

## Memorandum 2009-15

**Nonsubstantive Reorganization of Deadly Weapon Statutes:  
Miscellaneous Corrections**

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Some of the deadly weapons material prepared for the upcoming Commission meeting has not previously been presented to the Commission. See Memoranda 2900-4, 2009-5, 2009-6, 2009-7, 2009-8, 2009-9, and 2009-11. To ensure that Commissioners and other interested persons had ample time to review that new material before the meeting, the staff released it without first incorporating the draft legislation into the disposition table for this study, a process that helps to check the work. Since then, we have completed the disposition table and found a number of mistakes.

In addition, because most of these memoranda were released before new Part 6 of the Penal Code was fully drafted, it was not possible to conform all of the cross-references in them. The staff has now completed that task.

Set out below, for each memorandum, are: (1) the corrections needed, and (2) a fully conformed version of each provision in which one or more cross-references were not previously conformed.

At the end of the memorandum is a list of the organizations presently included on the Commission's distribution list for this study. The staff **encourages input on whether any changes should be made to the distribution list before the tentative recommendation is distributed and posted to the Commission's website, and whether any other means should be used to solicit comments on the tentative recommendation.**

Unless otherwise indicated, all statutory references in this memorandum are to the Penal Code.

## MEMORANDUM 2009-4

### Corrections

The following corrections should be made in the attachment to Memorandum 2009-4:

- **Page 7, line 23.** The first sentence of the Comment to Section 30515 should be revised as follows: "Section 30515 continues former Section 12276.1(a)-(c) without substantive change."
- **Page 16, line 14.** The first sentence of the Comment to Section 30650 should be revised as follows: "Section 30650 continues former Section ~~12088(t)~~ 12280(t) without substantive change."
- **Page 20, line 38.** The first sentence of the Comment to Section 30710 should be revised as follows: "Section ~~30700~~ 30710 continues former Section 12281(i) without substantive change."

### Conforming Revisions

The following provisions in the attachment to Memorandum 2009-4 included one or more cross-references that were not conformed to reflect the proposed reorganization of the deadly weapon statutes: proposed Sections 30510, 30915-30925, 30935, 30940, 31000, and 31005. Fully conformed versions of the pertinent parts of those provisions are shown below:

#### **§ 30510. "Assault weapon"**

30510. As used in this chapter, in Sections 16110, 16780, 17000, and 27555, and in subdivision (a) of Section 30005, "assault weapon" means the following designated semiautomatic firearms:

....

#### **§ 30915. Assault weapon obtained by bequest or intestate succession**

30915. Any person who obtains title to an assault weapon registered under this article or that was possessed pursuant to subdivision (a) of Section 30630 by bequest or intestate succession shall, within 90 days, do one or more of the following:

....

(c) Obtain a permit from the Department of Justice in the same manner as specified in Article 3 (commencing with Section 32650) of Chapter 6.

....

**§ 30920. Firearm lawfully possessed before it was classified as “assault weapon”**

30920. (a) Any person who lawfully possessed a firearm subsequently declared to be an assault weapon pursuant to former Section 12276.5, or subsequently defined as an assault weapon pursuant to former Section 12276.1, shall, within 90 days, do one or more of the following:

....

(3) Obtain a permit from the Department of Justice in the same manner as specified in Article 3 (commencing with Section 32650) of Chapter 6.

....

**§ 30925. Person who moves into state with assault weapon**

30925. A person moving into this state, otherwise in lawful possession of an assault weapon, shall do one of the following:

(a) Prior to bringing the assault weapon into this state, that person shall first obtain a permit from the Department of Justice in the same manner as specified in Article 3 (commencing with Section 32650) of Chapter 6.

(b) The person shall cause the assault weapon to be delivered to a licensed gun dealer in this state in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto. If the person obtains a permit from the Department of Justice in the same manner as specified in Article 3 (commencing with Section 32650) of Chapter 6, the dealer shall redeliver that assault weapon to the person. If the licensed gun dealer is prohibited from delivering the assault weapon to a person pursuant to this section, the dealer shall possess or dispose of the assault weapon as allowed by this chapter.

**§ 30935. .50 BMG rifle obtained by bequest or intestate succession**

30935. Any person who obtains title to a .50 BMG rifle registered under this article or that was possessed pursuant to subdivision (a) of Section 30630 by bequest or intestate succession shall, within 180 days of receipt, do one or more of the following:

....

(c) Obtain a permit from the Department of Justice in the same manner as specified in Article 3 (commencing with Section 32650) of Chapter 6.

....

**§ 30940. Person who moves into state with .50 BMG rifle**

30940. A person moving into this state, otherwise in lawful possession of a .50 BMG rifle, shall do one of the following:

(a) Prior to bringing the .50 BMG rifle into this state, that person shall first obtain a permit from the Department of Justice in the

same manner as specified in Article 3 (commencing with Section 32650) of Chapter 6.

(b) The person shall cause the .50 BMG rifle to be delivered to a licensed gun dealer in this state in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto. If the person obtains a permit from the Department of Justice in the same manner as specified in Article 3 (commencing with Section 32650) of Chapter 6, the dealer shall redeliver that .50 BMG rifle to the person. If the licensed gun dealer is prohibited from delivering the .50 caliber BMG rifle to a person pursuant to this section, the dealer shall dispose of the .50 BMG rifle as allowed by this chapter.

**§ 31000. Permit for use of assault weapon or .50 BMG rifle in manner not specified in Section 30945**

31000. (a) Any person who lawfully acquired an assault weapon before June 1, 1989, or a .50 BMG rifle before January 1, 2005, and wishes to use it in a manner different than specified in Section 30945 shall first obtain a permit from the Department of Justice in the same manner as specified in Article 3 (commencing with Section 32650) of Chapter 6.

(b) Any person who lawfully acquired an assault weapon between June 1, 1989, and January 1, 1990, and wishes to keep it after January 1, 1990, shall first obtain a permit from the Department of Justice in the same manner as specified in Article 3 (commencing with Section 32650) of Chapter 6.

(c) Any person who wishes to acquire an assault weapon after January 1, 1990, or a .50 BMG rifle after January 1, 2005, shall first obtain a permit from the Department of Justice in the same manner as specified in Article 3 (commencing with Section 32650) of Chapter 6.

**§ 31005. Issuance of permits by Department of Justice**

31005. (a) ....

(b) Application for the permits, the keeping and inspection thereof, and the revocation of permits shall be undertaken in the same manner as specified in Article 3 (commencing with Section 32650) of Chapter 6.

MEMORANDUM 2009-5

**Corrections**

The following corrections should be made in the attachment to Memorandum 2009-5:

- **Page 40, lines 27-31.** Subdivision (b) of proposed Section 32110 should be revised as follows:
  - (b) The sale, loan, or transfer of any firearm that is exempt from the provisions of Section 27545 pursuant to any applicable exemption contained in Article 2 (commencing with Section 27600) or Article 6 (commencing with Section 27850) of ....
- **Page 41, lines 3-5.** Subdivision (g) of proposed Section 32110 should be revised as follows:
  - (g) The sale, loan, or transfer of any pistol, revolver, or other firearm capable of being concealed upon the person listed as a curio or relic, as defined in Section 478.11 of Title 27 of the Code of Federal Regulations.
- **Page 41, lines 22-23.** The first paragraph of the Comment to Section 30650 should be revised as follows:
  - Comment.** Subdivisions (a)-(g) of Section 32110 continue former Section 12132(a)-(g) without substantive change. A cross-reference to nonexistent Section 178.11 of the Code of Federal Regulations has been replaced with a cross-reference to Section 478.11 of Title 27 of the Code of Federal Regulations.

### **Conforming Revisions**

The following provisions in the attachment to Memorandum 2009-5 included one or more cross-references that were not conformed to reflect the proposed reorganization of the deadly weapon statutes: proposed Sections 31630, 31700, 31725, 31730, 31770, 32110. Fully conformed versions of the pertinent parts of those provisions are shown below:

#### **§ 31630. Instructional materials**

31630. (a) The department shall develop an instruction manual in English and in Spanish by October 1, 2002. The department shall make the instructional manual available to firearms dealers licensed pursuant to Sections 26700 to 26915, inclusive, who shall make it available to the general public. Essential portions of the manual may be included in the pamphlet described in Section 34205.

....

#### **§ 31700. Persons exempted from handgun safety certificate requirement**

31700. (a) The following persons, properly identified, are exempted from the handgun safety certificate requirement in subdivision (a) of Section 31615:

....

(12) Persons who are the holders of a special weapons permit issued by the department pursuant to Section 32650 or 33300, pursuant to Article 3 (commencing with Section 18900) of Chapter 1 of Division 5 of Title 2, or pursuant to Article 4 (commencing with Section 32700) of Chapter 6 of this division.

....

**§ 31725. Exception for sale, delivery, or transfer to governmental entity as part of program in which entity is acquiring weapons from private individuals**

31725. (a) ....

(b) Any weapons acquired pursuant to this section shall be disposed of pursuant to the applicable provisions of Section 34000 or Sections 18000 and 18005.

**§ 31730. Exception for sale, delivery, loan, or transfer by law enforcement representative to nonprofit historical society, museum, or institutional collection**

31730. Subdivision (a) of Section 31615 does not apply to the sale, delivery, loan, or transfer of a firearm made by an authorized law enforcement representative of a city, county, city and county, or state, or of the federal government, to any public or private nonprofit historical society, museum, or institutional collection, or the purchase or receipt of that firearm by that public or private nonprofit historical society, museum, or institutional collection, if all of the following conditions are met:

....

(c) The firearm is not subject to any of the following:

- (1) Sections 18000 and 18005.
- (2) Division 4 (commencing with Section 18250) of Title 2.
- (3) Section 34000.
- (4) Sections 34005 and 34010.

....

**§ 31770. Exception for deliveries, transfers, or returns made pursuant to certain statutes**

31770. Subdivision (a) of Section 31615 does not apply to deliveries, transfers, or returns of firearms made pursuant to any of the following:

- (a) Sections 18000 and 18005.
- (b) Division 4 (commencing with Section 18250) of Title 2.
- (c) Chapter 2 (commencing with Section 33850) of Division 11.
- (d) Sections 34005 and 34010.

**§ 32110. Other exceptions**

32110. Articles 4 (commencing with Section 31900) and 5 (commencing with Section 32000) shall not apply to any of the following:

....

(c) The sale, loan, or transfer of any firearm as described in paragraph (3) of subdivision (b) of Section 32000.

....

**Addition to the Commission’s list of “Minor Clean-up Issues for Possible Future Legislative Attention”**

The process of conforming the cross-reference in subdivision (c) of proposed Section 32110 made the staff realize that there may be some redundancy between subdivisions (c) and (g) of proposed Sections 32110, which stem from subdivisions (c) and (g) of existing Section 12132, respectively.

In particular, subdivision (c) of existing Section 12132 creates an exception for the “sale, loan, or transfer of any firearm as described in paragraph (3) of subdivision (b) of Section 12125.” Paragraph (3) of subdivision (b) of Section 12125 refers to “[f]irearms listed as curios or relics, as defined in Section 478.11 of Title 27 of the Code of Federal Regulations.”

Similarly, subdivision (g) of existing Section 12132 creates an exception for the “sale, loan, or transfer of any pistol, revolver, or other firearm capable of being concealed upon the person listed as a curio or relic, as defined in Section 178.11 of the Code of Federal Regulations.” As discussed elsewhere, the cross-reference to “Section 178.11 of the Code of Federal Regulations” appears to be a mistake; the correct cross-reference is to Section 478.11 of Title 27 of the Code of Federal Regulations. Further, the phrase “pistol, revolver, or other firearm capable of being concealed upon the person” is synonymous with “handgun.” See Section 12001(a)(2).

Thus,

- Subdivision (c) of Section 12132 creates an exception for the sale, loan, or transfer of *any firearm* listed as a curio or relic, as defined in Section 478.11 of Title 27 of the Code of Federal Regulations.
- Subdivision (g) of Section 12132 creates an exception for the sale, loan, or transfer of *any handgun* listed as a curio or relic, as defined in Section 478.11 of Title 27 of the Code of Federal Regulations.

The situations covered by subdivision (g) are thus a subset of those covered by subdivision (c), and subdivision (g) appears to be redundant and unnecessary.

Because this is a strictly nonsubstantive study and the Commission is striving to minimize any concern that the proposed legislation would have a substantive impact, the staff recommends retaining both subdivision (c) and subdivision (g) in proposed Section 32110. But the point raised above might be worth considering in the future, in a different reform. **Unless the Commission otherwise directs, we will add this issue to the Commission's list of "Minor Clean-up Issues for Possible Future Legislative Attention."**

#### MEMORANDUM 2009-6

### Corrections

In the attachment to Memorandum 2009-6, proposed Section 32310 should be revised as follows:

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

32310. Except as provided in Article 2 (commencing with Section 32400) of this chapter and in Chapter 1 (commencing with Section 17700) of Division 2 of Title 2, commencing January 1, 2000, any person in this state who manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, or lends, ~~or possesses~~ any large-capacity magazine is punishable by imprisonment in a county jail not exceeding one year or in the state prison.

**Comment.** ~~With respect to a large-capacity magazine,~~ Section 32310 continues former Section ~~12020(a)(1)~~ 12020(a)(2) without substantive change.

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

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

### Conforming Revisions

In the attachment to Memorandum 2009-6, proposed Section 32450 included a cross-reference that was not conformed. A fully conformed version of the pertinent part of that section is shown below:

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

32450. Section 32310 does not apply to the purchase of a large-capacity magazine by the holder of a special weapons permit issued pursuant to Section 31000, 32650, or 33300, or pursuant to Article 3 (commencing with Section 18900) of Chapter 1 of Division 5 of Title 2, or pursuant to Article 4 (commencing with Section 32700) of Chapter 6 of this division, for any of the following purposes:

....

MEMORANDUM 2009-8

**Corrections**

As discussed at page 11 of the attachment to Memorandum 2009-8, the staff recommends that proposed Section 33900 be renumbered as proposed Section 26590. If the Commission follows that recommendation, the Comments to proposed Sections 33800, 33850, 33855, 33865, 33870, and 34005 need to be revised to reflect the relocation.

MEMORANDUM 2009-9

**Corrections**

The following correction should be made in the attachment to Memorandum 2009-9:

- **Page 3, line 37.** The first sentence of the Comment to Section 34350 should be revised as follows: "Section 34350 continues former Section 12072.5(b)-(d) without substantive change."

MEMORANDUM 2009-10

**Corrections**

- **Page 25, line 37, to page 26, line 13.** If proposed Section 33900 is renumbered as proposed Section 26590 (as recommended in Memorandum 2009-8, Attachment p. 11), proposed Section 16520(b) should be revised to reflect the relocation.
- **Page 28, line 20, to page 29, line 14.** If proposed Section 33900 is renumbered as proposed Section 26590, proposed Section 16575(a) should be revised to reflect the relocation.

- **Page 42, lines 27-28.** The introductory clause of proposed Section 16960 should be revised as follows: “As used in Article 1 (commencing with Section 26500) of Chapter 1 of Division 4 of Title 4, “operation of law” includes ....”

MEMORANDUM 2009-11

**Corrections**

- If proposed Section 33900 is renumbered as proposed Section 26590 (as recommended in Memorandum 2009-8, Attachment p. 11), the proposed amendment of Business and Professions Code Section 21626(a) should be revised to reflect the relocation.

DISTRIBUTION LIST

The following organizations are presently included on the Commission’s distribution list for this study:

Administrative Office of the Courts (San Francisco)  
 American Academy of Pediatrics, California District IX (Albany)  
 American College of Emergency Physicians, California (Sacramento)  
 California Department of Justice  
 California Department of Motor Vehicles  
 California District Attorneys Ass’n (Sacramento)  
 California Judges Ass’n (San Francisco)  
 California Land Title Ass’n (Sacramento)  
 California Office of the State Public Defender (Sacramento)  
 California Police Chiefs Ass’n (Sacramento)  
 California Public Defenders Ass’n (Sacramento)  
 California Rifle and Pistol Ass’n (Sacramento)  
 California Sportsman’s Lobby, Inc. (Sacramento)  
 California State Sheriff’s Ass’n (Sacramento)  
 Citizens Committee for the Right to Keep and Bear Arms (Bellevue)  
 Contra Costa Brady Campaign to Prevent Gun Violence  
 Friends Committee on Legislation of California (Sacramento)  
 Gun Owners of California (Fair Oaks)  
 Judicial Council of California, Office of Governmental Affairs (Sacramento)  
 Legal Community Against Violence (San Francisco)  
 Los Angeles County District Attorney (Los Angeles)  
 Los Angeles County Public Defender (Los Angeles)  
 Million Mom March, California State Council (Rough and Ready)  
 Million-Mom March, National President’s Council (Kensington)

National Rifle Ass'n (Riverside)  
National Rifle Ass'n, Institute for Legislative Action  
(Sacramento)  
National Shooting Sports Foundation, Inc. (Newtown, CT)  
Northern California Collection Services, Inc. (Sacramento)  
Office of the Attorney General (Sacramento)  
Office of Legislative Counsel (Sacramento)  
Outdoor Sportsman's Coalition (Fresno)  
Placer County District Attorney (Auburn)  
Physicians for Social Responsibility, Sacramento (Sacramento)  
Physicians for Social Responsibility, San Francisco Bay Area  
(Berkeley)  
Safari Club International, Sacramento Chapter (Sacramento)  
Safari Club International, San Francisco Bay Area Chapter  
(Millbrae)  
Safari Club International (Tucson, AZ)  
Santa Clara County Public Defender's Office (San Jose)  
State Bar of California (San Francisco)  
Tulare County Public Defender  
Trutanich-Michel LLP (Long Beach)  
Ventura County Office of the Public Defender (Ventura)  
Women Against Gun Violence (Los Angeles)

**The staff would much appreciate input on:**

- Whether any changes should be made to this distribution list before the tentative recommendation is distributed and posted to the Commission's website.
- Whether any other means should be used to solicit comments on the tentative recommendation.

**We would also appreciate being notified of any further corrections that should be made in the draft tentative recommendation before it is finalized.**

Respectfully submitted,

Barbara Gaal  
Chief Deputy Counsel