicted of one or more violent or
3 serious felonies as defined in subdivision (c) of Section 667.5 or subdivision (c) of
4 Section 1192.7, respectively, unless the nonviolent drug possession offense
5 occurred after a period of five years in which the defendant remained free of both
6 prison custody and the commission of an offense that results in a felony conviction
7 other than a nonviolent drug possession offense, or a misdemeanor conviction
8 involving physical injury or the threat of physical injury to another person.

9 (2) Any defendant who, in addition to one or more nonviolent drug possession
10 offenses, has been convicted in the same proceeding of a misdemeanor not related
11 to the use of drugs or any felony.

12 (3) Any defendant who, while armed with a deadly weapon, with the intent to
13 use the same as a deadly weapon, unlawfully possesses or is under the influence of
14 any controlled substance identified in Section 11054, 11055, 11056, 11057, or
15 11058 of the Health and Safety Code.

16 (4) Any defendant who refuses drug treatment as a condition of probation.

17 (5) Any defendant who has two separate convictions for nonviolent drug
18 possession offenses, has participated in two separate courses of drug treatment
19 pursuant to subdivision (a), and is found by the court, by clear and convincing
20 evidence, to be unamenable to any and all forms of available drug treatment, as
21 defined in subdivision (b) of Section 1210. Notwithstanding any other provision of
22 law, the trial court shall sentence that defendant to 30 days in jail.

23 (c)(1) Any defendant who has previously been convicted of at least three non-
24 drug-related felonies for which the defendant has served three separate prison
25 terms within the meaning of subdivision (b) of Section 667.5 shall be presumed
26 eligible for treatment under subdivision (a). The court may exclude ~~such a~~ the
27 defendant from treatment under subdivision (a) where the court, pursuant to the
28 motion of the prosecutor or its own motion, finds that the defendant poses a
29 present danger to the safety of others and would not benefit from a drug treatment
30 program. The court shall, on the record, state its findings, and the reasons for those
31 findings.

32 (2) Any defendant who has previously been convicted of a misdemeanor or
33 felony at least five times within the prior 30 months shall be presumed to be
34 eligible for treatment under subdivision (a). The court may exclude ~~such a~~ the
35 defendant from treatment under subdivision (a) if the court, pursuant to the motion
36 of the prosecutor, or on its own motion, finds that the defendant poses a present
37 danger to the safety of others or would not benefit from a drug treatment program.
38 The court shall, on the record, state its findings and the reasons for those findings.

39 (d) Within seven days of an order imposing probation under subdivision (a), the
40 probation department shall notify the drug treatment provider designated to
41 provide drug treatment under subdivision (a). Within 30 days of receiving that
42 notice, the treatment provider shall prepare a treatment plan and forward it to the
43 probation department for distribution to the court and counsel. The treatment

1 provider shall provide to the probation department standardized treatment progress
2 reports, with minimum data elements as determined by the department, including
3 all drug testing results. At a minimum, the reports shall be provided to the court
4 every 90 days, or more frequently, as the court directs.

5 (1) If at any point during the course of drug treatment the treatment provider
6 notifies the probation department and the court that the defendant is unamenable to
7 the drug treatment being provided, but may be amenable to other drug treatments
8 or related programs, the probation department may move the court to modify the
9 terms of probation, or on its own motion, the court may modify the terms of
10 probation after a hearing to ensure that the defendant receives the alternative drug
11 treatment or program.

12 (2) If at any point during the course of drug treatment the treatment provider
13 notifies the probation department and the court that the defendant is unamenable to
14 the drug treatment provided and all other forms of drug treatment programs
15 pursuant to subdivision (b) of Section 1210, the probation department may move
16 to revoke probation. At the revocation hearing, if it is proved that the defendant is
17 unamenable to all drug treatment programs pursuant to subdivision (b) of Section
18 1210, the court may revoke probation.

19 (3) Drug treatment services provided by subdivision (a) as a required condition
20 of probation may not exceed 12 months, unless the court makes a finding
21 supported by the record, that the continuation of treatment services beyond 12
22 months is necessary for drug treatment to be successful. If ~~such a~~ that finding is
23 made, the court may order up to two six-month extensions of treatment services.
24 The provision of treatment services under the Substance Abuse and Crime
25 Prevention Act of 2000 shall not exceed 24 months.

26 (e)(1) At any time after completion of drug treatment and the terms of probation,
27 the court shall conduct a hearing, and if the court finds that the defendant
28 successfully completed drug treatment, and substantially complied with the
29 conditions of probation, including refraining from the use of drugs after the
30 completion of treatment, the conviction on which the probation was based shall be
31 set aside and the court shall dismiss the indictment, complaint, or information
32 against the defendant. In addition, except as provided in paragraphs (2) and (3),
33 both the arrest and the conviction shall be deemed never to have occurred. The
34 defendant may additionally petition the court for a dismissal of charges at any time
35 after completion of the prescribed course of drug treatment. Except as provided in
36 paragraph (2) or (3), the defendant shall thereafter be released from all penalties
37 and disabilities resulting from the offense of which he or she has been convicted.

38 (2) Dismissal of an indictment, complaint, or information pursuant to paragraph
39 (1) does not permit a person to own, possess, or have in his or her custody or
40 control any firearm capable of being concealed upon the person or prevent his or
41 her conviction under ~~Section 12021~~ Chapter 2 (commencing with Section 29800)
42 of Division 9 of Title 4 of Part 6.

1 (3) Except as provided below, after an indictment, complaint, or information is
2 dismissed pursuant to paragraph (1), the defendant may indicate in response to any
3 question concerning his or her prior criminal record that he or she was not arrested
4 or convicted for the offense. Except as provided below, a record pertaining to an
5 arrest or conviction resulting in successful completion of a drug treatment program
6 under this section may not, without the defendant's consent, be used in any way
7 that could result in the denial of any employment, benefit, license, or certificate.

8 Regardless of his or her successful completion of drug treatment, the arrest and
9 conviction on which the probation was based may be recorded by the Department
10 of Justice and disclosed in response to any peace officer application request or any
11 law enforcement inquiry. Dismissal of an information, complaint, or indictment
12 under this section does not relieve a defendant of the obligation to disclose the
13 arrest and conviction in response to any direct question contained in any
14 questionnaire or application for public office, for a position as a peace officer as
15 defined in Section 830, for licensure by any state or local agency, for contracting
16 with the California State Lottery, or for purposes of serving on a jury.

17 (f)(1) If probation is revoked pursuant to the provisions of this subdivision, the
18 defendant may be incarcerated pursuant to otherwise applicable law without
19 regard to the provisions of this section. The court may modify or revoke probation
20 if the alleged violation is proved.

21 (2) If a defendant receives probation under subdivision (a), and violates that
22 probation either by committing an offense that is not a nonviolent drug possession
23 offense, or by violating a non-drug-related condition of probation, and the state
24 moves to revoke probation, the court may remand the defendant for a period not
25 exceeding 30 days during which time the court may receive input from treatment,
26 probation, the state, and the defendant, and the court may conduct further hearings
27 as it deems appropriate to determine whether or not probation should be reinstated
28 under this section. If the court reinstates the defendant on probation, the court may
29 modify the treatment plan and any other terms of probation, and continue the
30 defendant in a treatment program under the Substance Abuse and Crime
31 Prevention Act of 2000. If the court reinstates the defendant on probation, the
32 court may, after receiving input from the treatment provider and probation, if
33 available, intensify or alter the treatment plan under subdivision (a), and impose
34 sanctions, including jail sanctions not exceeding 30 days, a tool to enhance
35 treatment compliance.

36 (3)(A) If a defendant receives probation under subdivision (a), and violates that
37 probation either by committing a nonviolent drug possession offense, or a
38 misdemeanor for simple possession or use of drugs or drug paraphernalia, being
39 present where drugs are used, or failure to register as a drug offender, or any
40 activity similar to those listed in subdivision (d) of Section 1210, or by violating a
41 drug-related condition of probation, and the state moves to revoke probation, the
42 court shall conduct a hearing to determine whether probation shall be revoked.
43 The trial court shall revoke probation if the alleged probation violation is proved

1 and the state proves by a preponderance of the evidence that the defendant poses a
2 danger to the safety of others. If the court does not revoke probation, it may
3 intensify or alter the drug treatment plan and in addition, if the violation does not
4 involve the recent use of drugs as a circumstance of the violation, including, but
5 not limited to, violations relating to failure to appear at treatment or court,
6 noncompliance with treatment, and failure to report for drug testing, the court may
7 impose sanctions including jail sanctions that may not exceed 48 hours of
8 continuous custody as a tool to enhance treatment compliance and impose other
9 changes in the terms and conditions of probation. The court shall consider, among
10 other factors, the seriousness of the violation, previous treatment compliance,
11 employment, education, vocational training, medical conditions, medical
12 treatment, including narcotics replacement treatment, and including the opinion of
13 the defendant's licensed and treating physician if immediately available and
14 presented at the hearing, child support obligations, and family responsibilities. The
15 court shall consider additional conditions of probation, which may include, but are
16 not limited to, community service and supervised work programs. If one of the
17 circumstances of the violation involves recent drug use, as well as other
18 circumstances of violation, and the circumstance of recent drug use is
19 demonstrated to the court by satisfactory evidence and a finding made on the
20 record, the court may, after receiving input from treatment and probation, if
21 available, direct the defendant to enter a licensed detoxification or residential
22 treatment facility, and if there is no bed immediately available in ~~such a~~ that type
23 of facility, the court may order that the defendant be confined in a county jail for
24 detoxification purposes only, if the jail offers detoxification services, for a period
25 not to exceed 10 days. The detoxification services must provide narcotic
26 replacement therapy for those defendants presently actually receiving narcotic
27 replacement therapy.

28 (B) If a defendant receives probation under subdivision (a), and for the second
29 time violates that probation either by committing a nonviolent drug possession
30 offense, or a misdemeanor for simple possession or use of drugs or drug
31 paraphernalia, being present where drugs are used, or failure to register as a drug
32 offender, or any activity similar to those listed in subdivision (d) of Section 1210,
33 or by violating a drug-related condition of probation, and the state moves to
34 revoke probation, the court shall conduct a hearing to determine whether probation
35 shall be revoked. The trial court shall revoke probation if the alleged probation
36 violation is proved and the state proves by a preponderance of the evidence either
37 that the defendant poses a danger to the safety of others or is unamenable to drug
38 treatment. In determining whether a defendant is unamenable to drug treatment,
39 the court may consider, to the extent relevant, whether the defendant (i) has
40 committed a serious violation of rules at the drug treatment program, (ii) has
41 repeatedly committed violations of program rules that inhibit the defendant's
42 ability to function in the program, or (iii) has continually refused to participate in
43 the program or asked to be removed from the program. If the court does not

1 revoke probation, it may intensify or alter the drug treatment plan, and may, in
2 addition, if the violation does not involve the recent use of drugs as a circumstance
3 of the violation, including, but not limited to, violations relating to failure to
4 appear at treatment or court, noncompliance with treatment, and failure to report
5 for drug testing, impose sanctions including jail sanctions that may not exceed 120
6 hours of continuous custody as a tool to enhance treatment compliance and impose
7 other changes in the terms and conditions of probation. The court shall consider,
8 among other factors, the seriousness of the violation, previous treatment
9 compliance, employment, education, vocational training, medical conditions,
10 medical treatment, including narcotics replacement treatment, and including the
11 opinion of the defendant's licensed and treating physician if immediately available
12 and presented at the hearing, child support obligations, and family responsibilities.
13 The court shall consider additional conditions of probation, which may include,
14 but are not limited to, community service and supervised work programs. If one of
15 the circumstances of the violation involves recent drug use, as well as other
16 circumstances of violation, and the circumstance of recent drug use is
17 demonstrated to the court by satisfactory evidence and a finding made on the
18 record, the court may, after receiving input from treatment and probation, if
19 available, direct the defendant to enter a licensed detoxification or residential
20 treatment facility, and if there is no bed immediately available in the facility, the
21 court may order that the defendant be confined in a county jail for detoxification
22 purposes only, if the jail offers detoxification services, for a period not to exceed
23 10 days. Detoxification services must provide narcotic replacement therapy for
24 those defendants presently actually receiving narcotic replacement therapy.

25 (C) If a defendant receives probation under subdivision (a), and for the third or
26 subsequent time violates that probation either by committing a nonviolent drug
27 possession offense, or by violating a drug-related condition of probation, and the
28 state moves for a third or subsequent time to revoke probation, the court shall
29 conduct a hearing to determine whether probation shall be revoked. If the alleged
30 probation violation is proved, the defendant is not eligible for continued probation
31 under subdivision (a) unless the court determines that the defendant is not a danger
32 to the community and would benefit from further treatment under subdivision (a).
33 The court may then either intensify or alter the treatment plan under subdivision
34 (a) or transfer the defendant to a highly structured drug court. If the court
35 continues the defendant in treatment under subdivision (a), or drug court, the court
36 may impose appropriate sanctions including jail sanctions as the court deems
37 appropriate.

38 (D) If a defendant on probation at the effective date of this act for a nonviolent
39 drug possession offense violates that probation either by committing a nonviolent
40 drug possession offense, or a misdemeanor for simple possession or use of drugs
41 or drug paraphernalia, being present where drugs are used, or failure to register as
42 a drug offender, or any activity similar to those listed in subdivision (d) of Section
43 1210, or by violating a drug-related condition of probation, and the state moves to

1 revoke probation, the court shall conduct a hearing to determine whether probation
2 shall be revoked. The trial court shall revoke probation if the alleged probation
3 violation is proved and the state proves by a preponderance of the evidence that
4 the defendant poses a danger to the safety of others. If the court does not revoke
5 probation, it may modify or alter the treatment plan, and in addition, if the
6 violation does not involve the recent use of drugs as a circumstance of the
7 violation, including, but not limited to, violations relating to failure to appear at
8 treatment or court, noncompliance with treatment, and failure to report for drug
9 testing, the court may impose sanctions including jail sanctions that may not
10 exceed 48 hours of continuous custody as a tool to enhance treatment compliance
11 and impose other changes in the terms and conditions of probation. The court shall
12 consider, among other factors, the seriousness of the violation, previous treatment
13 compliance, employment, education, vocational training, medical conditions,
14 medical treatment, including narcotics replacement treatment, and including the
15 opinion of the defendant's licensed and treating physician if immediately available
16 and presented at the hearing, child support obligations, and family responsibilities.
17 The court shall consider additional conditions of probation, which may include,
18 but are not limited to, community service and supervised work programs. If one of
19 the circumstances of the violation involves recent drug use, as well as other
20 circumstances of violation, and the circumstance of recent drug use is
21 demonstrated to the court by satisfactory evidence and a finding made on the
22 record, the court may, after receiving input from treatment and probation, if
23 available, direct the defendant to enter a licensed detoxification or residential
24 treatment facility, and if there is no bed immediately available in ~~such a~~ that type
25 of facility, the court may order that the defendant be confined in a county jail for
26 detoxification purposes only, if the jail offers detoxification services, for a period
27 not to exceed 10 days. The detoxification services must provide narcotic
28 replacement therapy for those defendants presently actually receiving narcotic
29 replacement therapy.

30 (E) If a defendant on probation at the effective date of this act for a nonviolent
31 drug possession offense violates that probation a second time either by committing
32 a nonviolent drug possession offense, or a misdemeanor for simple possession or
33 use of drugs or drug paraphernalia, being present where drugs are used, or failure
34 to register as a drug offender, or any activity similar to those listed in subdivision
35 (d) of Section 1210, or by violating a drug-related condition of probation, and the
36 state moves for a second time to revoke probation, the court shall conduct a
37 hearing to determine whether probation shall be revoked. The trial court shall
38 revoke probation if the alleged probation violation is proved and the state proves
39 by a preponderance of the evidence either that the defendant poses a danger to the
40 safety of others or that the defendant is unamenable to drug treatment. If the court
41 does not revoke probation, it may modify or alter the treatment plan, and in
42 addition, if the violation does not involve the recent use of drugs as a circumstance
43 of the violation, including, but not limited to, violations relating to failure to

1 appear at treatment or court, noncompliance with treatment, and failure to report
2 for drug testing, the court may impose sanctions including jail sanctions that may
3 not exceed 120 hours of continuous custody as a tool to enhance treatment
4 compliance and impose other changes in the terms and conditions of probation.
5 The court shall consider, among other factors, the seriousness of the violation,
6 previous treatment compliance, employment, education, vocational training,
7 medical conditions, medical treatment including narcotics replacement treatment,
8 and including the opinion of the defendant's licensed and treating physician if
9 immediately available and presented at the hearing, child support obligations, and
10 family responsibilities. The court shall consider additional conditions of probation,
11 which may include, but are not limited to, community service and supervised work
12 programs. If one of the circumstances of the violation involves recent drug use, as
13 well as other circumstances of violation, and the circumstance of recent drug use is
14 demonstrated to the court by satisfactory evidence and a finding made on the
15 record, the court may, after receiving input from treatment and probation, if
16 available, direct the defendant to enter a licensed detoxification or residential
17 treatment facility, and if there is no bed immediately available in ~~such a~~ that type
18 of facility, the court may order that the defendant be confined in a county jail for
19 detoxification purposes only, if the jail offers detoxification services, for a period
20 not to exceed 10 days. The detoxification services must provide narcotic
21 replacement therapy for those defendants presently actually receiving narcotic
22 replacement therapy.

23 (F) If a defendant on probation at the effective date of this act for a nonviolent
24 drug offense violates that probation a third or subsequent time either by
25 committing a nonviolent drug possession offense, or by violating a drug-related
26 condition of probation, and the state moves for a third or subsequent time to
27 revoke probation, the court shall conduct a hearing to determine whether probation
28 shall be revoked. If the alleged probation violation is proved, the defendant is not
29 eligible for continued probation under subdivision (a), unless the court determines
30 that the defendant is not a danger to the community and would benefit from further
31 treatment under subdivision (a). The court may then either intensify or alter the
32 treatment plan under subdivision (a) or transfer the defendant to a highly
33 structured drug court. If the court continues the defendant in treatment under
34 subdivision (a), or drug court, the court may impose appropriate sanctions
35 including jail sanctions.

36 (g) The term "drug-related condition of probation" shall include a probationer's
37 specific drug treatment regimen, employment, vocational training, educational
38 programs, psychological counseling, and family counseling.

39 **Comment.** Subdivision (e) of Section 1210.1 is amended to reflect nonsubstantive
40 reorganization of the statutes governing control of deadly weapons.

41 Subdivisions (c), (d), and (f) are amended to make technical revisions.

1 **Penal Code § 1601 (amended). Availability of outpatient status**

2 SEC. _____. Section 1601 of the Penal Code is amended to read:

3 1601. (a) In the case of any person charged with and found incompetent on a
4 charge of, convicted of, or found not guilty by reason of insanity of murder,
5 mayhem, aggravated mayhem, a violation of Section 207, 209, or 209.5 in which
6 the victim suffers intentionally inflicted great bodily injury, robbery or carjacking
7 with a deadly or dangerous weapon or in which the victim suffers great bodily
8 injury, a violation of subdivision (a) or (b) of Section 451, a violation of paragraph
9 (2), (3), or (6) of subdivision (a) of Section 261, a violation of paragraph (1) or (4)
10 of subdivision (a) of Section 262, a violation of Section 459 in the first degree, a
11 violation of Section 220 in which the victim suffers great bodily injury, a violation
12 of Section 288, a violation of Section ~~12303.1, 12303.2, 12303.3, 12308, 12309,~~
13 ~~or 12310~~ 18715, 18725, 18740, 18745, 18750, or 18755, or any felony involving
14 death, great bodily injury, or an act which poses a serious threat of bodily harm to
15 another person, outpatient status under this title shall not be available until that
16 person has actually been confined in a state hospital or other facility for 180 days
17 or more after having been committed under the provisions of law specified in
18 Section 1600.

19 (b) In the case of any person charged with, and found incompetent on a charge
20 of, or convicted of, any misdemeanor or any felony other than those described in
21 subdivision (a), or found not guilty of any misdemeanor by reason of insanity,
22 outpatient status under this title may be granted by the court prior to actual
23 confinement in a state hospital or other treatment facility under the provisions of
24 law specified in Section 1600.

25 **Comment.** Subdivision (a) of Section 1601 is amended to reflect nonsubstantive
26 reorganization of the statutes governing control of deadly weapons.

27 **Penal Code § 2933.5 (amended). Persons ineligible for credit on term of imprisonment**

28 SEC. _____. Section 2933.5 of the Penal Code is amended to read:

29 2933.5. (a)(1) Notwithstanding any other provision of law, every person who is
30 convicted of any felony offense listed in paragraph (2), and who previously has
31 been convicted two or more times, on charges separately brought and tried, and
32 who previously has served two or more separate prior prison terms, as defined in
33 subdivision (g) of Section 667.5, of any offense or offenses listed in paragraph (2),
34 shall be ineligible to earn credit on his or her term of imprisonment pursuant to
35 this chapter.

36 (2) As used in this subdivision, “felony offense” includes any of the following:

37 (A) Murder, as defined in Sections 187 and 189.

38 (B) Voluntary manslaughter, as defined in subdivision (a) of Section 192.

39 (C) Mayhem as defined in Section 203.

40 (D) Aggravated mayhem, as defined in Section 205.

41 (E) Kidnapping, as defined in Section 207, 209, or 209.5.

1 (F) Assault with vitriol, corrosive acid, or caustic chemical of any nature, as
2 described in Section 244.

3 (G) Rape, as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or
4 paragraph (1) or (4) of subdivision (a) of Section 262.

5 (H) Sodomy by means of force, violence, duress, menace or fear of immediate
6 and unlawful bodily injury on the victim or another person, as described in
7 subdivision (c) of Section 286.

8 (I) Sodomy while voluntarily acting in concert, as described in subdivision (d)
9 of Section 286.

10 (J) Lewd or lascivious acts on a child under the age of 14 years, as described in
11 subdivision (b) of Section 288.

12 (K) Oral copulation by means of force, violence, duress, menace, or fear of
13 immediate and unlawful bodily injury on the victim or another person, as
14 described in subdivision (c) of Section 288a.

15 (L) Continuous sexual abuse of a child, as described in Section 288.5.

16 (M) Sexual penetration, as described in subdivision (a) of Section 289.

17 (N) Exploding a destructive device or explosive with intent to injure, as
18 described in Section ~~12303.3~~ 18740, with intent to murder, as described in Section
19 ~~12308~~ 18745, or resulting in great bodily injury or mayhem, as described in
20 Section ~~12309~~ 18750.

21 (O) Any felony in which the defendant personally inflicted great bodily injury,
22 as provided in Section 12022.53 or 12022.7.

23 (b) A prior conviction of an offense listed in subdivision (a) shall include a
24 conviction in another jurisdiction for an offense which includes all of the elements
25 of the particular felony as defined under California law.

26 (c) This section shall apply whenever the present felony is committed on or after
27 the effective date of this section, regardless of the date of commission of the prior
28 offense or offenses resulting in credit-earning ineligibility.

29 (d) This section shall be in addition to, and shall not preclude the imposition of,
30 any applicable sentence enhancement terms, or probation ineligibility and habitual
31 offender provisions authorized under any other section.

32 **Comment.** Subdivision (a) of Section 2933.5 is amended to reflect nonsubstantive
33 reorganization of the statutes governing control of deadly weapons.

34 For guidance in applying this section, see Section 16015 (determining existence of prior
35 conviction).

36 **Penal Code § 2962 (amended). Treatment by Department of Mental Health as parole**
37 **condition**

38 SEC. ____ . Section 2962 of the Penal Code is amended to read:

39 2962. As a condition of parole, a prisoner who meets the following criteria shall
40 be required to be treated by the State Department of Mental Health, and the State
41 Department of Mental Health shall provide the necessary treatment:

1 (a) The prisoner has a severe mental disorder that is not in remission or cannot
2 be kept in remission without treatment.

3 The term “severe mental disorder” means an illness or disease or condition that
4 substantially impairs the person’s thought, perception of reality, emotional
5 process, or judgment; or which grossly impairs behavior; or that demonstrates
6 evidence of an acute brain syndrome for which prompt remission, in the absence
7 of treatment, is unlikely. The term “severe mental disorder” as used in this section
8 does not include a personality or adjustment disorder, epilepsy, mental retardation
9 or other developmental disabilities, or addiction to or abuse of intoxicating
10 substances.

11 The term “remission” means a finding that the overt signs and symptoms of the
12 severe mental disorder are controlled either by psychotropic medication or
13 psychosocial support. A person “cannot be kept in remission without treatment” if
14 during the year prior to the question being before the Board of Prison Terms or a
15 trial court, he or she has been in remission and he or she has been physically
16 violent, except in self-defense, or he or she has made a serious threat of substantial
17 physical harm upon the person of another so as to cause the target of the threat to
18 reasonably fear for his or her safety or the safety of his or her immediate family, or
19 he or she has intentionally caused property damage, or he or she has not
20 voluntarily followed the treatment plan. In determining if a person has voluntarily
21 followed the treatment plan, the standard shall be whether the person has acted as
22 a reasonable person would in following the treatment plan.

23 (b) The severe mental disorder was one of the causes of or was an aggravating
24 factor in the commission of a crime for which the prisoner was sentenced to
25 prison.

26 (c) The prisoner has been in treatment for the severe mental disorder for 90 days
27 or more within the year prior to the prisoner’s parole or release.

28 (d)(1) Prior to release on parole, the person in charge of treating the prisoner and
29 a practicing psychiatrist or psychologist from the State Department of Mental
30 Health have evaluated the prisoner at a facility of the Department of Corrections,
31 and a chief psychiatrist of the Department of Corrections has certified to the Board
32 of Prison Terms that the prisoner has a severe mental disorder, that the disorder is
33 not in remission, or cannot be kept in remission without treatment, that the severe
34 mental disorder was one of the causes or was an aggravating factor in the
35 prisoner’s criminal behavior, that the prisoner has been in treatment for the severe
36 mental disorder for 90 days or more within the year prior to his or her parole
37 release day, and that by reason of his or her severe mental disorder the prisoner
38 represents a substantial danger of physical harm to others. For prisoners being
39 treated by the State Department of Mental Health pursuant to Section 2684, the
40 certification shall be by a chief psychiatrist of the Department of Corrections, and
41 the evaluation shall be done at a state hospital by the person at the state hospital in
42 charge of treating the prisoner and a practicing psychiatrist or psychologist from
43 the Department of Corrections.

1 (2) If the professionals doing the evaluation pursuant to paragraph (1) do not
2 concur that (A) the prisoner has a severe mental disorder, (B) that the disorder is
3 not in remission or cannot be kept in remission without treatment, or (C) that the
4 severe mental disorder was a cause of, or aggravated, the prisoner's criminal
5 behavior, and a chief psychiatrist has certified the prisoner to the Board of Prison
6 Terms pursuant to this paragraph, then the Board of Prison Terms shall order a
7 further examination by two independent professionals, as provided for in Section
8 2978.

9 (3) Only if both independent professionals who evaluate the prisoner pursuant to
10 paragraph (2) concur with the chief psychiatrist's certification of the issues
11 described in paragraph (2), shall this subdivision be applicable to the prisoner. The
12 professionals appointed pursuant to Section 2978 shall inform the prisoner that the
13 purpose of their examination is not treatment but to determine if the prisoner
14 meets certain criteria to be involuntarily treated as a mentally disordered offender.
15 It is not required that the prisoner appreciate or understand that information.

16 (e) The crime referred to in subdivision (b) meets both of the following criteria:

17 (1) The defendant received a determinate sentence pursuant to Section 1170 for
18 the crime.

19 (2) The crime is one of the following:

20 (A) Voluntary manslaughter.

21 (B) Mayhem.

22 (C) Kidnapping in violation of Section 207.

23 (D) Any robbery wherein it was charged and proved that the defendant
24 personally used a deadly or dangerous weapon, as provided in subdivision (b) of
25 Section 12022, in the commission of that robbery.

26 (E) Carjacking, as defined in subdivision (a) of Section 215, if it is charged and
27 proved that the defendant personally used a deadly or dangerous weapon, as
28 provided in subdivision (b) of Section 12022, in the commission of the carjacking.

29 (F) Rape, as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or
30 paragraph (1) or (4) of subdivision (a) of Section 262.

31 (G) Sodomy by force, violence, duress, menace, or fear of immediate and
32 unlawful bodily injury on the victim or another person.

33 (H) Oral copulation by force, violence, duress, menace, or fear of immediate and
34 unlawful bodily injury on the victim or another person.

35 (I) Lewd acts on a child under the age of 14 years in violation of Section 288.

36 (J) Continuous sexual abuse in violation of Section 288.5.

37 (K) The offense described in subdivision (a) of Section 289 where the act was
38 accomplished against the victim's will by force, violence, duress, menace, or fear
39 of immediate and unlawful bodily injury on the victim or another person.

40 (L) Arson in violation of subdivision (a) of Section 451, or arson in violation of
41 any other provision of Section 451 or in violation of Section 455 where the act
42 posed a substantial danger of physical harm to others.

1 (M) Any felony in which the defendant used a firearm which use was charged
2 and proved as provided in Section 12022.5, 12022.53, or 12022.55.

3 (N) A violation of Section ~~12308~~ 18745.

4 (O) Attempted murder.

5 (P) A crime not enumerated in subparagraphs (A) to (O), inclusive, in which the
6 prisoner used force or violence, or caused serious bodily injury as defined in
7 paragraph (4) of subdivision (f) of Section 243.

8 (Q) A crime in which the perpetrator expressly or impliedly threatened another
9 with the use of force or violence likely to produce substantial physical harm in
10 such a manner that a reasonable person would believe and expect that the force or
11 violence would be used. For purposes of this subparagraph, substantial physical
12 harm shall not require proof that the threatened act was likely to cause great or
13 serious bodily injury.

14 (f) As used in this chapter, “substantial danger of physical harm” does not
15 require proof of a recent overt act.

16 **Comment.** Subdivision (e) of Section 2962 is amended to reflect nonsubstantive
17 reorganization of the statutes governing control of deadly weapons.

18 **Penal Code § 3057 (amended). Confinement pursuant to parole revocation**

19 SEC. ____ . Section 3057 of the Penal Code is amended to read:

20 3057. (a) Confinement pursuant to a revocation of parole in the absence of a
21 new conviction and commitment to prison under other provisions of law, shall not
22 exceed 12 months, except as provided in subdivision (c).

23 (b) Upon completion of confinement pursuant to parole revocation without a
24 new commitment to prison, the inmate shall be released on parole for a period
25 which shall not extend beyond that portion of the maximum statutory period of
26 parole specified by Section 3000 which was unexpired at the time of each
27 revocation.

28 (c) Notwithstanding the limitations in subdivision (a) and in Section 3060.5
29 upon confinement pursuant to a parole revocation, the parole authority may extend
30 the confinement pursuant to parole revocation for a maximum of an additional 12
31 months for subsequent acts of misconduct committed by the parolee while
32 confined pursuant to that parole revocation. Upon a finding of good cause to
33 believe that a parolee has committed a subsequent act of misconduct and utilizing
34 procedures governing parole revocation proceedings, the parole authority may
35 extend the period of confinement pursuant to parole revocation as follows: (1) not
36 more than 180 days for an act punishable as a felony, whether or not prosecution is
37 undertaken, (2) not more than 90 days for an act punishable as a misdemeanor,
38 whether or not prosecution is undertaken, and (3) not more than 30 days for an act
39 defined as a serious disciplinary offense pursuant to subdivision (a) of Section
40 2932.

41 (d)(1) Except for parolees specified in paragraph (2), any revocation period
42 imposed under subdivision (a) may be reduced in the same manner and to the

1 same extent as a term of imprisonment may be reduced by worktime credits under
2 Section 2933. Worktime credit must be earned and may be forfeited pursuant to
3 the provisions of Section 2932.

4 Worktime credit forfeited shall not be restored.

5 (2) The following parolees shall not be eligible for credit under this subdivision:

6 (A) Parolees who are sentenced under Section 1168 with a maximum term of
7 life imprisonment.

8 (B) Parolees who violated a condition of parole relating to association with
9 specified persons, entering prohibited areas, attendance at parole outpatient clinics,
10 or psychiatric attention.

11 (C) Parolees who were revoked for conduct described in, or that could be
12 prosecuted under any of the following sections, whether or not prosecution is
13 undertaken: Section 189, Section 191.5, subdivision (a) of Section 192,
14 subdivision (a) of Section 192.5, Section 203, 207, 211, 215, 217.1, or 220,
15 subdivision (b) of Section 241, Section 244, paragraph (1) or (2) of subdivision (a)
16 of Section 245, paragraph (2) or (6) of subdivision (a) of Section 261, paragraph
17 (1) or (4) of subdivision (a) of Section 262, Section 264.1, subdivision (c) or (d) of
18 Section 286, Section 288, subdivision (c) or (d) of Section 288a, subdivision (a) of
19 Section 289, 347, or 404, subdivision (a) of Section 451, Section ~~12020, 12021~~
20 ~~12022, 12022.5, 12022.53, 12022.7, 12022.8, 12025, or 12560, or 25400, Chapter~~
21 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6, any
22 provision listed in Section 16590, or Section 664 for any attempt to engage in
23 conduct described in or that could be prosecuted under any of the above-
24 mentioned sections.

25 (D) Parolees who were revoked for any reason if they had been granted parole
26 after conviction of any of the offenses specified in subparagraph (C).

27 (E) Parolees who the parole authority finds at a revocation hearing to be
28 unsuitable for reduction of the period of confinement because of the circumstances
29 and gravity of the parole violation, or because of prior criminal history.

30 **Comment.** Subdivision (d) of Section 3057 is amended to reflect nonsubstantive
31 reorganization of the statutes governing control of deadly weapons. That subdivision is also
32 amended to eliminate an obsolete cross-reference to former Section 12560, which was repealed.
33 See 1990 Cal. Stat. ch. 9, § 14.

34 **Penal Code § 4852.03 (amended). Period of rehabilitation**

35 SEC. ____ . Section 4852.03 of the Penal Code is amended to read:

36 4852.03. (a) The period of rehabilitation shall begin to run upon the discharge of
37 the petitioner from custody due to his or her completion of the term to which he or
38 she was sentenced or upon his or her release on parole or probation, whichever is
39 sooner. For purposes of this chapter, the period of rehabilitation shall constitute
40 five years' residence in this state, plus a period of time determined by the
41 following rules:

1 (1) To the five years there shall be added four years in the case of any person
2 convicted of violating Section 187, 209, 219, 4500 or ~~42340~~ 18755 of this code, or
3 subdivision (a) of Section 1672 of the Military and Veterans Code, or of
4 committing any other offense which carries a life sentence.

5 (2) To the five years there shall be added five years in the case of any person
6 convicted of committing any offense or attempted offense for which sex offender
7 registration is required pursuant to Section 290, except for convictions for
8 violations of subdivision (b), (c), or (d) of Section 311.2, or of Section 311.3,
9 311.10, or 314. For those convictions, two years shall be added to the five years
10 imposed by this section.

11 (3) To the five years there shall be added two years in the case of any person
12 convicted of committing any offense that is not listed in paragraph (1) or
13 paragraph (2) and that does not carry a life sentence.

14 (4) The trial court hearing the application for the certificate of rehabilitation
15 may, if the defendant was ordered to serve consecutive sentences, order that his or
16 her statutory period of rehabilitation be extended for an additional period of time
17 which when combined with the time already served will not exceed the period
18 prescribed by statute for the sum of the maximum penalties for all the crimes.

19 (5) Any person who was discharged after completion of his or her term or was
20 released on parole before May 13, 1943, is not subject to the periods of
21 rehabilitation set forth in these rules.

22 (b) Unless and until the period of rehabilitation, as stipulated in this section, has
23 passed, the petitioner shall be ineligible to file his or her petition for a certificate of
24 rehabilitation with the court. Any certificate of rehabilitation that is issued and
25 under which the petitioner has not fulfilled the requirements of this chapter shall
26 be void.

27 (c) A change of residence within this state does not interrupt the period of
28 rehabilitation prescribed by this section.

29 **Comment.** Subdivision (a) of Section 4852.03 is amended to reflect nonsubstantive
30 reorganization of the statutes governing control of deadly weapons.

31 For guidance in applying this section, see Section 16015 (determining existence of prior
32 conviction).

33 **Penal Code § 4852.17 (amended). Certificate of rehabilitation or grant of pardon**

34 SEC. ____ . Section 4852.17 of the Penal Code is amended to read:

35 4852.17. Whenever a person is issued a certificate of rehabilitation or granted a
36 pardon from the Governor under this chapter, the fact shall be immediately
37 reported to the Department of Justice by the court, Governor, officer, or
38 governmental agency by whose official action the certificate is issued or the
39 pardon granted. The Department of Justice shall immediately record the facts so
40 reported on the former criminal record of the person, and transmit those facts to
41 the Federal Bureau of Investigation at Washington, D.C. When the criminal record

1 is thereafter reported by the department, it shall also report the fact that the person
2 has received a certificate of rehabilitation, or pardon, or both.

3 Whenever a person is granted a full and unconditional pardon by the Governor,
4 based upon a certificate of rehabilitation, the pardon shall entitle the person to
5 exercise thereafter all civil and political rights of citizenship, including but not
6 limited to: (1) the right to vote; (2) the right to own, possess, and keep any type of
7 firearm that may lawfully be owned and possessed by other citizens; except that
8 this right shall not be restored, and Sections ~~12001 and 12021~~ 17800 and 23510
9 and Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6
10 shall apply, if the person was ever convicted of a felony involving the use of a
11 dangerous weapon.

12 **Comment.** Section 4852.17 is amended to reflect nonsubstantive reorganization of the statutes
13 governing control of deadly weapons.

14 **Penal Code § 4854 (amended). Effect of pardon on rights relating to firearms**

15 SEC. ____ . Section 4854 of the Penal Code is amended to read:

16 4854. In the granting of a pardon to a person, the Governor may provide that the
17 person is entitled to exercise the right to own, possess and keep any type of
18 firearm that may lawfully be owned and possessed by other citizens; except that
19 this right shall not be restored, and Sections ~~12001 and 12021~~ 17800 and 23510
20 and Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6
21 shall apply, if the person was ever convicted of a felony involving the use of a
22 dangerous weapon.

23 **Comment.** Section 4854 is amended to reflect nonsubstantive reorganization of the statutes
24 governing control of deadly weapons.

25 **Penal Code § 11105 (amended). State and federal summary criminal history information**
26 **furnished by Department of Justice**

27 SEC. ____ . Section 11105 of the Penal Code is amended to read:

28 11105. (a)(1) The Department of Justice shall maintain state summary criminal
29 history information.

30 (2) As used in this section:

31 (A) “State summary criminal history information” means the master record of
32 information compiled by the Attorney General pertaining to the identification and
33 criminal history of any person, such as name, date of birth, physical description,
34 fingerprints, photographs, date of arrests, arresting agencies and booking numbers,
35 charges, dispositions, and similar data about the person.

36 (B) “State summary criminal history information” does not refer to records and
37 data compiled by criminal justice agencies other than the Attorney General, nor
38 does it refer to records of complaints to or investigations conducted by, or records
39 of intelligence information or security procedures of, the office of the Attorney
40 General and the Department of Justice.

1 (b) The Attorney General shall furnish state summary criminal history
2 information to any of the following, if needed in the course of their duties,
3 provided that when information is furnished to assist an agency, officer, or official
4 of state or local government, a public utility, or any other entity, in fulfilling
5 employment, certification, or licensing duties, Chapter 1321 of the Statutes of
6 1974 and Section 432.7 of the Labor Code shall apply:

7 (1) The courts of the state.

8 (2) Peace officers of the state, as defined in Section 830.1, subdivisions (a) and
9 (e) of Section 830.2, subdivision (a) of Section 830.3, subdivisions (a) and (b) of
10 Section 830.5, and subdivision (a) of Section 830.31.

11 (3) District attorneys of the state.

12 (4) Prosecuting city attorneys of any city within the state.

13 (5) City attorneys pursuing civil gang injunctions pursuant to Section 186.22a,
14 or drug abatement actions pursuant to Section 3479 or 3480 of the Civil Code, or
15 Section 11571 of the Health and Safety Code.

16 (6) Probation officers of the state.

17 (7) Parole officers of the state.

18 (8) A public defender or attorney of record when representing a person in
19 proceedings upon a petition for a certificate of rehabilitation and pardon pursuant
20 to Section 4852.08.

21 (9) A public defender or attorney of record when representing a person in a
22 criminal case, or parole revocation or revocation extension proceeding, and if
23 authorized access by statutory or decisional law.

24 (10) Any agency, officer, or official of the state if the criminal history
25 information is required to implement a statute or regulation that expressly refers to
26 specific criminal conduct applicable to the subject person of the state summary
27 criminal history information, and contains requirements or exclusions, or both,
28 expressly based upon that specified criminal conduct. The agency, officer, or
29 official of the state authorized by this paragraph to receive state summary criminal
30 history information may also transmit fingerprint images and related information
31 to the Department of Justice to be transmitted to the Federal Bureau of
32 Investigation.

33 (11) Any city or county, city and county, district, or any officer or official
34 thereof if access is needed in order to assist that agency, officer, or official in
35 fulfilling employment, certification, or licensing duties, and if the access is
36 specifically authorized by the city council, board of supervisors, or governing
37 board of the city, county, or district if the criminal history information is required
38 to implement a statute, ordinance, or regulation that expressly refers to specific
39 criminal conduct applicable to the subject person of the state summary criminal
40 history information, and contains requirements or exclusions, or both, expressly
41 based upon that specified criminal conduct. The city or county, city and county,
42 district, or the officer or official thereof authorized by this paragraph may also

1 transmit fingerprint images and related information to the Department of Justice to
2 be transmitted to the Federal Bureau of Investigation.

3 (12) The subject of the state summary criminal history information under
4 procedures established under Article 5 (commencing with Section 11120).

5 (13) Any person or entity when access is expressly authorized by statute if the
6 criminal history information is required to implement a statute or regulation that
7 expressly refers to specific criminal conduct applicable to the subject person of the
8 state summary criminal history information, and contains requirements or
9 exclusions, or both, expressly based upon that specified criminal conduct.

10 (14) Health officers of a city, county, city and county, or district when in the
11 performance of their official duties enforcing Section 120175 of the Health and
12 Safety Code.

13 (15) Any managing or supervising correctional officer of a county jail or other
14 county correctional facility.

15 (16) Any humane society, or society for the prevention of cruelty to animals, for
16 the specific purpose of complying with Section 14502 of the Corporations Code
17 for the appointment of level 1 humane officers.

18 (17) Local child support agencies established by Section 17304 of the Family
19 Code. When a local child support agency closes a support enforcement case
20 containing summary criminal history information, the agency shall delete or purge
21 from the file and destroy any documents or information concerning or arising from
22 offenses for or of which the parent has been arrested, charged, or convicted, other
23 than for offenses related to the parent's having failed to provide support for minor
24 children, consistent with the requirements of Section 17531 of the Family Code.

25 (18) County child welfare agency personnel who have been delegated the
26 authority of county probation officers to access state summary criminal history
27 information pursuant to Section 272 of the Welfare and Institutions Code for the
28 purposes specified in Section 16504.5 of the Welfare and Institutions Code.
29 Information from criminal history records provided pursuant to this subdivision
30 shall not be used for any purposes other than those specified in this section and
31 Section 16504.5 of the Welfare and Institutions Code. When an agency obtains
32 records obtained both on the basis of name checks and fingerprint checks, final
33 placement decisions shall be based only on the records obtained pursuant to the
34 fingerprint check.

35 (19) The court of a tribe, or court of a consortium of tribes, that has entered into
36 an agreement with the state pursuant to Section 10553.1 of the Welfare and
37 Institutions Code. This information may be used only for the purposes specified in
38 Section 16504.5 of the Welfare and Institutions Code and for tribal approval or
39 tribal licensing of foster care or adoptive homes. Article 6 (commencing with
40 Section 11140) shall apply to officers, members, and employees of a tribal court
41 receiving criminal record offender information pursuant to this section.

42 (20) Child welfare agency personnel of a tribe or consortium of tribes that has
43 entered into an agreement with the state pursuant to Section 10553.1 of the

1 Welfare and Institutions Code and to whom the state has delegated duties under
2 paragraph (2) of subdivision (a) of Section 272 of the Welfare and Institutions
3 Code. The purposes for use of the information shall be for the purposes specified
4 in Section 16504.5 of the Welfare and Institutions Code and for tribal approval or
5 tribal licensing of foster care or adoptive homes. When an agency obtains records
6 on the basis of name checks and fingerprint checks, final placement decisions shall
7 be based only on the records obtained pursuant to the fingerprint check. Article 6
8 (commencing with Section 11140) shall apply to child welfare agency personnel
9 receiving criminal record offender information pursuant to this section.

10 (21) An officer providing conservatorship investigations pursuant to Sections
11 5351, 5354, and 5356 of the Welfare and Institutions Code.

12 (22) A court investigator providing investigations or reviews in conservatorships
13 pursuant to Section 1826, 1850, 1851, or 2250.6 of the Probate Code.

14 (23) A person authorized to conduct a guardianship investigation pursuant to
15 Section 1513 of the Probate Code.

16 (c) The Attorney General may furnish state summary criminal history
17 information and, when specifically authorized by this subdivision, federal level
18 criminal history information upon a showing of a compelling need to any of the
19 following, provided that when information is furnished to assist an agency, officer,
20 or official of state or local government, a public utility, or any other entity in
21 fulfilling employment, certification, or licensing duties, Chapter 1321 of the
22 Statutes of 1974 and Section 432.7 of the Labor Code shall apply:

23 (1) Any public utility, as defined in Section 216 of the Public Utilities Code, that
24 operates a nuclear energy facility when access is needed in order to assist in
25 employing persons to work at the facility, provided that, if the Attorney General
26 supplies the data, he or she shall furnish a copy of the data to the person to whom
27 the data relates.

28 (2) To a peace officer of the state other than those included in subdivision (b).

29 (3) To an illegal dumping enforcement officer as defined in subdivision (j) of
30 Section 830.7.

31 (4) To a peace officer of another country.

32 (5) To public officers, other than peace officers, of the United States, other
33 states, or possessions or territories of the United States, provided that access to
34 records similar to state summary criminal history information is expressly
35 authorized by a statute of the United States, other states, or possessions or
36 territories of the United States if the information is needed for the performance of
37 their official duties.

38 (6) To any person when disclosure is requested by a probation, parole, or peace
39 officer with the consent of the subject of the state summary criminal history
40 information and for purposes of furthering the rehabilitation of the subject.

41 (7) The courts of the United States, other states, or territories or possessions of
42 the United States.

1 (8) Peace officers of the United States, other states, or territories or possessions
2 of the United States.

3 (9) To any individual who is the subject of the record requested if needed in
4 conjunction with an application to enter the United States or any foreign nation.

5 (10)(A) Any public utility, as defined in Section 216 of the Public Utilities
6 Code, or any cable corporation as defined in subparagraph (B), if receipt of
7 criminal history information is needed in order to assist in employing current or
8 prospective employees, contract employees, or subcontract employees who, in the
9 course of their employment may be seeking entrance to private residences or
10 adjacent grounds. The information provided shall be limited to the record of
11 convictions and any arrest for which the person is released on bail or on his or her
12 own recognizance pending trial.

13 If the Attorney General supplies the data pursuant to this paragraph, the
14 Attorney General shall furnish a copy of the data to the current or prospective
15 employee to whom the data relates.

16 Any information obtained from the state summary criminal history is
17 confidential and the receiving public utility or cable corporation shall not disclose
18 its contents, other than for the purpose for which it was acquired. The state
19 summary criminal history information in the possession of the public utility or
20 cable corporation and all copies made from it shall be destroyed not more than 30
21 days after employment or promotion or transfer is denied or granted, except for
22 those cases where a current or prospective employee is out on bail or on his or her
23 own recognizance pending trial, in which case the state summary criminal history
24 information and all copies shall be destroyed not more than 30 days after the case
25 is resolved.

26 A violation of this paragraph is a misdemeanor, and shall give the current or
27 prospective employee who is injured by the violation a cause of action against the
28 public utility or cable corporation to recover damages proximately caused by the
29 violations. Any public utility's or cable corporation's request for state summary
30 criminal history information for purposes of employing current or prospective
31 employees who may be seeking entrance to private residences or adjacent grounds
32 in the course of their employment shall be deemed a "compelling need" as
33 required to be shown in this subdivision.

34 Nothing in this section shall be construed as imposing any duty upon public
35 utilities or cable corporations to request state summary criminal history
36 information on any current or prospective employees.

37 (B) For purposes of this paragraph, "cable corporation" means any corporation
38 or firm that transmits or provides television, computer, or telephone services by
39 cable, digital, fiber optic, satellite, or comparable technology to subscribers for a
40 fee.

41 (C) Requests for federal-level criminal history information received by the
42 Department of Justice from entities authorized pursuant to subparagraph (A) shall
43 be forwarded to the Federal Bureau of Investigation by the Department of Justice.

1 Federal-level criminal history information received or compiled by the
2 Department of Justice may then be disseminated to the entities referenced in
3 subparagraph (A), as authorized by law.

4 (D)(i) Authority for a cable corporation to request state or federal-level criminal
5 history information under this paragraph shall commence July 1, 2005.

6 (ii) Authority for a public utility to request federal-level criminal history
7 information under this paragraph shall commence July 1, 2005.

8 (11) To any campus of the California State University or the University of
9 California, or any four-year college or university accredited by a regional
10 accreditation organization approved by the United States Department of
11 Education, if needed in conjunction with an application for admission by a
12 convicted felon to any special education program for convicted felons, including,
13 but not limited to, university alternatives and halfway houses. Only conviction
14 information shall be furnished. The college or university may require the
15 convicted felon to be fingerprinted, and any inquiry to the department under this
16 section shall include the convicted felon's fingerprints and any other information
17 specified by the department.

18 (d) Whenever an authorized request for state summary criminal history
19 information pertains to a person whose fingerprints are on file with the
20 Department of Justice and the department has no criminal history of that person,
21 and the information is to be used for employment, licensing, or certification
22 purposes, the fingerprint card accompanying the request for information, if any,
23 may be stamped "no criminal record" and returned to the person or entity making
24 the request.

25 (e) Whenever state summary criminal history information is furnished as the
26 result of an application and is to be used for employment, licensing, or
27 certification purposes, the Department of Justice may charge the person or entity
28 making the request a fee that it determines to be sufficient to reimburse the
29 department for the cost of furnishing the information. In addition, the Department
30 of Justice may add a surcharge to the fee to fund maintenance and improvements
31 to the systems from which the information is obtained. Notwithstanding any other
32 law, any person or entity required to pay a fee to the department for information
33 received under this section may charge the applicant a fee sufficient to reimburse
34 the person or entity for this expense. All moneys received by the department
35 pursuant to this section, Sections 11105.3 and ~~12054~~ 26190 of the Penal Code, and
36 Section 13588 of the Education Code shall be deposited in a special account in the
37 General Fund to be available for expenditure by the department to offset costs
38 incurred pursuant to those sections and for maintenance and improvements to the
39 systems from which the information is obtained upon appropriation by the
40 Legislature.

41 (f) Whenever there is a conflict, the processing of criminal fingerprints and
42 fingerprints of applicants for security guard or alarm agent registrations or
43 firearms qualification permits submitted pursuant to Section 7583.9, 7583.23,

1 7596.3, or 7598.4 of the Business and Professions Code shall take priority over the
2 processing of other applicant fingerprints.

3 (g) It is not a violation of this section to disseminate statistical or research
4 information obtained from a record, provided that the identity of the subject of the
5 record is not disclosed.

6 (h) It is not a violation of this section to include information obtained from a
7 record in (1) a transcript or record of a judicial or administrative proceeding or (2)
8 any other public record if the inclusion of the information in the public record is
9 authorized by a court, statute, or decisional law.

10 (i) Notwithstanding any other law, the Department of Justice or any state or
11 local law enforcement agency may require the submission of fingerprints for the
12 purpose of conducting summary criminal history information checks that are
13 authorized by law.

14 (j) The state summary criminal history information shall include any finding of
15 mental incompetence pursuant to Chapter 6 (commencing with Section 1367) of
16 Title 10 of Part 2 arising out of a complaint charging a felony offense specified in
17 Section 290.

18 (k)(1) This subdivision shall apply whenever state or federal summary criminal
19 history information is furnished by the Department of Justice as the result of an
20 application by an authorized agency or organization and the information is to be
21 used for peace officer employment or certification purposes. As used in this
22 subdivision, a peace officer is defined in Chapter 4.5 (commencing with Section
23 830) of Title 3 of Part 2.

24 (2) Notwithstanding any other provision of law, whenever state summary
25 criminal history information is furnished pursuant to paragraph (1), the
26 Department of Justice shall disseminate the following information:

27 (A) Every conviction rendered against the applicant.

28 (B) Every arrest for an offense for which the applicant is presently awaiting trial,
29 whether the applicant is incarcerated or has been released on bail or on his or her
30 own recognizance pending trial.

31 (C) Every arrest or detention, except for an arrest or detention resulting in an
32 exoneration, provided however that where the records of the Department of Justice
33 do not contain a disposition for the arrest, the Department of Justice first makes a
34 genuine effort to determine the disposition of the arrest.

35 (D) Every successful diversion.

36 (l)(1) This subdivision shall apply whenever state or federal summary criminal
37 history information is furnished by the Department of Justice as the result of an
38 application by a criminal justice agency or organization as defined in Section
39 13101 of the Penal Code, and the information is to be used for criminal justice
40 employment, licensing, or certification purposes.

41 (2) Notwithstanding any other provision of law, whenever state summary
42 criminal history information is furnished pursuant to paragraph (1), the
43 Department of Justice shall disseminate the following information:

1 (A) Every conviction rendered against the applicant.

2 (B) Every arrest for an offense for which the applicant is presently awaiting trial,
3 whether the applicant is incarcerated or has been released on bail or on his or her
4 own recognizance pending trial.

5 (C) Every arrest for an offense for which the records of the Department of
6 Justice do not contain a disposition or did not result in a conviction, provided that
7 the Department of Justice first makes a genuine effort to determine the disposition
8 of the arrest. However, information concerning an arrest shall not be disclosed if
9 the records of the Department of Justice indicate or if the genuine effort reveals
10 that the subject was exonerated, successfully completed a diversion or deferred
11 entry of judgment program, or the arrest was deemed a detention.

12 (m)(1) This subdivision shall apply whenever state or federal summary criminal
13 history information is furnished by the Department of Justice as the result of an
14 application by an authorized agency or organization pursuant to Section 1522,
15 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or any statute that
16 incorporates the criteria of any of those sections or this subdivision by reference,
17 and the information is to be used for employment, licensing, or certification
18 purposes.

19 (2) Notwithstanding any other provision of law, whenever state summary
20 criminal history information is furnished pursuant to paragraph (1), the
21 Department of Justice shall disseminate the following information:

22 (A) Every conviction of an offense rendered against the applicant.

23 (B) Every arrest for an offense for which the applicant is presently awaiting trial,
24 whether the applicant is incarcerated or has been released on bail or on his or her
25 own recognizance pending trial.

26 (C) Every arrest for an offense for which the Department of Social Services is
27 required by paragraph (1) of subdivision (a) of Section 1522 of the Health and
28 Safety Code to determine if an applicant has been arrested. However, if the
29 records of the Department of Justice do not contain a disposition for an arrest, the
30 Department of Justice shall first make a genuine effort to determine the disposition
31 of the arrest.

32 (3) Notwithstanding the requirements of the sections referenced in paragraph (1)
33 of this subdivision, the Department of Justice shall not disseminate information
34 about an arrest subsequently deemed a detention or an arrest that resulted in either
35 the successful completion of a diversion program or exoneration.

36 (n)(1) This subdivision shall apply whenever state or federal summary criminal
37 history information, to be used for employment, licensing, or certification
38 purposes, is furnished by the Department of Justice as the result of an application
39 by an authorized agency, organization, or individual pursuant to any of the
40 following:

41 (A) Paragraph (9) of subdivision (c), when the information is to be used by a
42 cable corporation.

43 (B) Section 11105.3 or 11105.4.

1 (C) Section 15660 of the Welfare and Institutions Code.

2 (D) Any statute that incorporates the criteria of any of the statutory provisions
3 listed in subparagraph (A), (B), or (C), or of this subdivision, by reference.

4 (2) With the exception of applications submitted by transportation companies
5 authorized pursuant to Section 11105.3, and notwithstanding any other provision
6 of law, whenever state summary criminal history information is furnished pursuant
7 to paragraph (1), the Department of Justice shall disseminate the following
8 information:

9 (A) Every conviction rendered against the applicant for a violation or attempted
10 violation of any offense specified in subdivision (a) of Section 15660 of the
11 Welfare and Institutions Code. However, with the exception of those offenses for
12 which registration is required pursuant to Section 290, the Department of Justice
13 shall not disseminate information pursuant to this subdivision unless the
14 conviction occurred within 10 years of the date of the agency's request for
15 information or the conviction is over 10 years old but the subject of the request
16 was incarcerated within 10 years of the agency's request for information.

17 (B) Every arrest for a violation or attempted violation of an offense specified in
18 subdivision (a) of Section 15660 of the Welfare and Institutions Code for which
19 the applicant is presently awaiting trial, whether the applicant is incarcerated or
20 has been released on bail or on his or her own recognizance pending trial.

21 (o)(1) This subdivision shall apply whenever state or federal summary criminal
22 history information is furnished by the Department of Justice as the result of an
23 application by an authorized agency or organization pursuant to Section 261 or
24 550 of the Financial Code, or any statute that incorporates the criteria of either of
25 those sections or this subdivision by reference, and the information is to be used
26 for employment, licensing, or certification purposes.

27 (2) Notwithstanding any other provision of law, whenever state summary
28 criminal history information is furnished pursuant to paragraph (1), the
29 Department of Justice shall disseminate the following information:

30 (A) Every conviction rendered against the applicant for a violation or attempted
31 violation of any offense specified in Section 550 of the Financial Code.

32 (B) Every arrest for a violation or attempted violation of an offense specified in
33 Section 550 of the Financial Code for which the applicant is presently awaiting
34 trial, whether the applicant is incarcerated or has been released on bail or on his or
35 her own recognizance pending trial.

36 (p)(1) This subdivision shall apply whenever state or federal criminal history
37 information is furnished by the Department of Justice as the result of an
38 application by an agency, organization, or individual not defined in subdivision
39 (k), (l), (m), (n), or (o), or by a transportation company authorized pursuant to
40 Section 11105.3, or any statute that incorporates the criteria of that section or this
41 subdivision by reference, and the information is to be used for employment,
42 licensing, or certification purposes.

1 (2) Notwithstanding any other provisions of law, whenever state summary
2 criminal history information is furnished pursuant to paragraph (1), the
3 Department of Justice shall disseminate the following information:

4 (A) Every conviction rendered against the applicant.

5 (B) Every arrest for an offense for which the applicant is presently awaiting trial,
6 whether the applicant is incarcerated or has been released on bail or on his or her
7 own recognizance pending trial.

8 (q) All agencies, organizations, or individuals defined in subdivisions (k), (l),
9 (m), (n), (o), and (p) may contract with the Department of Justice for subsequent
10 arrest notification pursuant to Section 11105.2. This subdivision shall not
11 supersede sections that mandate an agency, organization, or individual to contract
12 with the Department of Justice for subsequent arrest notification pursuant to
13 Section 11105.2.

14 (r) Nothing in this section shall be construed to mean that the Department of
15 Justice shall cease compliance with any other statutory notification requirements.

16 (s) The provisions of Section 50.12 of Title 28 of the Code of Federal
17 Regulations are to be followed in processing federal criminal history information.

18 **Comment.** Subdivision (e) of Section 11105 is amended to reflect nonsubstantive
19 reorganization of the statutes governing control of deadly weapons.

20 **Staff Note.** The text of Section 11105 reflects the enactment of AB 1301 (Gaines), 2008 Cal.
21 Stat. ch. 125.

22 **Penal Code § 11105.03 (amended). Criminal summary history information**

23 SEC. ____. Section 11105.03 of the Penal Code is amended to read:

24 11105.03. (a) Subject to the requirements and conditions set forth in this section
25 and Section 11105, local law enforcement agencies are hereby authorized to
26 provide state criminal summary history information obtained through CLETS for
27 the purpose of screening prospective participants and prospective and current staff
28 of a regional, county, city, or other local public housing authority, at the request of
29 the chief executive officer of the authority or his or her designee, upon a showing
30 by that authority that the authority manages a Section 8 housing program pursuant
31 to federal law (U.S. Housing Act of 1937), or operates housing at which children
32 under the age of 18 years reside or operates housing for persons categorized as
33 aged, blind, or disabled.

34 (b) The following requirements shall apply to information released by local law
35 enforcement agencies pursuant to subdivision (a):

36 (1) Local law enforcement agencies shall not release any information unless it
37 relates to a conviction for a serious felony, as defined in subdivision (c) of Section
38 1192.7, a conviction for any offense punishable under Section 273.5, 422.6, 422.7,
39 422.75, 422.9, or 1170.75, 12020, 12021 or 12021.1 or under Chapter 2
40 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900)
41 of Division 9 of Title 4 of Part 6, or under any provision listed in Section 16590, a
42 conviction under Section 273.6 that involves a violation of a protective order, as

1 defined in Section 6218 of the Family Code, or a conviction for any felony offense
2 that involves controlled substances or alcoholic beverages, or any felony offense
3 that involves any activity related to controlled substances or alcoholic beverages,
4 or a conviction for any offense that involves domestic violence, as defined in
5 Section 13700.

6 (2) Local law enforcement agencies shall not release any information concerning
7 any arrest for an offense that did not result in a conviction.

8 (3) Local law enforcement agencies shall not release any information concerning
9 any offense committed by a person who was under 18 years of age at the time he
10 or she committed the offense.

11 (4) Local law enforcement agencies shall release any information concerning
12 any conviction or release from custody that occurred within 10 years of the date on
13 which the request for information is submitted to the Attorney General, unless the
14 conviction was based upon a felony offense that involved controlled substances or
15 alcoholic beverages or a felony offense that involved any activity related to
16 controlled substances or alcoholic beverages. Where a conviction was based on
17 any of these felony offenses, local law enforcement agencies shall release any
18 information concerning this conviction if the conviction occurred within five years
19 of the date on which a request for the information was submitted.

20 (5) Notwithstanding paragraph (4), if information that meets the requirements of
21 paragraphs (2) to (4), inclusive, is located and the information reveals a conviction
22 of an offense specified in paragraph (1), local law enforcement agencies shall
23 release all summary criminal history information concerning the person whether or
24 not the information meets the requirements of paragraph (4), provided, however,
25 that the information meets the requirements of paragraphs (1) to (3), inclusive.

26 (6) Information released to the local public housing authority pursuant to this
27 section shall also be released to parole or probation officers at the same time.

28 (c) State summary criminal history information shall be used by the chief
29 executive officer of the housing authority or a designee only for purposes of
30 identifying prospective participants in subsidized programs and prospective and
31 current staff who have access to residences, whose criminal history is likely to
32 pose a risk to children under the age of 18 years or persons categorized as aged,
33 blind, or disabled living in the housing operated by the authority.

34 (d) If a housing authority obtains summary criminal history information for the
35 purpose of screening a prospective participant pursuant to this section, it shall
36 review and evaluate that information in the context of other available information
37 and shall not evaluate the person's suitability as a prospective participant based
38 solely on his or her past criminal history.

39 (e) If a housing authority determines that a prospective participant is not eligible
40 as a resident, it shall promptly notify him or her of the basis for its determination
41 and, upon request, shall provide him or her within a reasonable time after the
42 determination is made with an opportunity for an informal hearing on the

1 determination in accordance with Section 960.207 of Title 24 of the Code of
2 Federal Regulations.

3 (f) Any information obtained from state summary criminal history information
4 pursuant to this section is confidential and the recipient public housing authority
5 shall not disclose or use the information for any purpose other than that authorized
6 by this section. The state summary criminal history information in the possession
7 of the authority and all copies made from it shall be destroyed not more than 30
8 days after the authority's final decision whether to act on the housing status of the
9 individual to whom the information relates.

10 (g) The local public housing authority receiving state summary criminal history
11 information pursuant to this section shall adopt regulations governing the receipt,
12 maintenance, and use of the information. The regulations shall include provisions
13 that require notice that the authority has access to criminal records of participants
14 and employees who have access to programs.

15 (h) Use of this information is to be consistent with Title 24 of the Code of
16 Federal Regulations and the current regulations adopted by the housing authority
17 using the information.

18 (i) Nothing in this section shall be construed to require a housing authority to
19 request and review an applicant's criminal history.

20 (j) The California Housing Authorities Association, after compiling data from
21 all public housing authorities that receive summary criminal information pursuant
22 to this chapter, shall report its findings based upon this data to the Legislature
23 prior to January 1, 2000.

24 **Comment.** Subdivision (b) of Section 11105.03 is amended to reflect nonsubstantive
25 reorganization of the statutes governing control of deadly weapons.

26 For guidance in applying this section, see Section 16015 (determining existence of prior
27 conviction).

28 **Penal Code § 11106 (amended). Retention of records**

29 SEC. ____ . Section 11106 of the Penal Code is amended to read:

30 11106. (a) In order to assist in the investigation of crime, the prosecution of civil
31 actions by city attorneys pursuant to paragraph (3) of subdivision (c), the arrest
32 and prosecution of criminals, and the recovery of lost, stolen, or found property,
33 the Attorney General shall keep and properly file a complete record of all copies
34 of fingerprints, copies of licenses to carry firearms issued pursuant to Section
35 ~~12050 of the Penal Code~~ 26150, 26155, 26170, or 26215, information reported to
36 the Department of Justice pursuant to Section ~~12053~~ 26225, dealers' records of
37 sales of firearms, reports provided pursuant to ~~Section 12072 or 12078~~ Article 1
38 (commencing with Section 27500) of Chapter 4 of Division 6 of Title 4 of Part 6,
39 or pursuant to any provision listed in subdivision (a) of Section 16585, forms
40 provided pursuant to Section 12084, as that section read prior to being repealed by
41 the act that amended this section, reports provided pursuant to ~~Section 12071~~
42 Sections 26700 to 26915, inclusive, that are not dealers' records of sales of

1 firearms, and reports of stolen, lost, found, pledged, or pawned property in any
2 city or county of this state, and shall, upon proper application therefor, furnish this
3 information to the officers referred to in Section 11105.

4 (b)(1) Except as provided in subdivision (d), the Attorney General shall not
5 retain or compile any information from reports filed pursuant to ~~subdivision (a) of~~
6 ~~Section 12078~~ any provision listed in subdivision (c) of Section 16585 for firearms
7 that are not handguns, from forms submitted pursuant to Section 12084, as that
8 section read prior to being repealed by the act that amended this section, for
9 firearms that are not handguns, or from dealers' records of sales for firearms that
10 are not handguns. All copies of the forms submitted, or any information received
11 in electronic form, pursuant to Section 12084, as that section read prior to being
12 repealed by the act that amended this section, for firearms that are not handguns,
13 or of the dealers' records of sales for firearms that are not handguns shall be
14 destroyed within five days of the clearance by the Attorney General, unless the
15 purchaser or transferor is ineligible to take possession of the firearm. All copies of
16 the reports filed, or any information received in electronic form, pursuant to
17 ~~subdivision (a) of Section 12078~~ any provision listed in subdivision (c) of Section
18 16585 for firearms that are not handguns shall be destroyed within five days of the
19 receipt by the Attorney General, unless retention is necessary for use in a criminal
20 prosecution.

21 (2) A peace officer, the Attorney General, a Department of Justice employee
22 designated by the Attorney General, or any authorized local law enforcement
23 employee shall not retain or compile any information from a ~~firearms~~ firearm
24 transaction record, as defined in ~~paragraph (5) of subdivision (c) of Section 12071~~
25 Section 16550, for firearms that are not handguns unless retention or compilation
26 is necessary for use in a criminal prosecution or in a proceeding to revoke a
27 license issued pursuant to ~~Section 12071~~ Sections 26700 to 26915, inclusive.

28 (3) A violation of this subdivision is a misdemeanor.

29 (c)(1) The Attorney General shall permanently keep and properly file and
30 maintain all information reported to the Department of Justice pursuant to ~~Sections~~
31 ~~12071, 12072, 12078, 12082 and former Section 12084~~ or any other law the
32 following provisions, as to handguns and maintain a registry ~~thereof~~ thereof:

33 (A) Sections 26700 to 26915, inclusive.

34 (B) Article 1 (commencing with Section 27500) of Chapter 4 of Division 6 of
35 Title 4 of Part 6.

36 (C) Chapter 5 (commencing with Section 28050) of Division 6 of Title 4 of Part
37 6.

38 (D) Any provision listed in subdivision (a) of Section 16585.

39 (E) Former Section 12084.

40 (F) Any other law.

41 (2) The registry shall consist of all of the following:

42 (A) The name, address, identification of, place of birth (state or country),
43 complete telephone number, occupation, sex, description, and all legal names and

1 aliases ever used by the owner or person being loaned the particular handgun as
2 listed on the information provided to the department on the Dealers' Record of
3 Sale, the Law Enforcement Firearms Transfer (LEFT), as defined in former
4 Section 12084, or reports made to the department pursuant to ~~Section 12078~~ any
5 provision listed in subdivision (a) of Section 16585 or any other law.

6 (B) The name and address of, and other information about, any person (whether
7 a dealer or a private party) from whom the owner acquired or the person being
8 loaned the particular handgun and when the firearm was acquired or loaned as
9 listed on the information provided to the department on the Dealers' Record of
10 Sale, the LEFT, or reports made to the department pursuant to ~~Section 12078~~ any
11 provision listed in subdivision (a) of Section 16585 or any other law.

12 (C) Any waiting period exemption applicable to the transaction which resulted
13 in the owner of or the person being loaned the particular handgun acquiring or
14 being loaned that firearm.

15 (D) The manufacturer's name if stamped on the firearm, model name or number
16 if stamped on the firearm, and, if applicable, the serial number, other number (if
17 more than one serial number is stamped on the firearm), caliber, type of firearm, if
18 the firearm is new or used, barrel length, and color of the firearm.

19 (3) Information in the registry referred to in this subdivision shall, upon proper
20 application therefor, be furnished to the officers referred to in Section 11105, to a
21 city attorney prosecuting a civil action, solely for use in prosecuting that civil
22 action and not for any other purpose, or to the person listed in the registry as the
23 owner or person who is listed as being loaned the particular handgun.

24 (4) If any person is listed in the registry as the owner of a firearm through a
25 Dealers' Record of Sale prior to 1979, and the person listed in the registry requests
26 by letter that the Attorney General store and keep the record electronically, as well
27 as in the record's existing photographic, photostatic, or nonerasable optically
28 stored form, the Attorney General shall do so within three working days of receipt
29 of the request. The Attorney General shall, in writing, and as soon as practicable,
30 notify the person requesting electronic storage of the record that the request has
31 been honored as required by this paragraph.

32 (d)(1) Any officer referred to in paragraphs (1) to (6), inclusive, of subdivision
33 (b) of Section 11105 may disseminate the name of the subject of the record, the
34 number of the firearms listed in the record, and the description of any firearm,
35 including the make, model, and caliber, from the record relating to any firearm's
36 sale, transfer, registration, or license record, or any information reported to the
37 Department of Justice pursuant to ~~Section 12021.3, 12053, 12071, 12072, 12077,~~
38 ~~12078, 12082, or 12285~~ (i) Section 26225, (ii) Sections 26700 to 26915, inclusive,
39 (iii) Article 2 (commencing with Section 27500) of Chapter 4 of Division 6 of
40 Title 4 of Part 6, (iv) Chapter 5 (commencing with Section 28050) of Division 6 of
41 Title 4 of Part 6, (v) Article 2 (commencing with Section 28150) of Chapter 6 of
42 Division 6 of Title 4 of Part 6, (vi) Article 5 (commencing with Section 30900) of
43 Chapter 2 of Division 10 of Title 4 of Part 6, (vii) Chapter 2 (commencing with

1 Section 33850) of Division 11 of Title 4 of Part 6, or (viii) any provision listed in
2 subdivision (a) of Section 16585, if the following conditions are met:

3 (A) The subject of the record has been arraigned for a crime in which the victim
4 is a person described in subdivisions (a) to (f), inclusive, of Section 6211 of the
5 Family Code and is being prosecuted or is serving a sentence for the crime, or the
6 subject of the record is the subject of an emergency protective order, a temporary
7 restraining order, or an order after hearing, which is in effect and has been issued
8 by a family court under the Domestic Violence Protection Act set forth in Division
9 10 (commencing with Section 6200) of the Family Code.

10 (B) The information is disseminated only to the victim of the crime or to the
11 person who has obtained the emergency protective order, the temporary
12 restraining order, or the order after hearing issued by the family court.

13 (C) Whenever a law enforcement officer disseminates the information
14 authorized by this subdivision, that officer or another officer assigned to the case
15 shall immediately provide the victim of the crime with a “Victims of Domestic
16 Violence” card, as specified in subparagraph (H) of paragraph (9) of subdivision
17 (c) of Section 13701.

18 (2) The victim or person to whom information is disseminated pursuant to this
19 subdivision may disclose it as he or she deems necessary to protect himself or
20 herself or another person from bodily harm by the person who is the subject of the
21 record.

22 **Comment.** Section 11106 is amended to reflect nonsubstantive reorganization of the statutes
23 governing control of deadly weapons. An erroneous cross-reference to nonexistent “paragraph (5)
24 of subdivision (c) of Section 12071” has been replaced with a cross-reference to Section 16550,
25 which continues former Section 12071(c)(4)(A) without substantive change.

26 **Staff Notes.**

27 (1) Existing Penal Code Section 11106 contains five cross-references to Section 12084, a
28 provision that used to be in Title 2 of Part 4 of the Penal Code but was repealed in 2005. Section
29 11106 expressly acknowledges that Section 12084 has been repealed, and purposefully refers to
30 that section anyway, as it formerly read and existed. The staff therefore recommends that the
31 cross-references to Section 12084 be retained, as shown above.

32 (2) Existing Penal Code Section 11106(b)(2) refers to “a firearms transaction record, as defined
33 in *paragraph (5) of subdivision (c) of Section 12071.*” (Emphasis added.) There no longer is a
34 “paragraph (5) of subdivision (c) of Section 12071.” It was relabeled as Section 12071(c)(4)(A).
35 *Compare* 1999 Cal. Stat. ch. 128, § 1, *with* 2001 Cal. Stat. ch. 944, § 5.1.

36 In the Commission’s nonsubstantive reorganization of the deadly weapon statutes, Section
37 12071(c)(4)(A) would be continued in proposed Section 16550 (“firearm transaction record”).
38 The staff therefore recommends that Section 11106(b)(2) be revised to refer to Section 16550, as
39 shown above.

40 This approach seems more reasonable than perpetuating an obviously incomplete reference.
41 Although this is a strictly nonsubstantive study, some degree of commonsense is appropriate in
42 interpreting existing law. We would exercise such commonsense here and note the situation in the
43 preliminary part of the Commission’s report.

44 **Penal Code § 11108 (amended). Submission of descriptions of stolen property**

45 SEC. ____ . Section 11108 of the Penal Code is amended to read:

1 11108. (a) Each sheriff or police chief executive shall submit descriptions of
2 serialized property, or nonserialized property that has been uniquely inscribed,
3 which has been reported stolen, lost, found, recovered, held for safekeeping, or
4 under observation, directly into the appropriate Department of Justice automated
5 property system for firearms, stolen bicycles, stolen vehicles, or other property, as
6 the case may be.

7 (b) Information about a firearm entered into the automated system for firearms
8 shall remain in the system until the reported firearm has been found, recovered, is
9 no longer under observation, or the record is determined to have been entered in
10 error.

11 (c) Any costs incurred by the Department of Justice to implement subdivision
12 (b) shall be reimbursed from funds other than fees charged and collected pursuant
13 to ~~subdivisions (e) and (f) of Section 12076~~ Sections 28225 and 28230.

14 **Comment.** Subdivision (c) of Section 11108 is amended to reflect nonsubstantive
15 reorganization of the statutes governing control of deadly weapons.

16 **Penal Code § 11413 (amended). Terrorism**

17 SEC. ____ . Section 11413 of the Penal Code is amended to read:

18 11413. (a) Any person who explodes, ignites, or attempts to explode or ignite
19 any destructive device or any explosive, or who commits arson, in or about any of
20 the places listed in subdivision (b), for the purpose of terrorizing another or in
21 reckless disregard of terrorizing another is guilty of a felony, and shall be punished
22 by imprisonment in the state prison for three, five, or seven years, and a fine not
23 exceeding ten thousand dollars (\$10,000).

24 (b) Subdivision (a) applies to the following places:

25 (1) Any health facility licensed under Chapter 2 (commencing with Section
26 1250) of Division 2 of the Health and Safety Code, or any place where medical
27 care is provided by a licensed health care professional.

28 (2) Any church, temple, synagogue, mosque, or other place of worship.

29 (3) The buildings, offices, and meeting sites of organizations that counsel for or
30 against abortion or among whose major activities are lobbying, publicizing, or
31 organizing with respect to public or private issues relating to abortion.

32 (4) Any place at which a lecture, film-showing, or other private meeting or
33 presentation that educates or propagates with respect to abortion practices or
34 policies, whether on private property or at a meeting site authorized for specific
35 use by a private group on public property, is taking place.

36 (5) Any bookstore or public or private library.

37 (6) Any building or facility designated as a courthouse.

38 (7) The home or office of a judicial officer.

39 (8) Any building or facility regularly occupied by county probation department
40 personnel in which the employees perform official duties of the probation
41 department.

1 (9) Any private property, if the property was targeted in whole or in part because
2 of any of the actual or perceived characteristics of the owner or occupant of the
3 property listed in subdivision (a) of Section 422.55.

4 (10) Any public or private school providing instruction in kindergarten or grades
5 1 to 12, inclusive.

6 (c) As used in this section, “judicial officer” means a magistrate, judge, justice,
7 commissioner, referee, or any person appointed by a court to serve in one of these
8 capacities, of any state or federal court located in this state.

9 (d) As used in this section, “terrorizing” means to cause a person of ordinary
10 emotions and sensibilities to fear for personal safety.

11 (e) Nothing in this section shall be construed to prohibit the prosecution of any
12 person pursuant to Section ~~12303.3~~ 18740 or any other provision of law in lieu of
13 prosecution pursuant to this section.

14 **Comment.** Subdivision (e) of Section 11413 is amended to reflect nonsubstantive
15 reorganization of the statutes governing control of deadly weapons.

16 **Penal Code § 11418 (amended). Weapons of mass destruction**

17 SEC. ____ . Section 11418 of the Penal Code is amended to read:

18 11418. (a)(1) Any person, without lawful authority, who possesses, develops,
19 manufactures, produces, transfers, acquires, or retains any weapon of mass
20 destruction, shall be punished by imprisonment in the state prison for 4, 8, or 12
21 years.

22 (2) Any person who commits a violation of paragraph (1) and who has been
23 previously convicted of Section 11411, 11412, 11413, 11418, 11418.1, 11418.5,
24 11419, 11460, ~~12303.1, 12303.2, or 12303.3~~ 18715, 18725, or 18740 shall be
25 punished by imprisonment in the state prison for 5, 10, or 15 years.

26 (b)(1) Any person who uses or directly employs against another person a
27 weapon of mass destruction in a form that may cause widespread, disabling illness
28 or injury in human beings shall be punished by imprisonment in the state prison
29 for life.

30 (2) Any person who uses or directly employs against another person a weapon
31 of mass destruction in a form that may cause widespread great bodily injury or
32 death and causes the death of any human being shall be punished by imprisonment
33 in the state prison for life without the possibility of parole. Nothing in this
34 paragraph shall prevent punishment instead under Section 190.2.

35 (3) Any person who uses a weapon of mass destruction in a form that may cause
36 widespread damage to or disruption of the food supply or “source of drinking
37 water” as defined in subdivision (d) of Section 25249.11 of the Health and Safety
38 Code shall be punished by imprisonment in the state prison for 5, 8, or 12 years
39 and by a fine of not more than one hundred thousand dollars (\$100,000).

40 (4) Any person who maliciously uses against animals, crops, or seed and seed
41 stock, a weapon of mass destruction in a form that may cause widespread damage
42 to or substantial diminution in the value of stock animals or crops, including seeds

1 used for crops or product of the crops, shall be punished by imprisonment in the
2 state prison for 4, 8, or 12 years and by a fine of not more than one hundred
3 thousand dollars (\$100,000).

4 (c) Any person who uses a weapon of mass destruction in a form that may cause
5 widespread and significant damage to public natural resources, including coastal
6 waterways and beaches, public parkland, surface waters, ground water, and
7 wildlife, shall be punished by imprisonment in the state prison for 3, 4, or 6 years.

8 (d)(1) Any person who uses recombinant technology or any other biological
9 advance to create new pathogens or more virulent forms of existing pathogens for
10 use in any crime described in subdivision (b) shall be punished by imprisonment
11 in the state prison for 4, 8, or 12 years and by a fine of not more than two hundred
12 fifty thousand dollars (\$250,000).

13 (2) Any person who uses recombinant technology or any other biological
14 advance to create new pathogens or more virulent forms of existing pathogens for
15 use in any crime described in subdivision (c) shall be punished by imprisonment in
16 the state prison for three, six, or nine years and by a fine of not more than two
17 hundred fifty thousand dollars (\$250,000).

18 (e) Nothing in this section shall be construed to prevent punishment instead
19 pursuant to any other provision of law that imposes a greater or more severe
20 punishment.

21 **Comment.** Subdivision (a) of Section 11418 is amended to reflect nonsubstantive
22 reorganization of the statutes governing control of deadly weapons.

23 For guidance in applying this section, see Section 16015 (determining existence of prior
24 conviction).

25 **Penal Code § 11460 (amended). Paramilitary organizations**

26 SEC. ____ . Section 11460 of the Penal Code is amended to read:

27 11460. (a) Any two or more persons who assemble as a paramilitary
28 organization for the purpose of practicing with weapons shall be punished by
29 imprisonment in a county jail for not more than one year or by a fine of not more
30 than one thousand dollars (\$1,000), or by both that fine and imprisonment.

31 As used in this subdivision, “paramilitary organization” means an organization
32 which is not an agency of the United States government or of the State of
33 California, or which is not a private school meeting the requirements set forth in
34 Section 48222 of the Education Code, but which engages in instruction or training
35 in guerrilla warfare or sabotage, or which, as an organization, engages in rioting or
36 the violent disruption of, or the violent interference with, school activities.

37 (b)(1) Any person who teaches or demonstrates to any other person the use,
38 application, or making of any firearm, explosive, or destructive device, or
39 technique capable of causing injury or death to persons, knowing or having reason
40 to know or intending that these objects or techniques will be unlawfully employed
41 for use in, or in the furtherance of a civil disorder, or any person who assembles
42 with one or more other persons for the purpose of training with, practicing with, or

1 being instructed in the use of any firearm, explosive, or destructive device, or
2 technique capable of causing injury or death to persons, with the intent to cause or
3 further a civil disorder, shall be punished by imprisonment in the county jail for
4 not more than one year or by a fine of not more than one thousand dollars
5 (\$1,000), or by both that fine and imprisonment.

6 Nothing in this subdivision shall make unlawful any act of any peace officer or a
7 member of the military forces of this state or of the United States, performed in the
8 lawful course of his or her official duties.

9 (2) As used in this section:

10 (A) "Civil disorder" means any disturbance involving acts of violence which
11 cause an immediate danger of or results in damage or injury to the property or
12 person of any other individual.

13 (B) "Destructive device" has the same meaning as in Section ~~12301~~ 16460.

14 (C) "Explosive" has the same meaning as in Section 12000 of the Health and
15 Safety Code.

16 (D) "Firearm" means any device designed to be used as a weapon, or which may
17 readily be converted to a weapon, from which is expelled a projectile by the force
18 of any explosion or other form of combustion, or the frame or receiver of this
19 weapon.

20 (E) "Peace officer" means any peace officer or other officer having the powers
21 of arrest of a peace officer, specified in Chapter 4.5 (commencing with Section
22 830) of Title 3 of Part 2.

23 **Comment.** Subdivision (b) of Section 11460 is amended to reflect nonsubstantive
24 reorganization of the statutes governing control of deadly weapons.

25 **Penal Code § 13730 (amended). Domestic violence-related calls for assistance**

26 SEC. ____ . Section 13730 of the Penal Code is amended to read:

27 13730. (a) Each law enforcement agency shall develop a system, by January 1,
28 1986, for recording all domestic violence-related calls for assistance made to the
29 department including whether weapons are involved. All domestic violence-
30 related calls for assistance shall be supported with a written incident report, as
31 described in subdivision (c), identifying the domestic violence incident. Monthly,
32 the total number of domestic violence calls received and the numbers of those
33 cases involving weapons shall be compiled by each law enforcement agency and
34 submitted to the Attorney General.

35 (b) The Attorney General shall report annually to the Governor, the Legislature,
36 and the public the total number of domestic violence-related calls received by
37 California law enforcement agencies, the number of cases involving weapons, and
38 a breakdown of calls received by agency, city, and county.

39 (c) Each law enforcement agency shall develop an incident report form that
40 includes a domestic violence identification code by January 1, 1986. In all
41 incidents of domestic violence, a report shall be written and shall be identified on

1 the face of the report as a domestic violence incident. The report shall include at
2 least all of the following:

3 (1) A notation of whether the officer or officers who responded to the domestic
4 violence call observed any signs that the alleged abuser was under the influence of
5 alcohol or a controlled substance.

6 (2) A notation of whether the officer or officers who responded to the domestic
7 violence call determined if any law enforcement agency had previously responded
8 to a domestic violence call at the same address involving the same alleged abuser
9 or victim.

10 (3) A notation of whether the officer or officers who responded to the domestic
11 violence call found it necessary, for the protection of the peace officer or other
12 persons present, to inquire of the victim, the alleged abuser, or both, whether a
13 firearm or other deadly weapon was present at the location, and, if there is an
14 inquiry, whether that inquiry disclosed the presence of a firearm or other deadly
15 weapon. Any firearm or other deadly weapon discovered by an officer at the scene
16 of a domestic violence incident shall be subject to confiscation pursuant to ~~Section~~
17 12028.5 Division 4 (commencing with Section 18250) of Title 2 of Part 6.

18 **Comment.** Subdivision (c) of Section 13730 is amended to reflect nonsubstantive
19 reorganization of the statutes governing control of deadly weapons.

PUBLIC CONTRACT CODE

20 **Pub. Cont. Code § 10334 (amended). Restriction on state employee from acquiring state**
21 **goods**

22 SEC. ____ . Section 10334 of the Public Contract Code is amended to read:

23 10334. (a) No state employee shall acquire any goods from the state, unless the
24 goods are offered to the general public in the regular course of the state's business
25 on the same terms and conditions as those applicable to the employee. "State
26 employee," as used in this section, means any employee of the state included
27 within Section 82009 of the Government Code, and all officers and employees
28 included within Section 4 of Article VII of the California Constitution, except
29 those persons excluded from the definition of "designated employee" under the
30 last paragraph of Section 82019 of the Government Code.

31 (b) Notwithstanding subdivision (a), any peace officer as defined in Chapter 4.5
32 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, employed
33 by the State of California for a period of more than 120 months who has been duly
34 retired through a service retirement or a peace officer retiring from a job-incurred
35 disability not related to a mental or emotional disorder and who has been granted
36 the legal right to carry a concealed firearm pursuant to ~~subdivision (a) of Section~~
37 12027 Article 2 (commencing with Section 25450) of Chapter 2 of Division 5 of
38 Title 4 of Part 6 of the Penal Code may be authorized by the person's department
39 head to purchase his or her state-issued handgun. Disability retired peace officers
40 need not meet the 120-month employment requirement. The cost of the handgun

1 shall be the fair market value as listed in the annual Blue Book of Gun Values or
2 replacement cost, whichever is less, of the handgun issued as determined by the
3 appointing power, plus a charge for the cost of handling. The retiring officer shall
4 request to purchase his or her handgun in writing to the department within 30
5 calendar days of his or her retirement date.

6 (c) Notwithstanding subdivision (a), any peace officer described in Chapter 4.5
7 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code employed
8 by the State of California who is authorized to carry firearms may purchase his or
9 her state-issued service firearm if the person's department head directs the
10 department to change its state-issued service weapon system. The cost of the
11 service firearm shall be the fair market value as listed in the annual Blue Book of
12 Gun Values or replacement cost, whichever is less, of the firearm issued as
13 determined by the department head, plus a charge for the cost of handling. The
14 requesting officer shall request to purchase his or her firearm in writing to the
15 department within 10 calendar days of receiving the new state-issued weapon.

16 **Comment.** Subdivision (b) of Section 10334 is amended to reflect nonsubstantive
17 reorganization of the statutes governing control of deadly weapons.

WELFARE & INSTITUTIONS CODE

18 **Welf. & Inst. Code § 676 (amended). Admission to juvenile court hearing**

19 SEC. _____. Section 676 of the Welfare and Institutions Code is amended to read:

20 676. (a) Unless requested by the minor concerning whom the petition has been
21 filed and any parent or guardian present, the public shall not be admitted to a
22 juvenile court hearing. Nothing in this section shall preclude the attendance of up
23 to two family members of a prosecuting witness for the support of that witness, as
24 authorized by Section 868.5 of the Penal Code. The judge or referee may
25 nevertheless admit those persons he or she deems to have a direct and legitimate
26 interest in the particular case or the work of the court.

27 However, except as provided in subdivision (b), members of the public shall be
28 admitted, on the same basis as they may be admitted to trials in a court of criminal
29 jurisdiction, to hearings concerning petitions filed pursuant to Section 602 alleging
30 that a minor is a person described in Section 602 by reason of the violation of any
31 one of the following offenses:

32 (1) Murder.

33 (2) Arson of an inhabited building.

34 (3) Robbery while armed with a dangerous or deadly weapon.

35 (4) Rape with force or violence or threat of great bodily harm.

36 (5) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

37 (6) Oral copulation by force, violence, duress, menace, or threat of great bodily
38 harm.

39 (7) Any offense specified in subdivision (a) of Section 289 of the Penal Code.

40 (8) Kidnapping for ransom.

- 1 (9) Kidnapping for purpose of robbery.
- 2 (10) Kidnapping with bodily harm.
- 3 (11) Assault with intent to murder or attempted murder.
- 4 (12) Assault with a firearm or destructive device.
- 5 (13) Assault by any means of force likely to produce great bodily injury.
- 6 (14) Discharge of a firearm into an inhabited dwelling or occupied building.
- 7 (15) Any offense described in Section 1203.09 of the Penal Code.
- 8 (16) Any offense described in Section 12022.5 or 12022.53 of the Penal Code.
- 9 (17) Any felony offense in which a minor personally used a weapon ~~listed in~~
- 10 ~~subdivision (a) of Section 12020~~ described in any provision listed in Section
- 11 16590 of the Penal Code.
- 12 (18) Burglary of an inhabited dwelling house or trailer coach, as defined in
- 13 Section 635 of the Vehicle Code, or the inhabited portion of any other building, if
- 14 the minor previously has been adjudged a ward of the court by reason of the
- 15 commission of any offense listed in this section, including an offense listed in this
- 16 paragraph.
- 17 (19) Any felony offense described in Section 136.1 or 137 of the Penal Code.
- 18 (20) Any offense as specified in Sections 11351, 11351.5, 11352, 11378,
- 19 11378.5, 11379, and 11379.5 of the Health and Safety Code.
- 20 (21) Criminal street gang activity which constitutes a felony pursuant to Section
- 21 186.22 of the Penal Code.
- 22 (22) Manslaughter as specified in Section 192 of the Penal Code.
- 23 (23) Driveby shooting or discharge of a weapon from or at a motor vehicle as
- 24 specified in Sections 246, 247, and ~~12034~~ 26100 of the Penal Code.
- 25 (24) Any crime committed with an assault weapon, as defined in Section ~~12276~~
- 26 30510 of the Penal Code, including possession of an assault weapon as specified
- 27 ~~in subdivision (b) of Section 12280~~ Section 30605 of the Penal Code.
- 28 (25) Carjacking, while armed with a dangerous or deadly weapon.
- 29 (26) Kidnapping, in violation of Section 209.5 of the Penal Code.
- 30 (27) Torture, as described in Sections 206 and 206.1 of the Penal Code.
- 31 (28) Aggravated mayhem, in violation of Section 205 of the Penal Code.
- 32 (b) Where the petition filed alleges that the minor is a person described in
- 33 Section 602 by reason of the commission of rape with force or violence or great
- 34 bodily harm; sodomy by force, violence, duress, menace, or threat of great bodily
- 35 harm; oral copulation by force, violence, duress, menace, or threat of great bodily
- 36 harm; or any offense specified in Section 289 of the Penal Code, members of the
- 37 public shall not be admitted to the hearing in either of the following instances:
- 38 (1) Upon a motion for a closed hearing by the district attorney, who shall make
- 39 the motion if so requested by the victim.
- 40 (2) During the victim's testimony, if, at the time of the offense the victim was
- 41 under 16 years of age.
- 42 (c) The name of a minor found to have committed one of the offenses listed in
- 43 subdivision (a) shall not be confidential, unless the court, for good cause, so

1 orders. As used in this subdivision, “good cause” shall be limited to protecting the
2 personal safety of the minor, a victim, or a member of the public. The court shall
3 make a written finding, on the record, explaining why good cause exists to make
4 the name of the minor confidential.

5 (d) Notwithstanding Sections 827 and 828 and subject to subdivisions (e) and
6 (f), when a petition is sustained for any offense listed in subdivision (a), the
7 charging petition, the minutes of the proceeding, and the orders of adjudication
8 and disposition of the court that are contained in the court file shall be available
9 for public inspection. Nothing in this subdivision shall be construed to authorize
10 public access to any other documents in the court file.

11 (e) The probation officer or any party may petition the juvenile court to prohibit
12 disclosure to the public of any file or record. The juvenile court shall prohibit the
13 disclosure if it appears that the harm to the minor, victims, witnesses, or public
14 from the public disclosure outweighs the benefit of public knowledge. However,
15 the court shall not prohibit disclosure for the benefit of the minor unless the court
16 makes a written finding that the reason for the prohibition is to protect the safety
17 of the minor.

18 (f) Nothing in this section shall be applied to limit the disclosure of information
19 as otherwise provided for by law.

20 (g) The juvenile court shall for each day that the court is in session, post in a
21 conspicuous place which is accessible to the general public, a written list of
22 hearings that are open to the general public pursuant to this section, the location of
23 those hearings, and the time when the hearings will be held.

24 **Comment.** Subdivision (a) of Section 676 is amended to reflect nonsubstantive reorganization
25 of the statutes governing control of deadly weapons.

26 **Staff Note.** Welfare and Institutions Code Section 676(a)(24) refers to “an assault weapon, *as*
27 *defined in Section 12276 of the Penal Code ...*” (Emphasis added.) There are, however, not one
28 but two provisions defining “assault weapon.” See Penal Code §§ 12276, 12276.1. It is not clear
29 to the staff why Welfare and Institutions Code Section 676(a)(24) refers to only one of these
30 provisions. The omission could be deliberate or it could be accidental.

31 For purposes of this nonsubstantive study, the Commission should preserve the status quo, so
32 as to avoid any risk of a substantive change. Thus, the amendment shown above would replace
33 the reference to Section 12276 with a reference to proposed Section 30510, which would continue
34 Section 12276. No reference to the provision that would continue Section 12276.1 (proposed
35 Section 30515) would be included.

36 The issue discussed above might be worth exploring in the future, in a different study. Unless
37 the Commission otherwise directs, we will add this issue to the Commission’s list of “Minor
38 Clean-up Issues for Possible Future Legislative Attention.”

39 **Welf. & Inst. Code § 707 (amended). Fitness for juvenile court**

40 SEC. ____ . Section 707 of the Welfare and Institutions Code is amended to read:

41 707. (a)(1) In any case in which a minor is alleged to be a person described in
42 subdivision (a) of Section 602 by reason of the violation, when he or she was 16
43 years of age or older, of any criminal statute or ordinance except those listed in
44 subdivision (b), upon motion of the petitioner made prior to the attachment of

1 jeopardy the court shall cause the probation officer to investigate and submit a
2 report on the behavioral patterns and social history of the minor being considered
3 for a determination of unfitness. Following submission and consideration of the
4 report, and of any other relevant evidence that the petitioner or the minor may
5 wish to submit, the juvenile court may find that the minor is not a fit and proper
6 subject to be dealt with under the juvenile court law if it concludes that the minor
7 would not be amenable to the care, treatment, and training program available
8 through the facilities of the juvenile court, based upon an evaluation of the
9 following criteria:

10 (A) The degree of criminal sophistication exhibited by the minor.

11 (B) Whether the minor can be rehabilitated prior to the expiration of the juvenile
12 court's jurisdiction.

13 (C) The minor's previous delinquent history.

14 (D) Success of previous attempts by the juvenile court to rehabilitate the minor.

15 (E) The circumstances and gravity of the offense alleged in the petition to have
16 been committed by the minor.

17 A determination that the minor is not a fit and proper subject to be dealt with
18 under the juvenile court law may be based on any one or a combination of the
19 factors set forth above, which shall be recited in the order of unfitness. In any case
20 in which a hearing has been noticed pursuant to this section, the court shall
21 postpone the taking of a plea to the petition until the conclusion of the fitness
22 hearing, and no plea that may have been entered already shall constitute evidence
23 at the hearing.

24 (2)(A) This paragraph shall apply to a minor alleged to be a person described in
25 Section 602 by reason of the violation, when he or she has attained 16 years of
26 age, of any felony offense when the minor has been declared to be a ward of the
27 court pursuant to Section 602 on one or more prior occasions if both of the
28 following apply:

29 (i) The minor has previously been found to have committed two or more felony
30 offenses.

31 (ii) The offenses upon which the prior petition or petitions were based were
32 committed when the minor had attained 14 years of age.

33 (B) Upon motion of the petitioner made prior to the attachment of jeopardy the
34 court shall cause the probation officer to investigate and submit a report on the
35 behavioral patterns and social history of the minor being considered for a
36 determination of unfitness. Following submission and consideration of the report,
37 and of any other relevant evidence that the petitioner or the minor may wish to
38 submit, the minor shall be presumed to be not a fit and proper subject to be dealt
39 with under the juvenile court law unless the juvenile court concludes, based upon
40 evidence, which evidence may be of extenuating or mitigating circumstances, that
41 the minor would be amenable to the care, treatment, and training program
42 available through the facilities of the juvenile court based upon an evaluation of
43 the following criteria:

- 1 (i) The degree of criminal sophistication exhibited by the minor.
- 2 (ii) Whether the minor can be rehabilitated prior to the expiration of the juvenile
- 3 court's jurisdiction.
- 4 (iii) The minor's previous delinquent history.
- 5 (iv) Success of previous attempts by the juvenile court to rehabilitate the minor.
- 6 (v) The circumstances and gravity of the offense alleged in the petition to have
- 7 been committed by the minor.

8 A determination that the minor is a fit and proper subject to be dealt with under
9 the juvenile court law shall be based on a finding of amenability after
10 consideration of the criteria set forth above, and findings therefore recited in the
11 order as to each of the above criteria that the minor is fit and proper under each
12 and every one of the above criteria. In making a finding of fitness, the court may
13 consider extenuating and mitigating circumstances in evaluating each of the above
14 criteria. In any case in which the hearing has been noticed pursuant to this section,
15 the court shall postpone the taking of a plea to the petition until the conclusion of
16 the fitness hearing and no plea which may have been entered already shall
17 constitute evidence at the hearing. If the minor is found to be a fit and proper
18 subject to be dealt with under the juvenile court law pursuant to this subdivision,
19 the minor shall be committed to placement in a juvenile hall, ranch camp, forestry
20 camp, boot camp, or secure juvenile home pursuant to Section 730, or in any
21 institution operated by the Department of Corrections and Rehabilitation, Division
22 of Juvenile Facilities.

23 (3) If, pursuant to this subdivision, the minor is found to be not a fit and proper
24 subject for juvenile court treatment and is tried in a court of criminal jurisdiction
25 and found guilty by the trier of fact, the judge may commit the minor to the
26 Department of Corrections and Rehabilitation, Division of Juvenile Facilities, in
27 lieu of sentencing the minor to the state prison, unless the limitations specified in
28 Section 1732.6 apply.

29 (b) Subdivision (c) shall be applicable in any case in which a minor is alleged to
30 be a person described in Section 602 by reason of the violation of one of the
31 following offenses:

- 32 (1) Murder.
- 33 (2) Arson, as provided in subdivision (a) or (b) of Section 451 of the Penal
- 34 Code.
- 35 (3) Robbery.
- 36 (4) Rape with force, violence, or threat of great bodily harm.
- 37 (5) Sodomy by force, violence, duress, menace, or threat of great bodily harm.
- 38 (6) A lewd or lascivious act as provided in subdivision (b) of Section 288 of the
- 39 Penal Code.
- 40 (7) Oral copulation by force, violence, duress, menace, or threat of great bodily
- 41 harm.
- 42 (8) An offense specified in subdivision (a) of Section 289 of the Penal Code.
- 43 (9) Kidnapping for ransom.

- 1 (10) Kidnapping for purposes of robbery.
- 2 (11) Kidnapping with bodily harm.
- 3 (12) Attempted murder.
- 4 (13) Assault with a firearm or destructive device.
- 5 (14) Assault by any means of force likely to produce great bodily injury.
- 6 (15) Discharge of a firearm into an inhabited or occupied building.
- 7 (16) An offense described in Section 1203.09 of the Penal Code.
- 8 (17) An offense described in Section 12022.5 or 12022.53 of the Penal Code.
- 9 (18) A felony offense in which the minor personally used a weapon ~~listed in~~
10 ~~subdivision (a) of Section 12020~~ described in any provision listed in Section
11 16590 of the Penal Code.
- 12 (19) A felony offense described in Section 136.1 or 137 of the Penal Code.
- 13 (20) Manufacturing, compounding, or selling one-half ounce or more of a salt or
14 solution of a controlled substance specified in subdivision (e) of Section 11055 of
15 the Health and Safety Code.
- 16 (21) A violent felony, as defined in subdivision (c) of Section 667.5 of the Penal
17 Code, which also would constitute a felony violation of subdivision (b) of Section
18 186.22 of the Penal Code.
- 19 (22) Escape, by the use of force or violence, from a county juvenile hall, home,
20 ranch, camp, or forestry camp in violation of subdivision (b) of Section 871 if
21 great bodily injury is intentionally inflicted upon an employee of the juvenile
22 facility during the commission of the escape.
- 23 (23) Torture as described in Sections 206 and 206.1 of the Penal Code.
- 24 (24) Aggravated mayhem, as described in Section 205 of the Penal Code.
- 25 (25) Carjacking, as described in Section 215 of the Penal Code, while armed
26 with a dangerous or deadly weapon.
- 27 (26) Kidnapping for purposes of sexual assault, as punishable in subdivision (b)
28 of Section 209 of the Penal Code.
- 29 (27) Kidnapping as punishable in Section 209.5 of the Penal Code.
- 30 (28) The offense described in subdivision (c) of Section ~~12034~~ 26100 of the
31 Penal Code.
- 32 (29) The offense described in Section ~~12308~~ 18745 of the Penal Code.
- 33 (30) Voluntary manslaughter, as described in subdivision (a) of Section 192 of
34 the Penal Code.
- 35 (c) With regard to a minor alleged to be a person described in Section 602 by
36 reason of the violation, when he or she was 14 years of age or older, of any of the
37 offenses listed in subdivision (b), upon motion of the petitioner made prior to the
38 attachment of jeopardy the court shall cause the probation officer to investigate
39 and submit a report on the behavioral patterns and social history of the minor
40 being considered for a determination of unfitness. Following submission and
41 consideration of the report, and of any other relevant evidence that the petitioner
42 or the minor may wish to submit, the minor shall be presumed to be not a fit and
43 proper subject to be dealt with under the juvenile court law unless the juvenile

1 court concludes, based upon evidence, which evidence may be of extenuating or
2 mitigating circumstances, that the minor would be amenable to the care, treatment,
3 and training program available through the facilities of the juvenile court based
4 upon an evaluation of each of the following criteria:

5 (1) The degree of criminal sophistication exhibited by the minor.

6 (2) Whether the minor can be rehabilitated prior to the expiration of the juvenile
7 court's jurisdiction.

8 (3) The minor's previous delinquent history.

9 (4) Success of previous attempts by the juvenile court to rehabilitate the minor.

10 (5) The circumstances and gravity of the offenses alleged in the petition to have
11 been committed by the minor.

12 A determination that the minor is a fit and proper subject to be dealt with under
13 the juvenile court law shall be based on a finding of amenability after
14 consideration of the criteria set forth above, and findings therefore recited in the
15 order as to each of the above criteria that the minor is fit and proper under each
16 and every one of the above criteria. In making a finding of fitness, the court may
17 consider extenuating or mitigating circumstances in evaluating each of the above
18 criteria. In any case in which a hearing has been noticed pursuant to this section,
19 the court shall postpone the taking of a plea to the petition until the conclusion of
20 the fitness hearing and no plea which may have been entered already shall
21 constitute evidence at the hearing. If, pursuant to this subdivision, the minor is
22 found to be not a fit and proper subject for juvenile court treatment and is tried in a
23 court of criminal jurisdiction and found guilty by the trier of fact, the judge may
24 commit the minor to the Department of Corrections and Rehabilitation, Division
25 of Juvenile Facilities, in lieu of sentencing the minor to the state prison, unless the
26 limitations specified in Section 1732.6 apply.

27 (d)(1) Except as provided in subdivision (b) of Section 602, the district attorney
28 or other appropriate prosecuting officer may file an accusatory pleading in a court
29 of criminal jurisdiction against any minor 16 years of age or older who is accused
30 of committing an offense enumerated in subdivision (b).

31 (2) Except as provided in subdivision (b) of Section 602, the district attorney or
32 other appropriate prosecuting officer may file an accusatory pleading against a
33 minor 14 years of age or older in a court of criminal jurisdiction in any case in
34 which any one or more of the following circumstances apply:

35 (A) The minor is alleged to have committed an offense that if committed by an
36 adult would be punishable by death or imprisonment in the state prison for life.

37 (B) The minor is alleged to have personally used a firearm during the
38 commission or attempted commission of a felony, as described in Section 12022.5
39 or 12022.53 of the Penal Code.

40 (C) The minor is alleged to have committed an offense listed in subdivision (b)
41 in which any one or more of the following circumstances apply:

42 (i) The minor has previously been found to be a person described in Section 602
43 by reason of the commission of an offense listed in subdivision (b).

1 (ii) The offense was committed for the benefit of, at the direction of, or in
2 association with any criminal street gang, as defined in subdivision (f) of Section
3 186.22 of the Penal Code, with the specific intent to promote, further, or assist in
4 criminal conduct by gang members.

5 (iii) The offense was committed for the purpose of intimidating or interfering
6 with any other person's free exercise or enjoyment of a right secured to him or her
7 by the Constitution or laws of this state or by the Constitution or laws of the
8 United States and because of the other person's race, color, religion, ancestry,
9 national origin, disability, gender, or sexual orientation, or because the minor
10 perceives that the other person has one or more of those characteristics, as
11 described in Title 11.6 (commencing with Section 422.55) of Part 1 of the Penal
12 Code.

13 (iv) The victim of the offense was 65 years of age or older, or blind, deaf,
14 quadriplegic, paraplegic, developmentally disabled, or confined to a wheelchair,
15 and that disability was known or reasonably should have been known to the minor
16 at the time of the commission of the offense.

17 (3) Except as provided in subdivision (b) of Section 602, the district attorney or
18 other appropriate prosecuting officer may file an accusatory pleading in a court of
19 criminal jurisdiction against any minor 16 years of age or older who is accused of
20 committing one or more of the following offenses, if the minor has previously
21 been found to be a person described in Section 602 by reason of the violation of a
22 felony offense, when he or she was 14 years of age or older:

23 (A) A felony offense in which it is alleged that the victim of the offense was 65
24 years of age or older, or blind, deaf, quadriplegic, paraplegic, developmentally
25 disabled, or confined to a wheelchair, and that disability was known or reasonably
26 should have been known to the minor at the time of the commission of the offense.

27 (B) A felony offense committed for the purposes of intimidating or interfering
28 with any other person's free exercise or enjoyment of a right secured to him or her
29 by the Constitution or laws of this state or by the Constitution or laws of the
30 United States and because of the other person's race, color, religion, ancestry,
31 national origin, disability, gender, or sexual orientation, or because the minor
32 perceived that the other person had one or more of those characteristics, as
33 described in Title 11.6 (commencing with Section 422.55) of Part 1 of the Penal
34 Code.

35 (C) The offense was committed for the benefit of, at the direction of, or in
36 association with any criminal street gang as prohibited by Section 186.22 of the
37 Penal Code.

38 (4) In any case in which the district attorney or other appropriate prosecuting
39 officer has filed an accusatory pleading against a minor in a court of criminal
40 jurisdiction pursuant to this subdivision, the case shall then proceed according to
41 the laws applicable to a criminal case. In conjunction with the preliminary hearing
42 as provided in Section 738 of the Penal Code, the magistrate shall make a finding
43 that reasonable cause exists to believe that the minor comes within this

1 subdivision. If reasonable cause is not established, the criminal court shall transfer
2 the case to the juvenile court having jurisdiction over the matter.

3 (5) For an offense for which the prosecutor may file the accusatory pleading in a
4 court of criminal jurisdiction pursuant to this subdivision, but elects instead to file
5 a petition in the juvenile court, if the minor is subsequently found to be a person
6 described in subdivision (a) of Section 602, the minor shall be committed to
7 placement in a juvenile hall, ranch camp, forestry camp, boot camp, or secure
8 juvenile home pursuant to Section 730, or in any institution operated by the
9 Department of Corrections and Rehabilitation, Division of Juvenile Facilities.

10 (6) If, pursuant to this subdivision, the minor is found to be not a fit and proper
11 subject for juvenile court treatment and is tried in a court of criminal jurisdiction
12 and found guilty by the trier of fact, the judge may commit the minor to the
13 Department of Corrections and Rehabilitation, Division of Juvenile Facilities, in
14 lieu of sentencing the minor to the state prison, unless the limitations specified in
15 Section 1732.6 apply.

16 (e) A report submitted by a probation officer pursuant to this section regarding
17 the behavioral patterns and social history of the minor being considered for a
18 determination of unfitness shall include any written or oral statement offered by
19 the victim, the victim's parent or guardian if the victim is a minor, or if the victim
20 has died, the victim's next of kin, as authorized by subdivision (b) of Section
21 656.2. Victims' statements shall be considered by the court to the extent they are
22 relevant to the court's determination of unfitness.

23 **Comment.** Subdivision (b) of Section 707 is amended to reflect nonsubstantive reorganization
24 of the statutes governing control of deadly weapons.

25 **Staff Note.** The text of Section 707 reflects the enactment of SB 1498 (Committee on
26 Judiciary), 2008 Cal. Stat. ch. 179.

27 **Welf. & Inst. Code § 727 (amended). Court authority over minor adjudged ward of court**

28 SEC. _____. Section 727 of the Welfare and Institutions Code is amended to read:

29 727. (a) When a minor is adjudged a ward of the court on the ground that he or
30 she is a person described by Section 601 or 602, the court may make any and all
31 reasonable orders for the care, supervision, custody, conduct, maintenance, and
32 support of the minor, including medical treatment, subject to further order of the
33 court. To facilitate coordination and cooperation among governmental agencies,
34 the court may, after giving notice and an opportunity to be heard, join in the
35 juvenile court proceedings any agency that the court determines has failed to meet
36 a legal obligation to provide services to the minor. However, no governmental
37 agency shall be joined as a party in a juvenile court proceeding in which a minor
38 has been ordered committed to the Department of the Youth Authority. In any
39 proceeding in which an agency is joined, the court shall not impose duties upon
40 the agency beyond those mandated by law. Nothing in this section shall prohibit
41 agencies which have received notice of the hearing on joinder from meeting prior
42 to the hearing to coordinate services for the minor.

1 The court has no authority to order services unless it has been determined
2 through the administrative process of an agency that has been joined as a party,
3 that the minor is eligible for those services. With respect to mental health
4 assessment, treatment, and case management services pursuant to Chapter 26.5
5 (commencing with Section 7570) of Division 7 of Title 1 of the Government
6 Code, the court's determination shall be limited to whether the agency has
7 complied with that chapter.

8 In the discretion of the court, a ward may be ordered to be on probation without
9 supervision of the probation officer. The court, in so ordering, may impose on the
10 ward any and all reasonable conditions of behavior as may be appropriate under
11 this disposition. A minor who has been adjudged a ward of the court on the basis
12 of the commission of any of the offenses described in subdivision (b) or paragraph
13 (2) of subdivision (d) of Section 707, Section 459 of the Penal Code, or
14 subdivision (a) of Section 11350 of the Health and Safety Code, shall not be
15 eligible for probation without supervision of the probation officer. A minor who
16 has been adjudged a ward of the court on the basis of the commission of any
17 offense involving the sale or possession for sale of a controlled substance, except
18 misdemeanor offenses involving marijuana, as specified in Chapter 2
19 (commencing with Section 11053) of Division 10 of the Health and Safety Code,
20 or of an offense in violation of Section ~~12220~~ 32625 of the Penal Code, shall be
21 eligible for probation without supervision of the probation officer only when the
22 court determines that the interests of justice would best be served and states
23 reasons on the record for that determination.

24 In all other cases, the court shall order the care, custody, and control of the
25 minor to be under the supervision of the probation officer who may place the
26 minor in any of the following:

27 (1) The approved home of a relative, or the approved home of a nonrelative,
28 extended family member as defined in Section 362.7. When a decision has been
29 made to place the minor in the home of a relative, the court may authorize the
30 relative to give legal consent for the minor's medical, surgical, and dental care and
31 education as if the relative caretaker were the custodial parent of the minor.

32 (2) A suitable licensed community care facility.

33 (3) With a foster family agency to be placed in a suitable licensed foster family
34 home or certified family home which has been certified by the agency as meeting
35 licensing standards.

36 (4)(A) Every child adjudged a ward of the juvenile court who is residing in a
37 placement as defined in paragraphs (1) to (3), inclusive, shall be entitled to
38 participate in age-appropriate extracurricular, enrichment, and social activities. No
39 state or local regulation or policy may prevent, or create barriers to, participation
40 in those activities. Each state and local entity shall ensure that private agencies that
41 provide foster care services to wards have policies consistent with this section and
42 that those agencies promote and protect the ability of wards to participate in age-
43 appropriate extracurricular, enrichment, and social activities. A group home

1 administrator, a facility manager, or his or her responsible designee, and a
2 caregiver, as defined in paragraph (1) of subdivision (a) of Section 362.04, shall
3 use a reasonable and prudent parent standard, as defined in paragraph (2) of
4 subdivision (a) of Section 362.04, in determining whether to give permission for a
5 child residing in foster care to participate in extracurricular, enrichment, and social
6 activities. A group home administrator, a facility manager, or his or her
7 responsible designee, and a caregiver shall take reasonable steps to determine the
8 appropriateness of the activity taking into consideration the child's age, maturity,
9 and developmental level.

10 (B) A group home administrator or a facility manager, or his or her responsible
11 designee, is encouraged to consult with social work or treatment staff members
12 who are most familiar with the child at the group home in applying and using the
13 reasonable and prudent parent standard.

14 (b) When a minor has been adjudged a ward of the court on the ground that he
15 or she is a person described in Section 601 or 602 and the court finds that notice
16 has been given in accordance with Section 661, and when the court orders that a
17 parent or guardian shall retain custody of that minor either subject to or without
18 the supervision of the probation officer, the parent or guardian may be required to
19 participate with that minor in a counseling or education program including, but not
20 limited to, parent education and parenting programs operated by community
21 colleges, school districts, or other appropriate agencies designated by the court.

22 (c) The juvenile court may direct any and all reasonable orders to the parents
23 and guardians of the minor who is the subject of any proceedings under this
24 chapter as the court deems necessary and proper to carry out subdivisions (a) and
25 (b), including orders to appear before a county financial evaluation officer and
26 orders directing the parents or guardians to ensure the minor's regular school
27 attendance and to make reasonable efforts to obtain appropriate educational
28 services necessary to meet the needs of the minor.

29 When counseling or other treatment services are ordered for the minor, the
30 parent, guardian, or foster parent shall be ordered to participate in those services,
31 unless participation by the parent, guardian, or foster parent is deemed by the court
32 to be inappropriate or potentially detrimental to the child.

33 **Comment.** Subdivision (a) of Section 727 is amended to reflect nonsubstantive reorganization
34 of the statutes governing control of deadly weapons.

35 **Staff Note.** The text of Section 727 reflects the enactment of AB 2096 (Bass), 2008 Cal. Stat.
36 ch. 483.

37 **Welf. & Inst. Code § 1772 (amended). Honorable discharge from Youth Authority Board**

38 SEC. ____ . Section 1772 of the Welfare and Institutions Code is amended to
39 read:

40 1772. (a) Subject to subdivision (b), every person honorably discharged from
41 control by the Youth Authority Board who has not, during the period of control by
42 the authority, been placed by the authority in a state prison shall thereafter be

1 released from all penalties and disabilities resulting from the offense or crime for
2 which he or she was committed, and every person discharged may petition the
3 court which committed him or her, and the court may upon that petition set aside
4 the verdict of guilty and dismiss the accusation or information against the
5 petitioner who shall thereafter be released from all penalties and disabilities
6 resulting from the offense or crime for which he or she was committed, including,
7 but not limited to, any disqualification for any employment or occupational
8 license, or both, created by any other provision of law.

9 (b) Notwithstanding subdivision (a):

10 (1) A person described by subdivision (a) shall not be eligible for appointment
11 as a peace officer employed by any public agency if his or her appointment would
12 otherwise be prohibited by Section 1029 of the Government Code. However, that
13 person may be appointed and employed as a peace officer by the Department of
14 the Youth Authority if (A) at least five years have passed since his or her
15 honorable discharge, and the person has had no misdemeanor or felony
16 convictions except for traffic misdemeanors since he or she was honorably
17 discharged by the Youth Authority Board, or (B) the person was employed as a
18 peace officer by the Department of the Youth Authority on or before January 1,
19 1983. No person who is under the jurisdiction of the Department of the Youth
20 Authority shall be admitted to an examination for a peace officer position with the
21 department unless and until the person has been honorably discharged from the
22 jurisdiction of the Youth Authority Board.

23 (2) A person described by subdivision (a) is subject to ~~Sections 12021 and~~
24 ~~12021.1~~ Chapter 2 (commencing with Section 29800) and Chapter 3 (commencing
25 with Section 29900) of Division 9 of Title 4 of Part 6 of the Penal Code.

26 (3) The conviction of a person described by subdivision (a) for an offense listed
27 in subdivision (b) of Section 707 is admissible in a subsequent criminal, juvenile,
28 or civil proceeding if otherwise admissible, if all the following are true:

29 (A) The person was 16 years of age or older at the time he or she committed the
30 offense.

31 (B) The person was found unfit to be dealt with under the juvenile court law
32 pursuant to Section 707 because he or she was alleged to have committed an
33 offense listed in subdivision (b) of Section 707.

34 (C) The person was tried as an adult and convicted of an offense listed in
35 subdivision (b) of Section 707.

36 (D) The person was committed to the Department of the Youth Authority for the
37 offense referred to in subparagraph (C).

38 (4) The conviction of a person described by subdivision (a) may be used to
39 enhance the punishment for a subsequent offense.

40 (5) The conviction of a person who is 18 years of age or older at the time he or
41 she committed the offense is admissible in a subsequent civil, criminal, or juvenile
42 proceeding, if otherwise admissible pursuant to law.

1 (c) Every person discharged from control by the Youth Authority Board shall be
2 informed of the provisions of this section in writing at the time of discharge.

3 (d) “Honorably discharged” as used in this section means and includes every
4 person whose discharge is based upon a good record on parole.

5 **Comment.** Subdivision (b) of Section 1772 is amended to reflect nonsubstantive
6 reorganization of the statutes governing control of deadly weapons.

7 **Welf. & Inst. Code § 4514 (amended). Records of person with developmental disability**

8 SEC. ____ . Section 4514 of the Welfare and Institutions Code is amended to
9 read:

10 4514. All information and records obtained in the course of providing intake,
11 assessment, and services under Division 4.1 (commencing with Section 4400),
12 Division 4.5 (commencing with Section 4500), Division 6 (commencing with
13 Section 6000), or Division 7 (commencing with Section 7100) to persons with
14 developmental disabilities shall be confidential. Information and records obtained
15 in the course of providing similar services to either voluntary or involuntary
16 recipients prior to 1969 shall also be confidential. Information and records shall be
17 disclosed only in any of the following cases:

18 (a) In communications between qualified professional persons, whether
19 employed by a regional center or state developmental center, or not, in the
20 provision of intake, assessment, and services or appropriate referrals. The consent
21 of the person with a developmental disability, or his or her guardian or
22 conservator, shall be obtained before information or records may be disclosed by
23 regional center or state developmental center personnel to a professional not
24 employed by the regional center or state developmental center, or a program not
25 vendored by a regional center or state developmental center.

26 (b) When the person with a developmental disability, who has the capacity to
27 give informed consent, designates individuals to whom information or records
28 may be released, except that nothing in this chapter shall be construed to compel a
29 physician, psychologist, social worker, marriage and family therapist, nurse,
30 attorney, or other professional to reveal information that has been given to him or
31 her in confidence by a family member of the person unless a valid release has been
32 executed by that family member.

33 (c) To the extent necessary for a claim, or for a claim or application to be made
34 on behalf of a person with a developmental disability for aid, insurance,
35 government benefit, or medical assistance to which he or she may be entitled.

36 (d) If the person with a developmental disability is a minor, ward, or
37 conservatee, and his or her parent, guardian, conservator, or limited conservator
38 with access to confidential records, designates, in writing, persons to whom
39 records or information may be disclosed, except that nothing in this chapter shall
40 be construed to compel a physician, psychologist, social worker, marriage and
41 family therapist, nurse, attorney, or other professional to reveal information that

1 has been given to him or her in confidence by a family member of the person
2 unless a valid release has been executed by that family member.

3 (e) For research, provided that the Director of Developmental Services
4 designates by regulation rules for the conduct of research and requires the research
5 to be first reviewed by the appropriate institutional review board or boards. These
6 rules shall include, but need not be limited to, the requirement that all researchers
7 shall sign an oath of confidentiality as follows:

8
9 “ _____
10 Date

11
12 As a condition of doing research concerning persons with developmental
13 disabilities who have received services from ____ (fill in the facility, agency or
14 person), I, _____, agree to obtain the prior informed consent of persons who have
15 received services to the maximum degree possible as determined by the
16 appropriate institutional review board or boards for protection of human subjects
17 reviewing my research, or the person’s parent, guardian, or conservator, and I
18 further agree not to divulge any information obtained in the course of the research
19 to unauthorized persons, and not to publish or otherwise make public any
20 information regarding persons who have received services so those persons who
21 received services are identifiable.

22 I recognize that the unauthorized release of confidential information may make
23 me subject to a civil action under provisions of the Welfare and Institutions Code.

24
25 _____”
26 Signed

27
28 (f) To the courts, as necessary to the administration of justice.

29 (g) To governmental law enforcement agencies as needed for the protection of
30 federal and state elective constitutional officers and their families.

31 (h) To the Senate Committee on Rules or the Assembly Committee on Rules for
32 the purposes of legislative investigation authorized by the committee.

33 (i) To the courts and designated parties as part of a regional center report or
34 assessment in compliance with a statutory or regulatory requirement, including,
35 but not limited to, Section 1827.5 of the Probate Code, Sections 1001.22 and
36 1370.1 of the Penal Code, Section 6502 of the Welfare and Institutions Code, and
37 Section 56557 of Title 17 of the California Code of Regulations.

38 (j) To the attorney for the person with a developmental disability in any and all
39 proceedings upon presentation of a release of information signed by the person,
40 except that when the person lacks the capacity to give informed consent, the
41 regional center or state developmental center director or designee, upon satisfying
42 himself or herself of the identity of the attorney, and of the fact that the attorney
43 represents the person, shall release all information and records relating to the

1 person except that nothing in this article shall be construed to compel a physician,
2 psychologist, social worker, marriage and family therapist, nurse, attorney, or
3 other professional to reveal information that has been given to him or her in
4 confidence by a family member of the person unless a valid release has been
5 executed by that family member.

6 (k) Upon written consent by a person with a developmental disability previously
7 or presently receiving services from a regional center or state developmental
8 center, the director of the regional center or state developmental center, or his or
9 her designee, may release any information, except information that has been given
10 in confidence by members of the family of the person with developmental
11 disabilities, requested by a probation officer charged with the evaluation of the
12 person after his or her conviction of a crime if the regional center or state
13 developmental center director or designee determines that the information is
14 relevant to the evaluation. The consent shall only be operative until sentence is
15 passed on the crime of which the person was convicted. The confidential
16 information released pursuant to this subdivision shall be transmitted to the court
17 separately from the probation report and shall not be placed in the probation
18 report. The confidential information shall remain confidential except for purposes
19 of sentencing. After sentencing, the confidential information shall be sealed.

20 (l) Between persons who are trained and qualified to serve on “multidisciplinary
21 personnel” teams pursuant to subdivision (d) of Section 18951. The information
22 and records sought to be disclosed shall be relevant to the prevention,
23 identification, management, or treatment of an abused child and his or her parents
24 pursuant to Chapter 11 (commencing with Section 18950) of Part 6 of Division 9.

25 (m) When a person with a developmental disability dies from any cause, natural
26 or otherwise, while hospitalized in a state developmental center, the State
27 Department of Developmental Services, the physician in charge of the client, or
28 the professional in charge of the facility or his or her designee, shall release
29 information and records to the coroner. The State Department of Developmental
30 Services, the physician in charge of the client, or the professional in charge of the
31 facility or his or her designee, shall not release any notes, summaries, transcripts,
32 tapes, or records of conversations between the resident and health professional
33 personnel of the hospital relating to the personal life of the resident that is not
34 related to the diagnosis and treatment of the resident’s physical condition. Any
35 information released to the coroner pursuant to this section shall remain
36 confidential and shall be sealed and shall not be made part of the public record.

37 (n) To authorized licensing personnel who are employed by, or who are
38 authorized representatives of, the State Department of Health Services, and who
39 are licensed or registered health professionals, and to authorized legal staff or
40 special investigators who are peace officers who are employed by, or who are
41 authorized representatives of, the State Department of Social Services, as
42 necessary to the performance of their duties to inspect, license, and investigate
43 health facilities and community care facilities, and to ensure that the standards of

1 care and services provided in these facilities are adequate and appropriate and to
2 ascertain compliance with the rules and regulations to which the facility is subject.
3 The confidential information shall remain confidential except for purposes of
4 inspection, licensing, or investigation pursuant to Chapter 2 (commencing with
5 Section 1250) and Chapter 3 (commencing with Section 1500) of Division 2 of the
6 Health and Safety Code, or a criminal, civil, or administrative proceeding in
7 relation thereto. The confidential information may be used by the State
8 Department of Health Services or the State Department of Social Services in a
9 criminal, civil, or administrative proceeding. The confidential information shall be
10 available only to the judge or hearing officer and to the parties to the case. Names
11 which are confidential shall be listed in attachments separate to the general
12 pleadings. The confidential information shall be sealed after the conclusion of the
13 criminal, civil, or administrative hearings, and shall not subsequently be released
14 except in accordance with this subdivision. If the confidential information does not
15 result in a criminal, civil, or administrative proceeding, it shall be sealed after the
16 State Department of Health Services or the State Department of Social Services
17 decides that no further action will be taken in the matter of suspected licensing
18 violations. Except as otherwise provided in this subdivision, confidential
19 information in the possession of the State Department of Health Services or the
20 State Department of Social Services shall not contain the name of the person with
21 a developmental disability.

22 (o) To any board which licenses and certifies professionals in the fields of
23 mental health and developmental disabilities pursuant to state law, when the
24 Director of Developmental Services has reasonable cause to believe that there has
25 occurred a violation of any provision of law subject to the jurisdiction of a board
26 and the records are relevant to the violation. The information shall be sealed after
27 a decision is reached in the matter of the suspected violation, and shall not
28 subsequently be released except in accordance with this subdivision. Confidential
29 information in the possession of the board shall not contain the name of the person
30 with a developmental disability.

31 (p) To governmental law enforcement agencies by the director of a regional
32 center or state developmental center, or his or her designee, when (1) the person
33 with a developmental disability has been reported lost or missing or (2) there is
34 probable cause to believe that a person with a developmental disability has
35 committed, or has been the victim of, murder, manslaughter, mayhem, aggravated
36 mayhem, kidnapping, robbery, carjacking, assault with the intent to commit a
37 felony, arson, extortion, rape, forcible sodomy, forcible oral copulation, assault or
38 battery, or unlawful possession of a weapon, as provided in ~~Section 12020~~ any
39 provision listed in Section 16590 of the Penal Code.

40 This subdivision shall be limited solely to information directly relating to the
41 factual circumstances of the commission of the enumerated offenses and shall not
42 include any information relating to the mental state of the patient or the
43 circumstances of his or her treatment unless relevant to the crime involved.

1 This subdivision shall not be construed as an exception to, or in any other way
2 affecting, the provisions of Article 7 (commencing with Section 1010) of Chapter
3 4 of Division 8 of the Evidence Code, or Chapter 11 (commencing with Section
4 15600) and Chapter 13 (commencing with Section 15750) of Part 3 of Division 9.

5 (q) To the Youth Authority and Adult Correctional Agency or any component
6 thereof, as necessary to the administration of justice.

7 (r) To an agency mandated to investigate a report of abuse filed pursuant to
8 either Section 11164 of the Penal Code or Section 15630 of the Welfare and
9 Institutions Code for the purposes of either a mandated or voluntary report or
10 when those agencies request information in the course of conducting their
11 investigation.

12 (s) When a person with developmental disabilities, or the parent, guardian, or
13 conservator of a person with developmental disabilities who lacks capacity to
14 consent, fails to grant or deny a request by a regional center or state developmental
15 center to release information or records relating to the person with developmental
16 disabilities within a reasonable period of time, the director of the regional or
17 developmental center, or his or her designee, may release information or records
18 on behalf of that person provided both of the following conditions are met:

19 (1) Release of the information or records is deemed necessary to protect the
20 person's health, safety, or welfare.

21 (2) The person, or the person's parent, guardian, or conservator, has been
22 advised annually in writing of the policy of the regional center or state
23 developmental center for release of confidential client information or records
24 when the person with developmental disabilities, or the person's parent, guardian,
25 or conservator, fails to respond to a request for release of the information or
26 records within a reasonable period of time. A statement of policy contained in the
27 client's individual program plan shall be deemed to comply with the notice
28 requirement of this paragraph.

29 (t)(1) When an employee is served with a notice of adverse action, as defined in
30 Section 19570 of the Government Code, the following information and records
31 may be released:

32 (A) All information and records that the appointing authority relied upon in
33 issuing the notice of adverse action.

34 (B) All other information and records that are relevant to the adverse action, or
35 that would constitute relevant evidence as defined in Section 210 of the Evidence
36 Code.

37 (C) The information described in subparagraphs (A) and (B) may be released
38 only if both of the following conditions are met:

39 (i) The appointing authority has provided written notice to the consumer and the
40 consumer's legal representative or, if the consumer has no legal representative or
41 if the legal representative is a state agency, to the clients' rights advocate, and the
42 consumer, the consumer's legal representative, or the clients' rights advocate has
43 not objected in writing to the appointing authority within five business days of

1 receipt of the notice, or the appointing authority, upon review of the objection has
2 determined that the circumstances on which the adverse action is based are
3 egregious or threaten the health, safety, or life of the consumer or other consumers
4 and without the information the adverse action could not be taken.

5 (ii) The appointing authority, the person against whom the adverse action has
6 been taken, and the person's representative, if any, have entered into a stipulation
7 that does all of the following:

8 (I) Prohibits the parties from disclosing or using the information or records for
9 any purpose other than the proceedings for which the information or records were
10 requested or provided.

11 (II) Requires the employee and the employee's legal representative to return to
12 the appointing authority all records provided to them under this subdivision,
13 including, but not limited to, all records and documents or copies thereof that are
14 no longer in the possession of the employee or the employee's legal representative
15 because they were from any source containing confidential information protected
16 by this section, and all copies of those records and documents, within 10 days of
17 the date that the adverse action becomes final except for the actual records and
18 documents submitted to the administrative tribunal as a component of an appeal
19 from the adverse action.

20 (III) Requires the parties to submit the stipulation to the administrative tribunal
21 with jurisdiction over the adverse action at the earliest possible opportunity.

22 (2) For the purposes of this subdivision, the State Personnel Board may, prior to
23 any appeal from adverse action being filed with it, issue a protective order, upon
24 application by the appointing authority, for the limited purpose of prohibiting the
25 parties from disclosing or using information or records for any purpose other than
26 the proceeding for which the information or records were requested or provided,
27 and to require the employee or the employee's legal representative to return to the
28 appointing authority all records provided to them under this subdivision,
29 including, but not limited to, all records and documents from any source
30 containing confidential information protected by this section, and all copies of
31 those records and documents, within 10 days of the date that the adverse action
32 becomes final, except for the actual records and documents that are no longer in
33 the possession of the employee or the employee's legal representatives because
34 they were submitted to the administrative tribunal as a component of an appeal
35 from the adverse action.

36 (3) Individual identifiers, including, but not limited to, names, social security
37 numbers, and hospital numbers, that are not necessary for the prosecution or
38 defense of the adverse action, shall not be disclosed.

39 (4) All records, documents, or other materials containing confidential
40 information protected by this section that have been submitted or otherwise
41 disclosed to the administrative agency or other person as a component of an appeal
42 from an adverse action shall, upon proper motion by the appointing authority to
43 the administrative tribunal, be placed under administrative seal and shall not,

1 thereafter, be subject to disclosure to any person or entity except upon the issuance
2 of an order of a court of competent jurisdiction.

3 (5) For purposes of this subdivision, an adverse action becomes final when the
4 employee fails to answer within the time specified in Section 19575 of the
5 Government Code, or, after filing an answer, withdraws the appeal, or, upon
6 exhaustion of the administrative appeal or of the judicial review remedies as
7 otherwise provided by law.

8 **Comment.** Subdivision (p) of Section 4514 is amended to reflect nonsubstantive
9 reorganization of the statutes governing control of deadly weapons.

10 **Welf. & Inst. Code § 5328.4 (amended). Mandatory release of patient information to law**
11 **enforcement agencies**

12 SEC. _____. Section 5328.4 of the Welfare and Institutions Code is amended to
13 read:

14 5328.4. The physician in charge of the patient, or the professional person in
15 charge of the facility or his or her designee, when he or she has probable cause to
16 believe that a patient while hospitalized has committed, or has been the victim of,
17 murder, manslaughter, mayhem, aggravated mayhem, kidnapping, carjacking,
18 robbery, assault with intent to commit a felony, arson, extortion, rape, forcible
19 sodomy, forcible oral copulation, unlawful possession of a weapon as provided in
20 ~~Section 12020~~ any provision listed in Section 16590 of the Penal Code, or escape
21 from a hospital by a mentally disordered sex offender as provided in Section 6330
22 of the Welfare and Institutions Code, shall release information about the patient to
23 governmental law enforcement agencies.

24 The physician in charge of the patient, or the professional person in charge of
25 the facility or his or her designee, when he or she has probable cause to believe
26 that a patient, while hospitalized has committed, or has been the victim of assault
27 or battery may release information about the patient to governmental law
28 enforcement agencies.

29 This section shall be limited solely to information directly relating to the factual
30 circumstances of the commission of the enumerated offenses and shall not include
31 any information relating to the mental state of the patient or the circumstances of
32 his or her voluntary or involuntary admission, commitment, or treatment.

33 This section shall not be construed as an exception to or in any other way
34 affecting the provisions of Article 7 (commencing with Section 1010) of Chapter 4
35 of Division 8 of the Evidence Code.

36 **Comment.** Section 5328.4 is amended to reflect nonsubstantive reorganization of the statutes
37 governing control of deadly weapons.

38 **Welf. & Inst. Code § 6500 (amended). Commitment of persons dangerous to self or others**

39 SEC. _____. Section 6500 of the Welfare and Institutions Code is amended to
40 read:

41 6500. On and after July 1, 1971, no mentally retarded person may be committed
42 to the State Department of Developmental Services pursuant to this article, unless

1 he or she is a danger to himself or herself, or others. For the purposes of this
2 article, dangerousness to self or others shall be considered to include, but not be
3 limited to, a finding of incompetence to stand trial pursuant to the provisions of
4 Chapter 6 (commencing with Section 1367) of Title 10 of Part 2 of the Penal Code
5 when the defendant has been charged with murder, mayhem, aggravated mayhem,
6 a violation of Section 207, 209, or 209.5 of the Penal Code in which the victim
7 suffers intentionally inflicted great bodily injury, robbery perpetrated by torture or
8 by a person armed with a dangerous or deadly weapon or in which the victim
9 suffers great bodily injury, carjacking perpetrated by torture or by a person armed
10 with a dangerous or deadly weapon or in which the victim suffers great bodily
11 injury, a violation of subdivision (b) of Section 451 of the Penal Code, a violation
12 of paragraph (1) or (2) of subdivision (a) of Section 262 or paragraph (2) or (3) of
13 subdivision (a) of Section 261 of the Penal Code, a violation of Section 288 of the
14 Penal Code, any of the following acts when committed by force, violence, duress,
15 menace, fear of immediate and unlawful bodily injury on the victim or another
16 person: a violation of paragraph (1) or (2) of subdivision (a) of Section 262 of the
17 Penal Code, a violation of Section 264.1, 286, or 288a of the Penal Code, or a
18 violation of subdivision (a) of Section 289 of the Penal Code; a violation of
19 Section 459 of the Penal Code in the first degree, assault with intent to commit
20 murder, a violation of Section 220 of the Penal Code in which the victim suffers
21 great bodily injury, a violation of Section ~~12303.1, 12303.3, 12308, 12309, or~~
22 ~~12310~~ 18725, 18740, 18745, 18750, or 18755 of the Penal Code, or if the
23 defendant has been charged with a felony involving death, great bodily injury, or
24 an act which poses a serious threat of bodily harm to another person.

25 If the mentally retarded person is in the care or treatment of a state hospital,
26 developmental center, or other facility at the time a petition for commitment is
27 filed pursuant to this article, proof of a recent overt act while in the care and
28 treatment of a state hospital, developmental center, or other facility is not required
29 in order to find that the person is a danger to self or others.

30 Any order of commitment made pursuant to this article shall expire
31 automatically one year after the order of commitment is made. This section shall
32 not be construed to prohibit any party enumerated in Section 6502 from filing
33 subsequent petitions for additional periods of commitment. In the event
34 subsequent petitions are filed, the procedures followed shall be the same as with
35 an initial petition for commitment.

36 In any proceedings conducted under the authority of this article, the alleged
37 mentally retarded person shall be informed of his or her right to counsel by the
38 court, and if the person does not have an attorney for the proceedings, the court
39 shall immediately appoint the public defender or other attorney to represent him or
40 her. The person shall pay the cost for the legal services if he or she is able to do so.
41 At any judicial proceeding under the provisions of this article, allegations that a
42 person is mentally retarded and a danger to himself or herself or to others shall be

1 presented by the district attorney for the county unless the board of supervisors, by
2 ordinance or resolution, delegates this authority to the county counsel.

3 **Comment.** Section 6500 is amended to reflect nonsubstantive reorganization of the statutes
4 governing control of deadly weapons.

5 **Welf. & Inst. Code § 8100 (amended). Weapons restrictions on patients and other persons**

6 SEC. ____ . Section 8100 of the Welfare and Institutions Code is amended to
7 read:

8 8100. (a) A person shall not have in his or her possession or under his or her
9 custody or control, or purchase or receive, or attempt to purchase or receive, any
10 firearms whatsoever or any other deadly weapon, if on or after January 1, 1992, he
11 or she has been admitted to a facility and is receiving inpatient treatment and, in
12 the opinion of the attending health professional who is primarily responsible for
13 the patient's treatment of a mental disorder, is a danger to self or others, as
14 specified by Section 5150, 5250, or 5300, even though the patient has consented to
15 that treatment. A person is not subject to this subdivision once he or she is
16 discharged from the facility.

17 (b)(1) A person shall not have in his or her possession or under his or her
18 custody or control, or purchase or receive, or attempt to purchase or receive, any
19 firearms whatsoever or any other deadly weapon for a period of six months
20 whenever, on or after January 1, 1992, he or she communicates to a licensed
21 psychotherapist, as defined in subdivisions (a) to (e), inclusive, of Section 1010 of
22 the Evidence Code, a serious threat of physical violence against a reasonably
23 identifiable victim or victims. The six-month period shall commence from the date
24 that the licensed psychotherapist reports to the local law enforcement agency the
25 identity of the person making the communication. The prohibition provided for in
26 this subdivision shall not apply unless the licensed psychotherapist notifies a local
27 law enforcement agency of the threat by that person. The person, however, may
28 own, possess, have custody or control over, or receive or purchase any firearm if a
29 superior court, pursuant to paragraph (3) and upon petition of the person, has
30 found, by a preponderance of the evidence, that the person is likely to use firearms
31 or other deadly weapons in a safe and lawful manner.

32 (2) Upon receipt of the report from the local law enforcement agency pursuant
33 to subdivision (c) of Section 8105, the Department of Justice shall notify by
34 certified mail, return receipt requested, a person subject to this subdivision of the
35 following:

36 (A) That he or she is prohibited from possessing, having custody or control over,
37 receiving, or purchasing any firearm or other deadly weapon for a period of six
38 months commencing from the date that the licensed psychotherapist reports to the
39 local law enforcement agency the identity of the person making the
40 communication. The notice shall state the date when the prohibition commences
41 and ends.

1 (B) That he or she may petition a court, as provided in this subdivision, for an
2 order permitting the person to own, possess, control, receive, or purchase a
3 firearm.

4 (3) Any person who is subject to paragraph (1) may petition the superior court of
5 his or her county of residence for an order that he or she may own, possess, have
6 custody or control over, receive, or purchase firearms. At the time the petition is
7 filed, the clerk of the court shall set a hearing date and notify the person, the
8 Department of Justice, and the district attorney. The people of the State of
9 California shall be the respondent in the proceeding and shall be represented by
10 the district attorney. Upon motion of the district attorney, or upon its own motion,
11 the superior court may transfer the petition to the county in which the person
12 resided at the time of the statements, or the county in which the person made the
13 statements. Within seven days after receiving notice of the petition, the
14 Department of Justice shall file copies of the reports described in Section 8105
15 with the superior court. The reports shall be disclosed upon request to the person
16 and to the district attorney. The district attorney shall be entitled to a continuance
17 of the hearing to a date of not less than 14 days after the district attorney is
18 notified of the hearing date by the clerk of the court. The court, upon motion of the
19 petitioner establishing that confidential information is likely to be discussed during
20 the hearing that would cause harm to the person, shall conduct the hearing in
21 camera with only the relevant parties present, unless the court finds that the public
22 interest would be better served by conducting the hearing in public.
23 Notwithstanding any other provision of law, declarations, police reports, including
24 criminal history information, and any other material and relevant evidence that is
25 not excluded under Section 352 of the Evidence Code, shall be admissible at the
26 hearing under this paragraph. If the court finds by a preponderance of the evidence
27 that the person would be likely to use firearms in a safe and lawful manner, the
28 court shall order that the person may have custody or control over, receive,
29 possess, or purchase firearms. A copy of the order shall be submitted to the
30 Department of Justice. Upon receipt of the order, the department shall delete any
31 reference to the prohibition against firearms from the person's state summary
32 criminal history information.

33 (c) "Discharge," for the purposes of this section, does not include a leave of
34 absence from a facility.

35 (d) "Attending health care professional," as used in this section, means the
36 licensed health care professional primarily responsible for the person's treatment
37 who is qualified to make the decision that the person has a mental disorder and has
38 probable cause to believe that the person is a danger to self or others.

39 (e) "Deadly weapon," as used in this section and in Sections 8101, 8102, and
40 8103, means any weapon, the possession or concealed carrying of which is
41 prohibited by ~~Section 12020~~ any provision listed in Section 16590 of the Penal
42 Code.

1 (f) “Danger to self,” as used in subdivision (a), means a voluntary person who
2 has made a serious threat of, or attempted, suicide with the use of a firearm or
3 other deadly weapon.

4 (g) A violation of subdivision (a) of, or paragraph (1) of subdivision (b) of, this
5 section shall be a public offense, punishable by imprisonment in the state prison,
6 or in a county jail for not more than one year, by a fine not exceeding one
7 thousand dollars (\$1,000), or by both that imprisonment and fine.

8 (h) The prohibitions set forth in this section shall be in addition to those set forth
9 in Section 8103.

10 (i) Any person admitted and receiving treatment prior to January 1, 1992, shall
11 be governed by this section, as amended by Chapter 1090 of the Statutes of 1990,
12 until discharged from the facility.

13 **Comment.** Subdivision (e) of Section 8100 is amended to reflect nonsubstantive
14 reorganization of the statutes governing control of deadly weapons.

15 **Welf. & Inst. Code § 8103 (amended). Weapons restrictions on specified persons**

16 SEC. _____. Section 8103 of the Welfare and Institutions Code is amended to
17 read:

18 8103. (a)(1) No person who after October 1, 1955, has been adjudicated by a
19 court of any state to be a danger to others as a result of a mental disorder or mental
20 illness, or who has been adjudicated to be a mentally disordered sex offender, shall
21 purchase or receive, or attempt to purchase or receive, or have in his or her
22 possession, custody, or control any firearm or any other deadly weapon unless
23 there has been issued to the person a certificate by the court of adjudication upon
24 release from treatment or at a later date stating that the person may possess a
25 firearm or any other deadly weapon without endangering others, and the person
26 has not, subsequent to the issuance of the certificate, again been adjudicated by a
27 court to be a danger to others as a result of a mental disorder or mental illness.

28 (2) The court shall immediately notify the Department of Justice of the court
29 order finding the individual to be a person described in paragraph (1). The court
30 shall also notify the Department of Justice of any certificate issued as described in
31 paragraph (1).

32 (b)(1) No person who has been found, pursuant to Section 1026 of the Penal
33 Code or the law of any other state or the United States, not guilty by reason of
34 insanity of murder, mayhem, a violation of Section 207, 209, or 209.5 of the Penal
35 Code in which the victim suffers intentionally inflicted great bodily injury,
36 carjacking or robbery in which the victim suffers great bodily injury, a violation of
37 Section 451 or 452 of the Penal Code involving a trailer coach, as defined in
38 Section 635 of the Vehicle Code, or any dwelling house, a violation of paragraph
39 (1) or (2) of subdivision (a) of Section 262 or paragraph (2) or (3) of subdivision
40 (a) of Section 261 of the Penal Code, a violation of Section 459 of the Penal Code
41 in the first degree, assault with intent to commit murder, a violation of Section 220
42 of the Penal Code in which the victim suffers great bodily injury, a violation of

1 Section ~~12303.1, 12303.2, 12303.3, 12308, 12309, or 12310~~ 18715, 18725, 18740,
2 18745, 18750, or 18755 of the Penal Code, or of a felony involving death, great
3 bodily injury, or an act which poses a serious threat of bodily harm to another
4 person, or a violation of the law of any other state or the United States that
5 includes all the elements of any of the above felonies as defined under California
6 law, shall purchase or receive, or attempt to purchase or receive, or have in his or
7 her possession or under his or her custody or control any firearm or any other
8 deadly weapon.

9 (2) The court shall immediately notify the Department of Justice of the court
10 order finding the person to be a person described in paragraph (1).

11 (c)(1) No person who has been found, pursuant to Section 1026 of the Penal
12 Code or the law of any other state or the United States, not guilty by reason of
13 insanity of any crime other than those described in subdivision (b) shall purchase
14 or receive, or attempt to purchase or receive, or shall have in his or her possession,
15 custody, or control any firearm or any other deadly weapon unless the court of
16 commitment has found the person to have recovered sanity, pursuant to Section
17 1026.2 of the Penal Code or the law of any other state or the United States.

18 (2) The court shall immediately notify the Department of Justice of the court
19 order finding the person to be a person described in paragraph (1). The court shall
20 also notify the Department of Justice when it finds that the person has recovered
21 his or her sanity.

22 (d)(1) No person found by a court to be mentally incompetent to stand trial,
23 pursuant to Section 1370 or 1370.1 of the Penal Code or the law of any other state
24 or the United States, shall purchase or receive, or attempt to purchase or receive,
25 or shall have in his or her possession, custody, or control any firearm or any other
26 deadly weapon, unless there has been a finding with respect to the person of
27 restoration to competence to stand trial by the committing court, pursuant to
28 Section 1372 of the Penal Code or the law of any other state or the United States.

29 (2) The court shall immediately notify the Department of Justice of the court
30 order finding the person to be mentally incompetent as described in paragraph (1).
31 The court shall also notify the Department of Justice when it finds that the person
32 has recovered his or her competence.

33 (e)(1) No person who has been placed under conservatorship by a court,
34 pursuant to Section 5350 or the law of any other state or the United States, because
35 the person is gravely disabled as a result of a mental disorder or impairment by
36 chronic alcoholism shall purchase or receive, or attempt to purchase or receive, or
37 shall have in his or her possession, custody, or control any firearm or any other
38 deadly weapon while under the conservatorship if, at the time the conservatorship
39 was ordered or thereafter, the court which imposed the conservatorship found that
40 possession of a firearm or any other deadly weapon by the person would present a
41 danger to the safety of the person or to others. Upon placing any person under
42 conservatorship, and prohibiting firearm or any other deadly weapon possession
43 by the person, the court shall notify the person of this prohibition.

1 (2) The court shall immediately notify the Department of Justice of the court
2 order placing the person under conservatorship and prohibiting firearm or any
3 other deadly weapon possession by the person as described in paragraph (1). The
4 notice shall include the date the conservatorship was imposed and the date the
5 conservatorship is to be terminated. If the conservatorship is subsequently
6 terminated before the date listed in the notice to the Department of Justice or the
7 court subsequently finds that possession of a firearm or any other deadly weapon
8 by the person would no longer present a danger to the safety of the person or
9 others, the court shall immediately notify the Department of Justice.

10 (3) All information provided to the Department of Justice pursuant to paragraph
11 (2) shall be kept confidential, separate, and apart from all other records maintained
12 by the Department of Justice, and shall be used only to determine eligibility to
13 purchase or possess firearms or other deadly weapons. Any person who knowingly
14 furnishes that information for any other purpose is guilty of a misdemeanor. All
15 the information concerning any person shall be destroyed upon receipt by the
16 Department of Justice of notice of the termination of conservatorship as to that
17 person pursuant to paragraph (2).

18 (f)(1) No person who has been (A) taken into custody as provided in Section
19 5150 because that person is a danger to himself, herself, or to others, (B) assessed
20 within the meaning of Section 5151, and (C) admitted to a designated facility
21 within the meaning of Sections 5151 and 5152 because that person is a danger to
22 himself, herself, or others, shall own, possess, control, receive, or purchase, or
23 attempt to own, possess, control, receive, or purchase any firearm for a period of
24 five years after the person is released from the facility. A person described in the
25 preceding sentence, however, may own, possess, control, receive, or purchase, or
26 attempt to own, possess, control, receive, or purchase any firearm if the superior
27 court has, pursuant to paragraph (5), found that the People of the State of
28 California have not met their burden pursuant to paragraph (6).

29 (2) For each person subject to this subdivision, the facility shall immediately, on
30 the date of admission, submit a report to the Department of Justice, on a form
31 prescribed by the Department of Justice, containing information that includes, but
32 is not limited to, the identity of the person and the legal grounds upon which the
33 person was admitted to the facility.

34 Any report prescribed by this subdivision shall be confidential, except for
35 purposes of the court proceedings described in this subdivision and for
36 determining the eligibility of the person to own, possess, control, receive, or
37 purchase a firearm.

38 (3) Prior to, or concurrent with, the discharge, the facility shall inform a person
39 subject to this subdivision that he or she is prohibited from owning, possessing,
40 controlling, receiving, or purchasing any firearm for a period of five years.
41 Simultaneously, the facility shall inform the person that he or she may request a
42 hearing from a court, as provided in this subdivision, for an order permitting the
43 person to own, possess, control, receive, or purchase a firearm. The facility shall

1 provide the person with a form for a request for a hearing. The Department of
2 Justice shall prescribe the form. Where the person requests a hearing at the time of
3 discharge, the facility shall forward the form to the superior court unless the
4 person states that he or she will submit the form to the superior court.

5 (4) The Department of Justice shall provide the form upon request to any person
6 described in paragraph (1). The Department of Justice shall also provide the form
7 to the superior court in each county. A person described in paragraph (1) may
8 make a single request for a hearing at any time during the five-year period. The
9 request for hearing shall be made on the form prescribed by the department or in a
10 document that includes equivalent language.

11 (5) Any person who is subject to paragraph (1) who has requested a hearing
12 from the superior court of his or her county of residence for an order that he or she
13 may own, possess, control, receive, or purchase firearms shall be given a hearing.
14 The clerk of the court shall set a hearing date and notify the person, the
15 Department of Justice, and the district attorney. The People of the State of
16 California shall be the plaintiff in the proceeding and shall be represented by the
17 district attorney. Upon motion of the district attorney, or on its own motion, the
18 superior court may transfer the hearing to the county in which the person resided
19 at the time of his or her detention, the county in which the person was detained, or
20 the county in which the person was evaluated or treated. Within seven days after
21 the request for a hearing, the Department of Justice shall file copies of the reports
22 described in this section with the superior court. The reports shall be disclosed
23 upon request to the person and to the district attorney. The court shall set the
24 hearing within 30 days of receipt of the request for a hearing. Upon showing good
25 cause, the district attorney shall be entitled to a continuance not to exceed 14 days
26 after the district attorney was notified of the hearing date by the clerk of the court.
27 If additional continuances are granted, the total length of time for continuances
28 shall not exceed 60 days. The district attorney may notify the county mental health
29 director of the hearing who shall provide information about the detention of the
30 person that may be relevant to the court and shall file that information with the
31 superior court. That information shall be disclosed to the person and to the district
32 attorney. The court, upon motion of the person subject to paragraph (1)
33 establishing that confidential information is likely to be discussed during the
34 hearing that would cause harm to the person, shall conduct the hearing in camera
35 with only the relevant parties present, unless the court finds that the public interest
36 would be better served by conducting the hearing in public. Notwithstanding any
37 other law, declarations, police reports, including criminal history information, and
38 any other material and relevant evidence that is not excluded under Section 352 of
39 the Evidence Code, shall be admissible at the hearing under this section.

40 (6) The people shall bear the burden of showing by a preponderance of the
41 evidence that the person would not be likely to use firearms in a safe and lawful
42 manner.

1 (7) If the court finds at the hearing set forth in paragraph (5) that the people have
2 not met their burden as set forth in paragraph (6), the court shall order that the
3 person shall not be subject to the five-year prohibition in this section on the
4 ownership, control, receipt, possession or purchase of firearms. A copy of the
5 order shall be submitted to the Department of Justice. Upon receipt of the order,
6 the Department of Justice shall delete any reference to the prohibition against
7 firearms from the person's state mental health firearms prohibition system
8 information.

9 (8) Where the district attorney declines or fails to go forward in the hearing, the
10 court shall order that the person shall not be subject to the five-year prohibition
11 required by this subdivision on the ownership, control, receipt, possession, or
12 purchase of firearms. A copy of the order shall be submitted to the Department of
13 Justice. Upon receipt of the order, the Department of Justice shall, within 15 days,
14 delete any reference to the prohibition against firearms from the person's state
15 mental health firearms prohibition system information.

16 (9) Nothing in this subdivision shall prohibit the use of reports filed pursuant to
17 this section to determine the eligibility of persons to own, possess, control,
18 receive, or purchase a firearm if the person is the subject of a criminal
19 investigation, a part of which involves the ownership, possession, control, receipt,
20 or purchase of a firearm.

21 (g)(1) No person who has been certified for intensive treatment under Section
22 5250, 5260, or 5270.15 shall own, possess, control, receive, or purchase, or
23 attempt to own, possess, control, receive, or purchase any firearm for a period of
24 five years.

25 Any person who meets the criteria contained in subdivision (e) or (f) who is
26 released from intensive treatment shall nevertheless, if applicable, remain subject
27 to the prohibition contained in subdivision (e) or (f).

28 (2) For each person certified for intensive treatment under paragraph (1), the
29 facility shall immediately submit a report to the Department of Justice, on a form
30 prescribed by the department, containing information regarding the person,
31 including, but not limited to, the legal identity of the person and the legal grounds
32 upon which the person was certified. Any report submitted pursuant to this
33 paragraph shall only be used for the purposes specified in paragraph (2) of
34 subdivision (f).

35 (3) Prior to, or concurrent with, the discharge of each person certified for
36 intensive treatment under paragraph (1), the facility shall inform the person of that
37 information specified in paragraph (3) of subdivision (f).

38 (4) Any person who is subject to paragraph (1) may petition the superior court of
39 his or her county of residence for an order that he or she may own, possess,
40 control, receive, or purchase firearms. At the time the petition is filed, the clerk of
41 the court shall set a hearing date and notify the person, the Department of Justice,
42 and the district attorney. The People of the State of California shall be the
43 respondent in the proceeding and shall be represented by the district attorney.

1 Upon motion of the district attorney, or on its own motion, the superior court may
2 transfer the petition to the county in which the person resided at the time of his or
3 her detention, the county in which the person was detained, or the county in which
4 the person was evaluated or treated. Within seven days after receiving notice of
5 the petition, the Department of Justice shall file copies of the reports described in
6 this section with the superior court. The reports shall be disclosed upon request to
7 the person and to the district attorney. The district attorney shall be entitled to a
8 continuance of the hearing to a date of not less than 14 days after the district
9 attorney was notified of the hearing date by the clerk of the court. The district
10 attorney may notify the county mental health director of the petition, and the
11 county mental health director shall provide information about the detention of the
12 person that may be relevant to the court and shall file that information with the
13 superior court. That information shall be disclosed to the person and to the district
14 attorney. The court, upon motion of the person subject to paragraph (1)
15 establishing that confidential information is likely to be discussed during the
16 hearing that would cause harm to the person, shall conduct the hearing in camera
17 with only the relevant parties present, unless the court finds that the public interest
18 would be better served by conducting the hearing in public. Notwithstanding any
19 other provision of law, any declaration, police reports, including criminal history
20 information, and any other material and relevant evidence that is not excluded
21 under Section 352 of the Evidence Code, shall be admissible at the hearing under
22 this section. If the court finds by a preponderance of the evidence that the person
23 would be likely to use firearms in a safe and lawful manner, the court may order
24 that the person may own, control, receive, possess, or purchase firearms. A copy
25 of the order shall be submitted to the Department of Justice. Upon receipt of the
26 order, the Department of Justice shall delete any reference to the prohibition
27 against firearms from the person's state mental health firearms prohibition system
28 information.

29 (h) For all persons identified in subdivisions (f) and (g), facilities shall report to
30 the Department of Justice as specified in those subdivisions, except facilities shall
31 not report persons under subdivision (g) if the same persons previously have been
32 reported under subdivision (f).

33 Additionally, all facilities shall report to the Department of Justice upon the
34 discharge of persons from whom reports have been submitted pursuant to
35 subdivision (f) or (g). However, a report shall not be filed for persons who are
36 discharged within 31 days after the date of admission.

37 (i) Every person who owns or possesses or has under his or her custody or
38 control, or purchases or receives, or attempts to purchase or receive, any firearm or
39 any other deadly weapon in violation of this section shall be punished by
40 imprisonment in the state prison or in a county jail for not more than one year.

41 (j) "Deadly weapon," as used in this section, has the meaning prescribed by
42 Section 8100.

1 **Comment.** Subdivision (b) of Section 8103 is amended to reflect nonsubstantive
2 reorganization of the statutes governing control of deadly weapons.

3 For guidance in applying this section, see Section 16015 (determining existence of prior
4 conviction).

5 **Welf. & Inst. Code § 8104 (amended). Department of Mental Health records requested by**
6 **Department of Justice**

7 SEC. _____. Section 8104 of the Welfare and Institutions Code is amended to
8 read:

9 8104. The State Department of Mental Health shall maintain in a convenient
10 central location and shall make available to the Department of Justice those
11 records that the State Department of Mental Health has in its possession that are
12 necessary to identify persons who come within Section 8100 or 8103. These
13 records shall be made available to the Department of Justice upon request. The
14 Department of Justice shall make these requests only with respect to its duties with
15 regard to applications for permits for, or to carry, or the possession, purchase, or
16 transfer of, explosives as defined in Section 12000 of the Health and Safety Code,
17 devices defined in Section ~~12001~~ 16250, 16530, or 16640 of the Penal Code, in
18 subdivisions (a) to (d), inclusive, of Section 16520 of the Penal Code, or in
19 subdivision (a) of Section 16840 of the Penal Code, machineguns as defined in
20 Section ~~12200~~ 16880 of the Penal Code, short-barreled shotguns or short-barreled
21 rifles as defined in Section ~~12020~~ Sections 17170 and 17180 of the Penal Code,
22 assault weapons as defined in Section ~~12276~~ 30510 of the Penal Code, and
23 destructive devices as defined in Section ~~12301~~ 16460 of the Penal Code, or to
24 determine the eligibility of a person to acquire, carry, or possess a firearm,
25 explosive, or destructive device by a person who is subject to a criminal
26 investigation, a part of which involves the acquisition, carrying, or possession of a
27 firearm by that person. These records shall not be furnished or made available to
28 any person unless the department determines that disclosure of any information in
29 the records is necessary to carry out its duties with respect to applications for
30 permits for, or to carry, or the possession, purchase, or transfer of, explosives,
31 destructive devices, devices as defined in Section ~~12001~~ 16250, 16530, or 16640
32 of the Penal Code, in subdivisions (a) to (d), inclusive, of Section 16520 of the
33 Penal Code, or in subdivision (a) of Section 16840 of the Penal Code, short-
34 barreled shotguns, short-barreled rifles, assault weapons, and machineguns, or to
35 determine the eligibility of a person to acquire, carry, or possess a firearm,
36 explosive, or destructive device by a person who is subject to a criminal
37 investigation, a part of which involves the acquisition, carrying, or possession of a
38 firearm by that person.

39 **Comment.** Section 8104 is amended to reflect nonsubstantive reorganization of the statutes
40 governing control of deadly weapons.

41 **Staff Note.** Welfare and Institutions Code Section 8104 refers to “assault weapons *as defined*
42 *in Section 12276 of the Penal Code ...*” (Emphasis added.) There are, however, not one but two
43 provisions defining “assault weapon.” See Penal Code §§ 12276, 12276.1. It is not clear to the

1 staff why Welfare and Institutions Code Section 8104 refers to only one of these provisions. The
2 omission could be deliberate or it could be accidental.

3 For purposes of this nonsubstantive study, the Commission should preserve the status quo, so
4 as to avoid any risk of a substantive change. Thus, the amendment shown above would replace
5 the reference to Section 12276 with a reference to proposed Section 30510, which would continue
6 Section 12276. No reference to the provision that would continue Section 12276.1 (proposed
7 Section 30515) would be included.

8 The issue discussed above might be worth exploring in the future, in a different study. Unless
9 the Commission otherwise directs, we will add this issue to the Commission’s list of “Minor
10 Clean-up Issues for Possible Future Legislative Attention.”

11 **Welf. & Inst. Code § 15657.03 (amended). Protective orders for elder or dependant adult**
12 **and other specified persons**

13 SEC. ____ . Section 15657.03 of the Welfare and Institutions Code is amended to
14 read:

15 15657.03. (a) An elder or dependent adult who has suffered abuse as defined in
16 Section 15610.07 may seek protective orders as provided in this section.

17 (b) For the purposes of this section, “protective order” means an order that
18 includes any of the following restraining orders, whether issued ex parte, after
19 notice and hearing, or in a judgment:

20 (1) An order enjoining a party from abusing, intimidating, molesting, attacking,
21 striking, stalking, threatening, sexually assaulting, battering, harassing,
22 telephoning, including, but not limited to, annoying telephone calls as described in
23 Section 653m of the Penal Code, destroying personal property, contacting, either
24 directly or indirectly, by mail or otherwise, or coming within a specified distance
25 of, or disturbing the peace of the petitioner, and, in the discretion of the court, on a
26 showing of good cause, of other named family or household members or a
27 conservator, if any, of the petitioner.

28 (2) An order excluding a party from the petitioner’s residence or dwelling,
29 except that this order shall not be issued if legal or equitable title to, or lease of,
30 the residence or dwelling is in the sole name of the party to be excluded, or is in
31 the name of the party to be excluded and any other party besides the petitioner.

32 (3) An order enjoining a party from specified behavior that the court determines
33 is necessary to effectuate orders described in paragraph (1) or (2).

34 (c) An order may be issued under this section, with or without notice, to restrain
35 any person for the purpose of preventing a recurrence of abuse, if an affidavit
36 shows, to the satisfaction of the court, reasonable proof of a past act or acts of
37 abuse of the petitioning elder or dependent adult.

38 (d)(1) Upon filing a petition for protective orders under this section, the
39 petitioner may obtain a temporary restraining order in accordance with Section
40 527 of the Code of Civil Procedure, except to the extent this section provides a
41 rule that is inconsistent. The temporary restraining order may include any of the
42 protective orders described in subdivision (b). However, the court may issue an ex
43 parte order excluding a party from the petitioner’s residence or dwelling only on a
44 showing of all of the following:

1 (A) Facts sufficient for the court to ascertain that the party who will stay in the
2 dwelling has a right under color of law to possession of the premises.

3 (B) That the party to be excluded has assaulted or threatens to assault the
4 petitioner, other named family or household member of the petitioner, or
5 conservator of the petitioner.

6 (C) That physical or emotional harm would otherwise result to the petitioner,
7 other named family or household member of the petitioner, or conservator of the
8 petitioner.

9 (2) If a temporary restraining order is granted without notice, the matter shall be
10 made returnable on an order requiring cause to be shown why a permanent order
11 should not be granted, on the earliest day that the business of the court will permit,
12 but not later than 20 days or, if good cause appears to the court, 25 days from the
13 date the temporary restraining order is granted, unless the order is otherwise
14 modified or terminated by the court.

15 (e) The court may issue, upon notice and a hearing, any of the orders set forth in
16 subdivision (b). The court may issue, after notice and hearing, an order excluding
17 a person from a residence or dwelling if the court finds that physical or emotional
18 harm would otherwise result to the petitioner, other named family or household
19 member of the petitioner, or conservator of the petitioner.

20 (f) In the discretion of the court, an order issued after notice and a hearing under
21 this section may have a duration of not more than three years, subject to
22 termination or modification by further order of the court either on written
23 stipulation filed with the court or on the motion of a party. These orders may be
24 renewed upon the request of a party, either for three years or permanently, without
25 a showing of any further abuse since the issuance of the original order, subject to
26 termination or modification by further order of the court either on written
27 stipulation filed with the court or on the motion of a party. The failure to state the
28 expiration date on the face of the form creates an order with a duration of three
29 years from the date of issuance.

30 (g) Upon the filing of a petition for protective orders under this section, the
31 respondent shall be personally served with a copy of the petition, notice of the
32 hearing or order to show cause, temporary restraining order, if any, and any
33 affidavits in support of the petition. Service shall be made at least five days before
34 the hearing. The court may, on motion of the petitioner or on its own motion,
35 shorten the time for service on the respondent.

36 (h) The court may, upon the filing of an affidavit by the applicant that the
37 respondent could not be served within the time required by statute, reissue an
38 order previously issued and dissolved by the court for failure to serve the
39 respondent. The reissued order shall be made returnable on the earliest day that the
40 business of the court will permit, but not later than 20 days or, if good cause
41 appears to the court, 25 days from the date of reissuance. The reissued order shall
42 state on its face the date of expiration of the order.

1 (i)(1) If a person named in an order issued under this section, after a hearing, has
2 not been served personally with the order but has received actual notice of the
3 existence and substance of the order through personal appearance in court to hear
4 the terms of the order from the court, no additional proof of service is required for
5 enforcement of the order.

6 (2) If the person named in a temporary restraining order is personally served
7 with the order and notice of hearing with respect to a restraining order or
8 protective order based thereon, but the person does not appear at the hearing,
9 either personally or by counsel, and the terms and conditions of the restraining
10 order or protective order are identical to the temporary restraining order, except
11 for the duration of the order, then the restraining order or protective order may be
12 served on the person by first-class mail sent to that person at the most current
13 address for the person available to the court.

14 (3) The judicial form for orders issued pursuant to this subdivision shall contain
15 a statement in substantially the following form: “NO ADDITIONAL PROOF OF
16 SERVICE IS REQUIRED IF THE FACE OF THIS FORM INDICATES THAT
17 BOTH PARTIES WERE PERSONALLY PRESENT AT THE HEARING
18 WHERE THE ORDER WAS ISSUED. IF YOU HAVE BEEN PERSONALLY
19 SERVED WITH A TEMPORARY RESTRAINING ORDER OR EMERGENCY
20 PROTECTIVE ORDER AND NOTICE OF HEARING, BUT YOU DO NOT
21 APPEAR AT THE HEARING EITHER IN PERSON OR BY COUNSEL, AND
22 A RESTRAINING ORDER OR PROTECTIVE ORDER IS ISSUED AT THE
23 HEARING THAT DOES NOT DIFFER FROM THE PRIOR TEMPORARY
24 RESTRAINING ORDER OR EMERGENCY PROTECTIVE ORDER, A COPY
25 OF THE ORDER WILL BE SERVED UPON YOU BY MAIL AT THE
26 FOLLOWING ADDRESS _____. IF THAT ADDRESS IS NOT CORRECT OR
27 YOU WISH TO VERIFY THAT THE TEMPORARY OR EMERGENCY
28 ORDER WAS MADE PERMANENT WITHOUT SUBSTANTIVE CHANGE,
29 CALL THE CLERK OF THE COURT AT _____.”

30 (j)(1) The court shall order the petitioner or the attorney for the petitioner to
31 deliver, or the clerk of the court to mail, a copy of an order issued under this
32 section, or a reissuance, extension, modification, or termination of the order, and
33 any subsequent proof of service, by the close of the business day on which the
34 order, reissuance, extension, modification, or termination was made, to each local
35 law enforcement agency designated by the petitioner or the attorney for the
36 petitioner having jurisdiction over the residence of the petitioner, and to any
37 additional law enforcement agencies within the court’s discretion as are requested
38 by the petitioner. Each appropriate law enforcement agency shall make available
39 information as to the existence and current status of these orders to law
40 enforcement officers responding to the scene of reported abuse.

41 (2) An order issued under this section shall, on request of the petitioner, be
42 served on the respondent, whether or not the respondent has been taken into
43 custody, by any law enforcement officer who is present at the scene of reported

1 abuse involving the parties to the proceeding. The petitioner shall provide the
2 officer with an endorsed copy of the order and a proof of service, which the officer
3 shall complete and send to the issuing court.

4 (3) Upon receiving information at the scene of an incident of abuse that a
5 protective order has been issued under this section, or that a person who has been
6 taken into custody is the respondent to that order, if the protected person cannot
7 produce an endorsed copy of the order, a law enforcement officer shall
8 immediately attempt to verify the existence of the order.

9 (4) If the law enforcement officer determines that a protective order has been
10 issued, but not served, the officer shall immediately notify the respondent of the
11 terms of the order and where a written copy of the order can be obtained, and the
12 officer shall at that time also enforce the order. The law enforcement officer's
13 verbal notice of the terms of the order shall constitute service of the order and is
14 sufficient notice for the purposes of this section and for the purposes of Section
15 273.6 of the Penal Code.

16 (k) Nothing in this section shall preclude either party from representation by
17 private counsel or from appearing on the party's own behalf.

18 (l) There is no filing fee for a petition, response, or paper seeking the reissuance,
19 modification, or enforcement of a protective order filed in a proceeding brought
20 pursuant to this section.

21 (m) Pursuant to paragraph (4) of subdivision (b) of Section 6103.2 of the
22 Government Code, a petitioner shall not be required to pay a fee for law
23 enforcement to serve an order issued under this chapter.

24 (n) The prevailing party in any action brought under this section may be
25 awarded court costs and attorney's fees, if any.

26 (o)(1) An order issued pursuant to this section shall prohibit the person subject
27 to it from owning, possessing, purchasing, receiving, or attempting to purchase or
28 receive, a firearm.

29 (2) Paragraph (1) shall not apply to a case consisting solely of financial abuse
30 unaccompanied by force, threat, harassment, intimidation, or any other form of
31 abuse.

32 (3) The court shall order a person subject to a protective order issued under this
33 section to relinquish any firearms he or she owns or possesses pursuant to Section
34 527.9 of the Code of Civil Procedure.

35 (4) Every person who owns, possesses, purchases, or receives, or attempts to
36 purchase or receive a firearm while the protective order is in effect is punishable
37 pursuant to ~~subdivision (g) of Section 12021~~ Section 29825 of the Penal Code.

38 (p) Any willful disobedience of any temporary restraining order or restraining
39 order after hearing granted under this section is punishable pursuant to Section
40 273.6 of the Penal Code.

41 (q) This section does not apply to any action or proceeding covered by Title
42 1.6C (commencing with Section 1788) of Part 4 of Division 3 of the Civil Code,
43 by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of

1 Civil Procedure, or by Division 10 (commencing with Section 6200) of the Family
2 Code. Nothing in this section shall preclude a petitioner's right to use other
3 existing civil remedies.

4 (r) The Judicial Council shall promulgate forms and instructions therefor, rules
5 for service of process, scheduling of hearings, and any other matters required by
6 this section. The petition and response forms shall be simple and concise.

7 (s) This section shall become operative on January 1, 2010.

8 **Comment.** Subdivision (o) of Section 15657.03 is amended to reflect nonsubstantive
9 reorganization of the statutes governing control of deadly weapons.

10 **Staff Note.** The text of Section 15657.03 reflects the enactment of AB 225 (Beall), 2008 Cal.
11 Stat. ch. 480, § 2, which will be operative on January 1, 2010.

12 Amendments to Section 15657.03 by the enactment of the same bill, which are to be repealed
13 on January 1, 2010, are not shown. See AB 225 (Beall), 2008 Cal. Stat. ch. 480, § 1.
