

## Memorandum 2009-28

**Nonsubstantive Reorganization of Deadly Weapon Statutes:  
Conforming Revisions (Comments on Tentative Recommendation)**

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Earlier this year, the Commission approved two tentative recommendations to be circulated for comment:

- (1) **Tentative Recommendation on Nonsubstantive Reorganization of Deadly Weapon Statutes (Feb. 2009)**. This 461-page proposal would reorganize the deadly weapons provisions now located in Title 2 of Part 4 of the Penal Code.
- (2) **Tentative Recommendation on Nonsubstantive Reorganization of Deadly Weapon Statutes: Conforming Revisions (Feb. 2009)**. This 172-page document consists of conforming revisions of numerous statutes to reflect the proposed reorganization of Title 2 of Part 4 of the Penal Code.

The official comment period for these tentative recommendations has ended and the Commission's report is due by July 1, 2009. The main tentative recommendation is discussed in Memorandum 2009-27. The second tentative recommendation, consisting of conforming revisions, is the focus of this memorandum. To meet the July 1 deadline, **the Commission will need to approve a final recommendation at the upcoming June 10 meeting.**

## COMMENTS ON THE TENTATIVE RECOMMENDATION

Like the main tentative recommendation, the tentative recommendation consisting of conforming revisions was posted on the Commission's website and circulated to a wide variety of groups and individuals. Thus far, the Commission has not received any comments on it.

This lack of input is not surprising, because reviewing the conforming revisions is tedious, time-consuming, and secondary to scrutinizing the main proposal. **Comments continue to be welcome and encouraged, either in writing or orally when the Commission meets.** The staff appreciates any effort that

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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](http://www.clrc.ca.gov)). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

stakeholders, Commissioners, or other interested persons are able to devote to this matter.

#### CORRECTIONS AND STAFF SUGGESTIONS FOR IMPROVEMENT

In the time since the Commission approved the tentative recommendation, the staff has re-checked all of the conforming revisions and the proposed Comments. Attached is a list of “Corrections and Staff Suggestions for Improvement,” which describes various revisions we recommend and states the reasons for making these revisions.

The staff considers these matters relatively straightforward. Absent input or other developments, we do not plan to present any of them for discussion at the upcoming meeting. **If anyone has concerns about a particular point on the list of “Corrections and Staff Suggestions for Improvement,” please plan to raise the point for discussion and bring your concerns to the Commission’s attention.** Because the matters on the list seem relatively straightforward, **the staff intends to make the recommended revisions unless the Commission otherwise directs.**

In addition to the matters on the list of “Corrections and Staff Suggestions for Improvement,” a few more points came to the staff’s attention while re-checking the proposed conforming revisions. Those points are discussed below.

#### **Education Code Section 49330. “Injurious Object” Defined**

Education Code Section 49330 states: “As used in this article, ‘injurious object’ shall mean those objects specified in Sections 653k, 12001, 12020, 12220, 12401, and 12402 of the Penal Code, and objects capable of inflicting substantial bodily damage, not necessary for the academic purpose of the pupil.”

The cross-references to Penal Code Sections 653k, 12020, 12220, 12401, and 12402 are easy to conform to the numbering scheme of proposed new Part 6 of the Penal Code. The cross-reference to Penal Code Section 12001 is not as easy to conform.

Section 12001 consists of numerous definitions and a couple of substantive provisions. The weapons defined in the section include:

- “pistol,” “revolver,” and “firearm capable of being concealed upon the person” (subdivisions (a)(1), (f))
- “handgun” (subdivisions (a)(2), (f))
- “firearm” (subdivisions (b)-(e))

- “BB device” (subdivision (g))

The section also specifies when a firearm is to be deemed “loaded” for purposes of Section 12023, and contains various references to other types of weapons (e.g., “Nothing shall prevent a device defined as a ‘handgun,’ ‘pistol,’ ‘revolver,’ or ‘firearm capable of being concealed upon the person’ from also being found to be a short-barreled shotgun or a short-barreled rifle, as defined in Section 12020.”).

The problem in conforming Education Code Section 49330 is determining what is meant by the phrase “objects specified in Sectio[n] ... 12001.” Does that phrase refer only to the weapons *defined* in the section, or is it also meant to include any of the other types of weapons that are *just mentioned* in the section?

In the tentative recommendation, the phrase “objects specified in Sectio[n] ... 12001” would be replaced by

- ... objects specified in the following sections:
  - (1) Subdivision (b) of Section 16170 of the Penal Code.
  - (2) Section 16250 of the Penal Code.
  - (3) Subdivisions (a) to (d), inclusive, of Section 16520 of the Penal Code.
  - (4) Section 16530 of the Penal Code.
  - ....
  - (6) Section 16640 of the Penal Code.
  - (7) Subdivision (a) of Section 16840 of the Penal Code.
  - ....

Of the sections that would be referenced, four of them would continue the weapon definitions from Section 12001 — proposed Sections 16250 (“BB device”), 16520(a)-(d) (“firearm”), 16530 (“firearm capable of being concealed upon the person,” “pistol,” and “revolver”), and 16640 (“handgun”). The other sections that would be referenced are:

- Proposed Section 16170(b), which would continue the definition of “antique firearm” that is used in Section 12001(e), which states that “[f]or purposes of Sections 12070, 12071, and paragraph (8) of subdivision (a), and subdivisions (b), (c), (d), and (f) of Section 12072, the term ‘firearm’ does not include an unloaded firearm that is defined as an ‘antique firearm’ in Section 921(a)(16) of Title 18 of the United States Code.”
- Proposed Section 16840(a), which would continue the portion of Section 12001 that specifies when a firearm is to be deemed “loaded” for purposes of Section 12023.

On reconsidering the proposed amendment of Education Code Section 49330, the staff is not confident that this is the correct way to amend the section to reflect the proposed reorganization of the material in Penal Code Section 12001. We are not sure what would be the best approach, because we are not certain how to interpret the phrase “objects specified in Sectio[n] ... 12001.”

**Suggestions regarding this matter would be helpful.** Absent a consensus on how to proceed, the staff recommends **(1) removing the proposed amendment of Education Code Section 49330 from the Commission’s proposal, and (2) adding the issue of conforming Section 49330 to the Commission’s list of “Minor Clean-Up Issues for Possible Future Legislative Attention.”**

That would afford time to examine the matter more closely, and would eliminate the risk of making an inadvertent substantive change in the Commission’s proposal. The delay in conforming Section 49330 would not be a problem, because the Commission’s proposal has a delayed operative date, and because proposed Section 16010(b) would provide:

(b) A reference in a statute to a previously existing provision that is restated and continued in this part or in Title 2 (commencing with Section 12001) of Part 4, or in any other provision of the Deadly Weapons Recodification Act of 2012, shall, unless a contrary intent appears, be deemed a reference to the restatement and continuation.

See Memorandum 2009-27, p. 11.

### **Fish and Game Code Section 2006. Loaded Rifle or Shotgun**

Penal Code Section 12001(j) specifies when a firearm is to be deemed “loaded” for purposes of Section 12023. This provision would be continued in subdivision (a) of proposed Penal Code Section 16840.

Penal Code Sections 12031(g), 12025(b)(6)(A), and 12035(a)(2) use a different definition of “loaded,” for purposes of specified provisions. This second definition would be continued in subdivision (b) of proposed Penal Code Section 16840.

A third definition of “loaded” is used in Fish and Game Code Section 2006, which provides:

2006. It is unlawful to possess a loaded rifle or shotgun in any vehicle or conveyance or its attachments which is standing on or along or is being driven on or along any public highway or other way open to the public.

*A rifle or shotgun shall be deemed to be loaded for the purposes of this section when there is an unexpended cartridge or shell in the firing chamber but not when the only cartridges or shells are in the magazine.*

The provisions of this section shall not apply to peace officers or members of the armed forces of this State or the United States, while on duty or going to or returning from duty.

(Emphasis added.)

To alert persons to this third definition, the staff has already suggested that the definition be mentioned in the Comment to proposed Penal Code Section 16840. See Memorandum 2009-27, List of Corrections & Staff Suggestions for Improvement p. 9; see also *id.* at List p. 22 (suggesting that Fish & Game Code § 2006 be mentioned in the Comments to proposed Penal Code §§ 25800 & 25850).

To further assist persons using the codes, it would be helpful to have a Comment to Fish and Game Code Section 2006, which would alert persons to the two definitions of “loaded” in Penal Code Section 16840. That could be achieved by amending Fish and Game Code Section 2006 as follows:

**§ 2006 (amended). Loaded rifle or shotgun in vehicle or conveyance on public way**

2006. (a) It is unlawful to possess a loaded rifle or shotgun in any vehicle or conveyance or its attachments which is standing on or along or is being driven on or along any public highway or other way open to the public.

(b) A rifle or shotgun shall be deemed to be loaded for the purposes of this section when there is an unexpended cartridge or shell in the firing chamber but not when the only cartridges or shells are in the magazine.

(c) The provisions of this section shall not apply to peace officers or members of the armed forces of this State or the United States, while on duty or going to or returning from duty.

**Comment.** Section 2006 is amended to label the paragraphs.

The definition of “loaded” in subdivision (b) applies for purposes of this section. A different definition of “loaded” applies for purposes of armed criminal action. See Penal Code § 16840(a). A third definition of “loaded” applies for the crime of carrying a loaded firearm in public. See Penal Code § 16840(b).

**The staff recommends that this amendment of Fish and Game Code Section 2006 be added to the Commission’s proposal.**

## **Definition of “Assault Weapon” in Welfare and Institutions Code Sections 676 and 8104**

Welfare and Institutions Code Section 676(a)(24) refers to a “crime committed with an assault weapon, *as defined in Section 12276 of the Penal Code, including ....*” (Emphasis added.) Similarly, Welfare and Institutions Code Section 8104 refers to “assault weapons *as defined in Section 12276 of the Penal Code ....*” (Emphasis added.)

The tentative recommendation would conform these provisions by replacing the cross-reference to Penal Code Section 12276 with a cross-reference to proposed Penal Code Section 30510, which would continue Section 12276 without substantive change. That treatment is appropriate for purposes of the Commission’s nonsubstantive study on reorganization of the deadly weapon statutes.

However, the term “assault weapon” is defined not only in existing Penal Code Section 12276, but also in existing Penal Code Section 12276.1, which would be continued in proposed Penal Code Section 30515. The staff is not sure why Welfare and Institutions Code Sections 676(a)(24) and 8104 refer only to Penal Code Section 12276 and not also to Penal Code Section 12276.1.

**We recommend that the Commission add this issue to its list of “Minor Clean-Up Issues for Possible Future Legislative Attention.”**

### **Location of Conforming Revisions**

The Commission circulated the conforming revisions as a separate tentative recommendation because that made the main proposal more manageable in size. We hoped that this would facilitate review of the proposal.

For purposes of the Commission’s final report, **the staff recommends including the conforming revisions at the end of that report**, instead of putting them in a separate report. Although this will make the final report quite lengthy, we believe it will be helpful to have the entire proposal in a single document.

That would not preclude introducing the conforming revisions as a separate bill in the Legislature, if that is later deemed advisable as a matter of strategy. However, **if the conforming revisions are eventually placed in a separate bill, that bill should include an uncodified provision stating:**

Nothing in this act is intended to substantively change the law relating to deadly weapons. The act is intended to be entirely nonsubstantive in effect. Every provision of the act, including, without limitation, every cross-reference in every provision of the

act, shall be interpreted consistent with the nonsubstantive intent of the act.

**Approval of a Final Recommendation**

Subject to the revisions discussed in this memorandum and in the attached list of “Corrections and Staff Suggestions for Improvement,” **the Commission should incorporate the conforming revisions that were circulated for comment into its final report.**

Respectfully submitted,

Barbara Gaal  
Chief Deputy Counsel

**TENTATIVE RECOMMENDATION ON NONSUBSTANTIVE  
REORGANIZATION OF DEADLY WEAPON STATUTES:  
CONFORMING REVISIONS**

**CORRECTIONS AND STAFF SUGGESTIONS FOR IMPROVEMENT**

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**Page iii, Table of Contents Entry for Welf. & Inst. Code § 15657.03**

Recommended Revision: Replace “dependant” with “dependent”

Reason: Spelling error

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**Page 7, Lines 16-17 (Bus. & Prof. Code § 7591.11)**

Recommended Revision:

Replace “Article 1 (commencing with Section 29800) of Chapter 2 of Division 9 of Title 4 of Part 6” with “Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6”

Reason:

The existing cross-reference is to Section 12021, which would be continued in Chapter 2 of Division 9 of Title 4 of Part 6. The portions of Section 12021 that are most likely to be pertinent would be continued in Article 1 of that chapter. But other material from Section 12021 might also be pertinent. It would be safest to refer to the entire chapter, not just to Article 1.

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**Page 48, Line 28 (Penal Code § 136.2)**

Recommended Revision:

Put the phrase “of the Penal Code” in ~~strikeout~~ and move it in front of “Section 29825”

Reason:

Statutory drafting convention. The code name usually is not included in a cross-reference if the cross-referenced provision is in the same code as the statute containing the cross-reference.

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**Page 49, Line 27 (Penal Code § 136.2)**

Recommended Revision:

Put the phrase “of the Penal Code” in strikeout and move it in front of “Section 29825”

Reason:

Statutory drafting convention. The code name usually is not included in a cross-reference if the cross-referenced provision is in the same code as the statute containing the cross-reference.

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**Page 54, Line 18 (Penal Code § 171b)**

Recommended Revision:

Replace “~~12010~~” with “12020”

Reason:

Typographical error

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**Page 85, Line 85 (Penal Code § 830.8)**

Recommended Revision:

Replace “subdivisions (a) and (c) to (h), inclusive, of Section 25850” with “subdivision (a) and subdivisions (c) to (h), inclusive, of Section 25850”

Reason:

Improved clarity without any change in meaning

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**Page 106, Line 30 (Penal Code § 1210.1)**

Recommended Revision:

Replace “~~such a~~ the” with “~~such a~~ the”

Reason:

The word “the” needs to be in underscore because it is not in existing law

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**Page 106, Line 38 (Penal Code § 1210.1)**

Recommended Revision:

Replace “~~such a~~ the” with “~~such a~~ the”

Reason:

The word “the” needs to be in underscore because it is not in existing law

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**Page 133, Line 41 (Penal Code § 11106)**

Recommended Revision:

Replace “Article 2 (commencing with Section 27500)” with “Article 1 (commencing with Section 27500)”

Reason:

Typographical error

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**Page 168, Line 15 (Leadline for Welf. & Inst. Code § 15657.03)**

Recommended Revision: Replace “dependant” with “dependent”

Reason: Spelling error

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