

Memorandum 2009-54

**Nonsubstantive Reorganization of Deadly Weapon Statutes:
Further Revisions to Incorporate 2009 Legislation**

Three years ago, the Legislature directed the 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 (ACR 73 (McCarthy)). The purpose of this project was to make the deadly weapon statutes more user-friendly, without effecting any substantive change. *Id.*

In compliance with the legislative deadline, the Commission approved a final recommendation on *Nonsubstantive Reorganization of Deadly Weapon Statutes* at its June meeting, and submitted a pre-print version of that recommendation to the Legislature and the Governor shortly thereafter. Since then, the 2009 regular session of the Legislature has ended, and the Governor has acted on all of the bills that were sent to him for approval.

When it met in October, the Commission considered how to update the pre-print recommendation to account for ten newly-enacted bills affecting Title 2 of Part 4 of the Penal Code (Penal Code §§ 12000-12809), which contains the key statutes governing control of deadly weapons. See Memorandum 2009-41; First Supplement to Memorandum 2009-41. The Commission approved various revisions to incorporate the ten new bills into its report, and also approved certain other minor corrections and revisions of the report. See Minutes (Oct. 2009), pp. 10-11; see also Memorandum 2009-42; Memorandum 2009-46. The staff informed the Commission that further revisions might still be necessary, because we had not yet checked for new legislation affecting the conforming revisions in the Commission’s report. Minutes (Oct. 2009), p. 11.

Since the October meeting, the staff has prepared a new version of the Commission’s report, which differs from the 6/24/09 version as detailed below. We have not yet posted that new version to the Commission’s website, or distributed it in any manner. It is almost 700 pages long, so instead of providing

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the full text now, this memorandum focuses on describing the changes from the previous version. **The Commission should consider those changes and determine whether to approve the ones it has not already authorized.**

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

DIFFERENCES BETWEEN THE NEW VERSION AND THE 6/24/09 PRE-PRINT

The newly-prepared version of the Commission's recommendation differs from the 6/24/09 pre-print version in the following respects:

Corrections Noted in Memorandum 2009-46

The new version incorporates the corrections noted in Memorandum 2009-46, which the Commission approved at the October meeting.

Revisions Recommended in Memorandum 2009-42

The new version incorporates the revisions recommended in Memorandum 2009-42 (relating to statutory references to former law), which the Commission approved at the October meeting.

On one point discussed in that memorandum, the staff made no clear recommendation. See the Staff Note on proposed Section 30730, which points out that although existing Section 12281(h) refers to "the act amending this section in the 1997-98 Regular Session of the Legislature," there was no such act. Memorandum 2009-42, p. 21. The staff raised the possibility of adding this matter as a new item on the Commission's list of "Minor Clean-Up Issues for Possible Future Legislative Attention" (Appendix B to the pre-print report). But we also noted that the matter might already be encompassed within Item #39 on that list, which concerns "whether the statutes relating to SKS rifles should be revised to delete, segregate, or otherwise modify outdated material."

In the new version of the Commission's recommendation, we did not add a new item to the clean-up list. Instead, we modified the footnote to existing Item #39, to include a citation to Memorandum 2009-42, p. 21. We believe that is sufficient to address the situation.

Revisions Recommended in Memorandum 2009-41

The new version incorporates the revisions recommended in Memorandum 2009-41 (relating to legislation enacted in 2009), which the Commission approved

at the October meeting. In incorporating those revisions, the staff made the following refinements:

- At page 23 of Memorandum 2009-41, the staff recommended that “the revisions to Sections 12021.5, 12022.2, and 12022.4 made by SB 150, and the new versions of those provisions added by SB 150, *should be incorporated verbatim* into the Commission’s proposal.” (Emphasis added.) By their terms, however, the newly revised versions of those provisions will sunset on January 1, 2011. Even if a bill to implement the Commission’s recommendation were introduced and enacted in 2010, it would not become operative before the sunset date. Thus, the new version of the Commission’s recommendation does not include a proposed amendment of the version of each provision that is scheduled to sunset on January 1, 2011. If the sunset date were extended or eliminated, the Commission could make necessary adjustments at that time. This point is explained in a Note following the proposed amendment of the version of each provision that would become operative on January 1, 2011.
- Further, the newly added version of Section 12021.5, like the prior version of Section 12021.5, cross-refers to Section 12020(c)(20) and (21), which would be reorganized by the Commission’s proposal. As in the 6/24/09 pre-print (p. 67), those cross-references need to be conformed to reflect the proposed reorganization. We have done this in the new version of the Commission’s recommendation.
- Similarly, newly added version of Section 12022.2, like the prior version of Section 12022.2, cross-refers to Section 12021.1(b), which would be reorganized by the Commission’s proposal. As in the 6/24/09 pre-print (p. 70), that cross-reference needs to be conformed to reflect the proposed reorganization. We have done this in the new version of the Commission’s recommendation.
- At pages 15-16 of Memorandum 2009-41, the staff recommended that certain changes be made to proposed Section 16650 and the accompanying Comment, to reflect the enactment of Assembly Bill 962 (De Leon), 2009 Cal. Stat. ch. 628. The new version of the Commission’s recommendation incorporates those changes, except we have revised the Comment to list sections in numerical order, insert the word “former” in several places, and more precisely describe the content of subdivision (b). As so revised, the Comment reads:

Comment. Subdivision (a) of Section 16650 continues the first clause of former Section 12060(b), the first clause of former Section 12318(b)(2), and former Section 12323(a) without substantive change.

Subdivision (b) continues the remainder of former Section 12060(b) (except the definition of “antique firearm”)

and the remainder of former Section 12318(b) (except the definition of “antique firearm”) without substantive change.

See Sections 16170 (“antique firearm”), 16520 (“firearm”), 16530 (“firearm capable of being concealed upon the person,” “pistol,” and “revolver”).

Revisions Recommended in the First Supplement to Memorandum 2009-41

The new version incorporates the revisions recommended in the First Supplement to Memorandum 2009-41 (relating to Senate Bill 175 (Aanestad), 2009 Cal. Stat. ch. 334), which the Commission approved at the October meeting.

At pages 4-5 of that supplement, the staff recommended that two new provisions (proposed Sections 26592 and 26595) be added to the Commission’s proposal, to continue the substance of two new statutory exceptions that were added by SB 175. The new version of the Commission’s recommendation contains those two new provisions, but we have numbered them as proposed Sections 26587 and 26588, instead of proposed Sections 26592 and 26595. That way, the new provisions would be adjacent to all of the other sections derived from existing Section 12070.

Revisions Consistent With the Key Changes Shown in Memorandum 2009-41 and its First Supplement

Memorandum 2009-41 and its First Supplement describe the key changes necessary to reflect the enactment of the ten bills they discuss. As indicated in those documents, further changes are needed to conform the disposition table, the Comments, and the remainder of the Commission’s proposal to reflect those key changes.

For example, in the 6/24/09 pre-print recommendation, the leadline for proposed Section 30300 is: “Sale of ammunition or reloaded ammunition to minor, or sale of handgun ammunition or reloaded handgun ammunition to person under age 21.” Due to the enactment of AB 962 (De Leon), Memorandum 2009-41 recommends that proposed Section 30300 be expanded to cover additional activities, and that the leadline be revised to: “Providing ammunition to minors and other young people.” In accordance with the Commission’s instructions, the staff incorporated those changes into the new version of the Commission’s recommendation. In addition, in each Comment that cites to proposed Section 30300, we revised the parenthetical to say “providing ammunition to minors and other young people,” instead of “sale of ammunition or reloaded ammunition to minor, or sale of handgun ammunition or reloaded

handgun ammunition to person under age 21.” See Comments to Sections 31500, 31615, 32000.

We made similar conforming revisions as needed to reflect the other key changes recommended in Memorandum 2009-41 and its First Supplement. It would be overly burdensome to try to detail all of those changes here.

Of particular importance, however, we checked whether it was necessary to revise proposed Sections 16575 (former Article 4 of Chapter 1 provisions), 16580 (former Chapter 1 provisions), and 16585 (former Section 12078 provisions) to reflect the key changes described in Memorandum 2009-41 and its First Supplement.

We found that proposed Section 16575(a)(19) should be revised to refer to “Sections 26500 to 26588, inclusive,” instead of “Sections 26500 to 26585, inclusive,” due to the addition of the two new provisions discussed under “Revisions Recommended in the First Supplement to Memorandum 2009-41” above. A similar change was necessary in several other places, including the definition of “firearm” (proposed Section 16520(b)(7), (d)(5)).

We also found that proposed Section 16580 (as presented in Memorandum 2009-42, pp. 3-4) should be revised as shown in ~~strikeout~~ and underscore below:

§ 16580. “Former Chapter 1 provisions”

16580. (a) Except as stated in subdivision (c), the following provisions are continuations of provisions that were included in former Chapter 1 (commencing with Section 12000) of Title 2 of Part 4, entitled “Firearms,” when that chapter was repealed by the Deadly Weapons Recodification Act of 2012:

- (1) Sections 12001 to 12022.95, inclusive.
- (2) Sections 16120 to 16140, inclusive.
- (3) Subdivision (b) of Section 16170, to the extent it continues former Sections 12001, ~~12060~~, 12078, 12085, and 12088.8, as those sections read when they were repealed by the Deadly Weapons Recodification Act of 2012.
- (4) Subdivision (c) of Section 16170.
- (5) Section 16190.
- (6) Sections 16220 to 16240, inclusive.
- (7) Section 16250, to the extent it continues former Section 12001, as that section read when it was repealed by the Deadly Weapons Recodification Act of 2012.
- (8) Section 16260.
- (9) Sections 16320 to 16340, inclusive.
- (10) Section 16360.
- (11) Sections 16400 ~~and 16410~~ to 16410, inclusive.
- (12) Section 16430.

(13) Section 16450, to the extent it continues former ~~Section~~ Sections 12060 and 12086, as ~~that section~~ those sections read when ~~it was~~ they were repealed by the Deadly Weapons Recodification Act of 2012.

(14) Subdivision (b) of Section 16460.

(15) Section 16470.

(16) Section 16490.

(17) Subdivision (a) of Section 16520, to the extent it continues former Section 12001, as that section read when it was repealed by the Deadly Weapons Recodification Act of 2012.

(18) Subdivisions (b) to (g), inclusive, of Section 16520.

(19) Sections 16530 to 16550, inclusive.

(20) Section 16570.

(21) Sections 16600 to 16640, inclusive.

(22) Section 16650, to the extent it continues former Section 12060, as that section read when it was repealed by the Deadly Weapons Recodification Act of 2012.

(23) Section 16662, to the extent it continues former Section 12060, as that section read when it was repealed by the Deadly Weapons Recodification Act of 2012.

~~(22)~~ (24) Sections 16670 to 16690, inclusive.

~~(23)~~ (25) Sections 16720 to 16760, inclusive.

~~(24)~~ (26) Sections 16800 and 16810.

~~(25)~~ (27) Sections 16830 to 16870, inclusive.

~~(26)~~ (28) Sections 16920 to 16960, inclusive.

~~(27)~~ (29) Sections 16990 and 17000.

~~(28)~~ (30) Sections 17020 to 17070, inclusive.

~~(29)~~ (31) Section 17090, to the extent it continues former Section 12020, as that section read when it was repealed by the Deadly Weapons Recodification Act of 2012.

~~(30)~~ (32) Section 17110.

~~(31)~~ (33) Section 17125.

~~(32)~~ (34) Section 17160.

~~(33)~~ (35) Sections 17170 to 17200, inclusive.

~~(34)~~ (36) Sections 17270 to 17290, inclusive.

~~(35)~~ Section (37) Sections 17310 and 17315.

~~(36)~~ (38) Sections 17330 to 17505, inclusive.

~~(37)~~ (39) Sections 17515 to 18500, inclusive.

~~(38)~~ (40) Sections 19100 to 19290, inclusive.

~~(39)~~ (41) Sections 20200 to 21390, inclusive.

~~(40)~~ (42) Sections 21790 to 22490, inclusive.

~~(41)~~ (43) Sections 23500 to 30290, inclusive.

~~(44)~~ Sections 30345 to 30365, inclusive.

~~(42)~~ (45) Sections 31500 to 31590, inclusive.

~~(43)~~ (46) Sections 31705 to 31830, inclusive.

~~(44)~~ (47) Sections 32310 to 32450, inclusive.

~~(45)~~ (48) Sections 32900 to 33320, inclusive.

~~(46)~~ (49) Sections 33600 to 34370, inclusive.

(b) Except as stated in subdivision (c), the provisions listed in subdivision (a) may be referred to as “former Chapter 1 provisions.”

(c) Subdivision (a) does not include any provision that was first codified in one of the specified numerical ranges after the effective date of the Deadly Weapons Recodification Act of 2012.

Comment. Section 16580 is new. It provides a convenient means of referring to former Sections 12000-12101.

For a disposition table showing where each provision in former Sections 12000-12101 was recodified, see *Nonsubstantive Reorganization of Deadly Weapon Statutes*, __ Cal. L. Revision Comm’n Reports __ (2009).

It did not appear necessary to make any changes to proposed Section 16585 (as presented in Memorandum 2009-42, pp. 4-6).

Updating the Conforming Revisions Shown in the 6/24/09 Pre-Print Recommendation

The Commission’s 6/24/09 pre-print recommendation proposes to reorganize most of Title 2 of Part 4 of the Penal Code (Penal Code §§ 12000-12809) in a new Part 6 of the Penal Code. Numerous statutes throughout the codes cross-refer to one or more of the provisions that the Commission is proposing to reorganize. If the Commission’s proposal were enacted, the cross-references in those statutes would have to be revised to reflect the reorganization. Accordingly, the 6/24/09 pre-print recommendation proposes a conforming revision of each such statute (see pp. 484-656).

Fourteen of those statutes were amended in 2009. Those amendments need to be incorporated into the Commission’s proposal. The staff has made the necessary changes in the new version of the proposal, as discussed at pages 1-48 of the attachment to this memorandum.

Additional Conforming Revisions Necessitated by 2009 Legislation

After the Commission submitted the 6/24/09 pre-print recommendation, new provisions were added to the codes, some of which include cross-references that would need to be conformed to the proposed reorganization. In addition, some existing provisions were amended to include new cross-references that would need to be conformed.

To reflect these developments, several new amendments need to be included in the “Conforming Revisions” portion of the Commission’s report. The staff has

made the necessary changes in the new version of the proposal, as discussed at pages 49-64 of the attachment to this memorandum.

Miscellaneous Technical Corrections and Other Minor Revisions

In addition to the revisions discussed above, the staff made miscellaneous technical corrections and other minor revisions in preparing the new version of the Commission's recommendation on *Nonsubstantive Reorganization of Deadly Weapon Statutes*. For example,

- In the 6/24/09 pre-print, footnote 2 of Appendix A erroneously refers to the proposed amendment of Section 11106 shown in a tentative recommendation, instead of the one in the pre-print itself. In the new version of the Commission's proposal, we have corrected this problem.
- At page 16, the 6/24/09 pre-print describes how the Commission's proposal would reorganize existing Section 12078(e). That provision was just amended by Senate Bill 175 (Aanestad), 2009 Cal. Stat. ch. 334, § 3. In the new version of the Commission's proposal, the staff has revised the discussion of Section 12078(e) to reflect the changes made by SB 175.
- At page 20, the 6/24/09 pre-print describes how the Commission will proceed if new legislation relating to control of deadly weapons is enacted before a bill to implement the Commission's proposal is introduced. In the new version of the report, we have revised that discussion, pointing out that the proposal has been updated to incorporate 2009 legislation, and will be further updated if necessary to incorporate future legislation.
- Footnote 29 at page 10 of the 6/24/09 pre-print states how many code sections and words of text are currently in Title 2 of Part 4 of the Penal Code, and how many code sections and words of text would be in proposed new Part 6 of the Penal Code. Due to the enactment of 2009 legislation, and corresponding changes to the Commission's proposal, those figures are no longer correct. For now, the staff has inserted blanks in place of the outdated figures. We will update those figures before distributing the new version of the proposal or posting it to the Commission's website.

This list is not exhaustive; we have just provided a few examples to illustrate the types of changes that we made.

COMMISSION ACTION

The Commission should consider the changes described above and determine whether to approve the ones it has not already authorized. Unless

the Commission otherwise directs, the staff will then post the new version of the Commission's recommendation on its website, notify its e-subscribers that an updated new version is available, and provide hard copies of the new version to the Governor's office, contacts within the Legislature, and each member of the Commission. We will also send each person or organization on the Commission's traditional mailing list a notice explaining that an updated version of the Commission's recommendation is available on request. **Because of the bulk of the report and the Commission's limited budget, we would not send a hard copy of the new version to anyone on the traditional mailing list unless we receive a specific request.**

The staff is still exploring whether the Commission's recommendation should be introduced in the Legislature in 2010, or not until 2011, which would be the start of a new legislative session. We may be able to provide more information on that point at the upcoming meeting.

Once we know when a bill will be introduced, the staff will proceed as follows:

- **If a bill will be introduced in 2010**, we will promptly submit the new version of the Commission's recommendation to the printer for publication, so that published copies can be distributed during the legislative process.
- **If a bill will not be introduced until 2011**, we will not yet submit the Commission's recommendation to the printer for publication. Under those circumstances, it would be best to delay publication until after the 2009-2010 legislative session ends, so that 2010 enactments can be incorporated before the report is published.

Respectfully submitted,

Barbara Gaal
Chief Deputy Counsel

CHANGES TO THE CONFORMING REVISIONS PROPOSED IN THE 6/24/09 PRE-PRINT RECOMMENDATION

The Commission's 6/24/09 pre-print recommendation on *Nonsubstantive Reorganization of Deadly Weapon Statutes* proposes to reorganize most of Title 2 of Part 4 of the Penal Code (Penal Code §§ 12000-12809) in a new Part 6 of the Penal Code.

Numerous statutes throughout the codes cross-refer to one or more of the provisions that the Commission is proposing to reorganize. If the Commission's proposal were enacted, the cross-references in those statutes would have to be revised to reflect the reorganization. Accordingly, the 6/24/09 pre-print recommendation proposes a conforming revision of each such statute (see pp. 484-656).

Fourteen of those statutes were amended in 2009. Those amendments need to be incorporated into the Commission's proposal, as discussed in more detail below.

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CIVIL CODE SECTION 3485

At pages 495-99, the 6/24/09 pre-print recommendation proposes to amend Civil Code Section 3485 to reflect the Commission's proposed nonsubstantive reorganization of the deadly weapon statutes. But Section 3485 was amended by Assembly Bill 530 (Krekorian), 2009 Cal. Stat. ch. 244, § 1. To reflect that development, the amendment shown in the 6/24/09 pre-print recommendation should be replaced with the new amendment shown below, which incorporates the changes made by AB 530. To facilitate review of this new amendment, each paragraph affected by AB 530 is shaded gray. The proposed conforming revisions are shown in strikeout and underscore.

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

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

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

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

(B) This notice shall include sufficient documentation establishing a violation of the nuisance or illegal purpose provisions of subdivision 4 of Section 1161 of the Code of Civil Procedure and an advisement to the owner of the assignment provision contained in subparagraph (D). The notice shall be served upon the owner and the tenant in accordance with subdivision (e).

(C) The notice to the tenant shall, in at least 14-point bold type, meet the following requirements:

(i) The notice shall contain the following language:

“(Date)

(Name of tenant)

(Address of tenant)

Re: Civil Code Section 3485

Dear (name of tenant):

This letter is to inform you that an eviction action may soon be filed in court against you for suspected firearms activity. According to state law, Civil Code Section 3485 provides for eviction of persons engaging in such conduct, as described below.

(Name of police department) records indicate that you, (name of arrestee), were arrested on (date) for violations of (list violations) on (address of property).

A letter has been sent to the property owner(s) advising of your arrest and the requirements of state law, as well as the landlord's option to assign the unlawful detainer action to the (name of city attorney or prosecutor's office).

A list of legal assistance providers is provided below. Please note, this list is not exclusive and is provided for your information only; the (name of city attorney or prosecutor's office) does not endorse or recommend any of the listed agencies.

Sincerely,

(Name of deputy city attorney or city prosecutor)
Deputy City (Attorney or Prosecutor)

Notice to Tenant: This notice is not a notice of eviction. You should call (name of the city attorney or prosecutor pursuing the action) at (telephone number) or a legal assistance provider to stop the eviction action if any of the following is applicable:

- (1) You are not the person named in this notice.
- (2) The person named in the notice does not live with you.
- (3) The person named in the notice has permanently moved.
- (4) You do not know the person named in the notice.
- (5) You want to request that only the person involved in the nuisance be evicted, allowing the other residents to stay.
- (6) You have any other legal defense or legal reason to stop the eviction action. A list of legal assistance providers is attached to this notice. Some provide free legal assistance if you are eligible.”

(ii) The notice shall be provided to the tenant in English and, as translated, in all of the languages identified in subdivision (a) of Section 1632 of the Civil Code.

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

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

(F) If the city prosecutor or city attorney accepts the assignment of the right of the owner to bring the unlawful detainer action, the owner shall retain all other rights and duties, including the handling of the tenant's personal property,

following issuance of the writ of possession and its delivery to and execution by the appropriate agency.

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

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

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

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

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

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

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

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

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

(4) Any .50 BMG rifle, as defined in Section ~~12278~~ 30530 of the Penal Code.

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

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

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

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

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

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

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

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

(g)(1) The city attorney and city prosecutor of each participating jurisdiction shall provide to the California Research Bureau the following information:

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

(B) For each notice provided pursuant to paragraph (1) of subdivision (a), the following information:

(i) The name and age, as provided by the landlord, of each person residing at the noticed address.

(ii) Whether the person has previously received a notice pursuant to this section from the reporting city attorney or prosecutor, and if so, whether the tenant vacated or was evicted as a result.

(C) For the tenant receiving the notice, whether the tenant has previously been arrested (other than an arrest that is the basis of this notice) for any of the offenses specified in subdivision (c).

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

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

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

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

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

(I) For the subtotal of cases filed by an owner, the city attorney, or the city prosecutor, the following information:

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

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

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

(iv) The number of defendants represented by counsel.

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

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

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

(J) For the subtotal of cases in which a notice was provided pursuant to subdivision (a), but no case was filed, the following information:

(i) The number of instances in which a tenant voluntarily vacated subsequent to receiving the notice.

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

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

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

(K) For each case in which a notice was issued and the tenants either vacated the premises before a judgment in the unlawful detainer action or were evicted, the street address, city, and ZIP Code of residence where the tenants relocated, to the extent known.

(2)(A) Information compiled pursuant to this section shall be reported annually to the California Research Bureau on or before January 20.

(B) The California Research Bureau shall thereafter submit a brief report to the Senate and Assembly Committees on Judiciary once on or before March 20, 2011, and once on or before March 20, 2013, summarizing the information collected pursuant to this section and evaluating the merits of the pilot programs established by this section. The report for this section may be combined with the California

Research Bureau report submitted for the pilot program established by Section 3486 of the Civil Code. The 2013 report shall indicate whether the City of Los Angeles has regularly reported to the bureau.

(3) Personally identifiable information submitted to the California Research Bureau pursuant to this section shall be confidential and shall not be publicly disclosed.

(h) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

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

GOVERNMENT CODE SECTION 6276.18

At pages 523-24, the 6/24/09 pre-print recommendation proposes to amend Government Code Section 6276.18 to reflect the Commission's proposed nonsubstantive reorganization of the deadly weapon statutes. But Section 6276.18 was amended by Senate Bill 359 (Romero), 2009 Cal. Stat. ch. 584, § 10. To reflect that development, the amendment shown in the 6/24/09 pre-print recommendation should be replaced with the new amendment shown below, which incorporates the changes made by SB 359. To facilitate review of this new amendment, each paragraph affected by SB 359 is shaded gray. The proposed conforming revisions are shown in strikeout and underscore.

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

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

6276.18. Family Court, records, Section 1818, Family ~~Law~~ Code.

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

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

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

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

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

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

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

Firearms, centralized list of exempted federal firearms licensees, disclosure of information compiled from, ~~Section 12083~~ Sections 24850 to 24890, inclusive, Penal Code.

Firearms, centralized list of dealers and licensees, disclosure of information compiled from, ~~Section 12071~~ Sections 26700 to 26915, inclusive, Penal Code.

Firearm license applications, subdivision (u), Section 6254.

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

Fishing and hunting licenses, confidentiality of names and addresses contained in records submitted to the Department of Fish and Game to obtain recreational fishing and hunting licenses, Section 1050.6, Fish and Game Code.

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

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

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

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

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

Franchise Tax Board, auditing, confidentiality of, Section 90005.

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

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

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

The section is also amended to refer to the Family Code, not the Family Law Code.

HEALTH AND SAFETY CODE SECTION 1257.7

At pages 525-26, the 6/24/09 pre-print recommendation proposes to amend Health and Safety Code Section 1257.7 to reflect the Commission's proposed nonsubstantive reorganization of the deadly weapon statutes. But Section 1257.7 was amended by Assembly Bill 1083 (Perez), 2009 Cal. Stat. ch. 506, § 1. To reflect that development, the amendment shown in the 6/24/09 pre-print recommendation should be replaced with the new amendment shown below, which incorporates the changes made by AB 1083. To facilitate review of this new amendment, each paragraph affected by AB 1083 is shaded gray. The proposed conforming revisions are shown in strikeout and underscore.

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

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

1257.7. (a) After July 1, 2010, all hospitals licensed pursuant to subdivisions (a), (b), and (f) of Section 1250 shall conduct, not less than annually, a security and safety assessment and, using the assessment, develop, and annually update based on the assessment, a security plan with measures to protect personnel, patients, and visitors from aggressive or violent behavior. The security and safety assessment shall examine trends of aggressive or violent behavior at the facility. These hospitals shall track incidents of aggressive or violent behavior as part of the quality assessment and improvement program and for the purposes of developing a security plan to deter and manage further aggressive or violent acts of a similar nature. The plan may include, but shall not be limited to, security considerations relating to all of the following:

- (1) Physical layout.
- (2) Staffing.
- (3) Security personnel availability.
- (4) Policy and training related to appropriate responses to violent acts.
- (5) Efforts to cooperate with local law enforcement regarding violent acts in the facility.

In developing this plan, the hospital shall consider guidelines or standards on violence in health care facilities issued by the department, the Division of Occupational Safety and Health, and the federal Occupational Safety and Health Administration. As part of the security plan, a hospital shall adopt security policies including, but not limited to, personnel training policies designed to protect personnel, patients, and visitors from aggressive or violent behavior. In developing the plan and the assessment, the hospital shall consult with affected employees, including the recognized collective bargaining agent or agents, if any, and members of the hospital medical staff organized pursuant to Section 2282 of the Business and Professions Code. This consultation may occur through hospital committees.

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

- (1) The role of security in hospital operations.
- (2) Hospital organization.
- (3) Protective measures, including alarms and access control.
- (4) The handling of disturbed patients, visitors, and employees.
- (5) Identification of aggressive and violent predicting factors.
- (6) Hospital safety and emergency preparedness.
- (7) The rudiments of documenting and reporting crimes, including, by way of example, not disturbing a crime scene.

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

(d) Any act of assault, as defined in Section 240 of the Penal Code, or battery, as defined in Section 242 of the Penal Code, that results in injury or involves the use of a firearm or other dangerous weapon, against any on-duty hospital personnel shall be reported to the local law enforcement agency within 72 hours of the incident. Any other act of assault, as defined in Section 240 of the Penal Code, or battery, as defined in Section 242 of the Penal Code, against any on-duty hospital personnel may be reported to the local law enforcement agency within 72 hours of the incident. No health facility or employee of a health facility who reports a known or suspected instance of assault or battery pursuant to this section shall be civilly or criminally liable for any report required by this section. No health facility or employee of a health facility who reports a known or suspected instance of assault or battery that is authorized, but not required, by this section, shall be civilly or criminally liable for the report authorized by this section unless it can be proven that a false report was made and the health facility or its employee knew that the report was false or was made with reckless disregard of the truth or falsity of the report, and any health facility or employee of a health facility who makes a report known to be false or with reckless disregard of the truth or falsity of the report shall be liable for any damages caused. Any individual knowingly interfering with or obstructing the lawful reporting process shall be guilty of a misdemeanor. "Dangerous weapon," as used in this section, means any weapon the possession or concealed carrying of which is prohibited by ~~Section 12020~~ any provision listed in Section 16590 of the Penal Code.

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

HEALTH AND SAFETY CODE SECTION 12101

At pages 527-29, the 6/24/09 pre-print recommendation proposes to amend Health and Safety Code Section 12101 to reflect the Commission's proposed nonsubstantive reorganization of the deadly weapon statutes. But Section 12101 was amended by Senate Bill 174 (Strickland), 2009 Cal. Stat. ch. 35, § 5. To reflect that development, the amendment shown in the 6/24/09 pre-print recommendation should be replaced with the new amendment shown below, which incorporates the changes made by SB 174. To facilitate review of this new amendment, each paragraph affected by SB 174 is shaded gray. The proposed conforming revisions are shown in strikeout and underscore.

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

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

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

- (1) Manufacture explosives.
- (2) Sell, furnish, or give away explosives.
- (3) Receive, store, or possess explosives.

(4) Transport explosives.

(5) Use explosives.

(6) Operate a terminal for handling explosives.

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

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

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

(2) If the person holding a valid permit for the use or storage of explosives desires to purchase or receive explosives in a jurisdiction other than that of intended use or storage, the person shall first present the permit to the issuing authority in the jurisdiction of purchase or receipt for endorsement. The issuing authority may include any reasonable restrictions or conditions which the authority finds necessary for the prevention of fire and explosion, the preservation of life, safety, or the control and security of explosives within the authority's jurisdiction. If, for any reason, the issuing authority refuses to endorse the permit previously issued in the area of intended use or storage, the authority shall immediately notify both the issuing authority who issued the permit and the Department of Justice of the fact of the refusal and the reasons for the refusal.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ineligible to hold a permit, the Department of Justice shall provide to the issuing authority any subsequent arrest and conviction information supporting that ineligibility.

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

PENAL CODE SECTION 166

At pages 535-37, the 6/24/09 pre-print recommendation proposes to amend Penal Code Section 166 to reflect the Commission's proposed nonsubstantive reorganization of the deadly weapon statutes. But Section 166 was amended by Assembly Bill 1164 (Tran), 2009 Cal. Stat. ch. 140, § 139. To reflect that development, the amendment shown in the 6/24/09 pre-print recommendation should be replaced with the new amendment shown below, which incorporates the changes made by AB 1164. To facilitate review of this new amendment, each paragraph affected by AB 1164 is shaded gray. The proposed conforming revisions are shown in strikeout and underscore.

Penal Code § 166 (amended). Contempt of court

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

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

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

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

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

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

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

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

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

(8) Presenting to any court having power to pass sentence upon any prisoner under conviction, or to any member of the court, any affidavit or testimony or

representation of any kind, verbal or written, in aggravation or mitigation of the punishment to be imposed upon the prisoner, except as provided in this code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PENAL CODE SECTION 186.22

At pages 542-46, the 6/24/09 pre-print recommendation proposes to amend Penal Code Section 186.22 to reflect the Commission's proposed nonsubstantive

reorganization of the deadly weapon statutes. But Section 186.22 was amended by Senate Bill 150 (Wright), 2009 Cal. Stat. ch. 171, § 1. Among other things, the amendment inserted a sunset clause with a sunset date of January 1, 2011. In addition, SB 150 added a new version of Section 186.22, which will become operative on January 1, 2011. See 2009 Cal. Stat. ch. 171, § 2.

To reflect those developments, the proposed amendment shown in the 6/24/09 pre-print recommendation should be replaced with a proposed amendment of the version of Section 186.22 that was added by SB 150 and will become operative on January 1, 2011. This new amendment is shown below, with the proposed revisions in ~~strikeout~~ and underscore.

It is not necessary to include a proposed amendment of the version of Section 186.22 that is scheduled to sunset on January 1, 2011. Even if a bill to implement the recommendation were introduced and enacted in 2010, it would not become operative before the sunset date. If the sunset date were extended or eliminated, the Commission could make necessary adjustments at that time. These points would be explained in a Note following the proposed amendment of the version of Section 186.22 that is scheduled to become operative on January 1, 2011.

Penal Code § 186.22 (operative Jan. 1, 2011) (amended). Promotion, furtherance, or assistance in felonious conduct by gang member

SEC. _____. Section 186.22 of the Penal Code, as it reads in Section 2 of Chapter 171 of the Statutes of 2009, is amended to read:

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

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

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

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

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

(2) If the underlying felony described in paragraph (1) is committed on the grounds of, or within 1,000 feet of, a public or private elementary, vocational,

junior high, or high school, during hours in which the facility is open for classes or school-related programs or when minors are using the facility, that fact shall be a circumstance in aggravation of the crime in imposing a term under paragraph (1).

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

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

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

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

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

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

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

(d) Any person who is convicted of a public offense punishable as a felony or a misdemeanor, which is committed for the benefit of, at the direction of or in association with, any criminal street gang with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison for one, two, or three years, provided that any person sentenced to imprisonment in the county jail shall be imprisoned for a period not to exceed one year, but not less than 180 days, and shall not be eligible for release upon completion of sentence, parole, or any other basis, until he or she has served 180

days. If the court grants probation or suspends the execution of sentence imposed upon the defendant, it shall require as a condition thereof that the defendant serve 180 days in a county jail.

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

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

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

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

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

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

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

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

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

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

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

(11) Burglary, as defined in Section 459.

(12) Rape, as defined in Section 261.

(13) Looting, as defined in Section 463.

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

(15) Kidnapping, as defined in Section 207.

(16) Mayhem, as defined in Section 203.

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

(18) Torture, as defined in Section 206.

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

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

(21) Carjacking, as defined in Section 215.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) Notwithstanding any other provision of law, for each person committed to the Division of Juvenile Facilities for a conviction pursuant to subdivision (a) or (b) of this section, the offense shall be deemed one for which the state shall pay the rate of 100 percent of the per capita institutional cost of the Division of Juvenile Facilities, pursuant to Section 912.5 of the Welfare and Institutions Code.

(i) In order to secure a conviction or sustain a juvenile petition, pursuant to subdivision (a) it is not necessary for the prosecution to prove that the person devotes all, or a substantial part, of his or her time or efforts to the criminal street

gang, nor is it necessary to prove that the person is a member of the criminal street gang. Active participation in the criminal street gang is all that is required.

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

(k) This section shall become operative on January 1, 2011.

Comment. Subdivision (e) of Section 186.22 (as operative Jan. 1, 2011) is amended to reflect nonsubstantive reorganization of the statutes governing control of deadly weapons.

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

Note. This recommendation does not include a proposed amendment of the version of Section 186.22 that is scheduled to sunset on January 1, 2011. Even if a bill to implement the recommendation were introduced and enacted in 2010, it would not become operative before the sunset date. If the sunset date is extended or eliminated, the Commission will make adjustments as necessary.

PENAL CODE SECTION 273.6

At pages 551-53, the 6/24/09 pre-print recommendation proposes to amend Penal Code Section 273.6 to reflect the Commission's proposed nonsubstantive reorganization of the deadly weapon statutes. But Section 273.6 was amended by Senate Bill 188 (Runner), 2009 Cal. Stat. ch. 566, § 2. To reflect that development, the amendment shown in the 6/24/09 pre-print recommendation should be replaced with the new amendment shown below, which incorporates the changes made by SB 188. To facilitate review of this new amendment, each paragraph affected by SB 188 is shaded gray. The proposed conforming revisions are shown in strikeout and underscore.

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

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

273.6. (a) Any intentional and knowing violation of a protective order, as defined in Section 6218 of the Family Code, or of an order issued pursuant to Section 527.6, 527.8, or 527.85 of the Code of Civil Procedure, or Section 15657.03 of the Welfare and Institutions Code, is a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000), or by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment.

(b) In the event of a violation of subdivision (a) that results in physical injury, the person shall be punished by a fine of not more than two thousand dollars (\$2,000), or by imprisonment in a county jail for not less than 30 days nor more than one year, or by both that fine and imprisonment. However, if the person is imprisoned in a county jail for at least 48 hours, the court may, in the interest of justice and for reasons stated on the record, reduce or eliminate the 30-day

minimum imprisonment required by this subdivision. In determining whether to reduce or eliminate the minimum imprisonment pursuant to this subdivision, the court shall consider the seriousness of the facts before the court, whether there are additional allegations of a violation of the order during the pendency of the case before the court, the probability of future violations, the safety of the victim, and whether the defendant has successfully completed or is making progress with counseling.

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

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

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

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

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

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

(e) In the event of a subsequent conviction for a violation of an order described in subdivision (a) for an act occurring within one year of a prior conviction for a violation of an order described in subdivision (a) that results in physical injury to a victim, the person shall be punished by a fine of not more than two thousand dollars (\$2,000), or by imprisonment in a county jail for not less than six months nor more than one year, by both that fine and imprisonment, or by imprisonment in the state prison. However, if the person is imprisoned in a county jail for at least 30 days, the court may, in the interest of justice and for reasons stated in the record, reduce or eliminate the six-month minimum imprisonment required by this subdivision. In determining whether to reduce or eliminate the minimum imprisonment pursuant to this subdivision, the court shall consider the seriousness of the facts before the court, whether there are additional allegations of a violation of the order during the pendency of the case before the court, the probability of future violations, the safety of the victim, and whether the defendant has successfully completed or is making progress with counseling.

(f) The prosecuting agency of each county shall have the primary responsibility for the enforcement of orders described in subdivisions (a), (b), (d), and (e).

(g)(1) Every person who owns, possesses, purchases, or receives a firearm knowing he or she is prohibited from doing so by the provisions of a protective order as defined in Section 136.2 of this code, Section 6218 of the Family Code, or Section 527.6 or 527.8 of the Code of Civil Procedure, or Section 15657.03 of the Welfare and Institutions Code, shall be punished under ~~subdivision (g) of Section 12021~~ Section 29825.

(2) Every person subject to a protective order described in paragraph (1) shall not be prosecuted under this section for owning, possessing, purchasing, or receiving a firearm to the extent that firearm is granted an exemption pursuant to subdivision (f) of Section 527.9 of the Code of Civil Procedure, or subdivision (h) of Section 6389 of the Family Code.

(h) If probation is granted upon conviction of a violation of subdivision (a), (b), (c), (d), or (e), the court shall impose probation consistent with Section 1203.097, and the conditions of probation may include, in lieu of a fine, one or both of the following requirements:

(1) That the defendant make payments to a battered women's shelter or to a shelter for abused elder persons or dependent adults, up to a maximum of five thousand dollars (\$5,000), pursuant to Section 1203.097.

(2) That the defendant reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

(i) For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under subdivision (e), the court shall make a determination of the defendant's ability to pay. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support. Where the injury to a married person is caused in whole or in part by the criminal acts of his or her spouse in violation of this section, the community property may not be used to discharge the liability of the offending spouse for restitution to the injured spouse, required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse and dependents, required by this section, until all separate property of the offending spouse is exhausted.

Comment. Subdivision (g) of Section 273.6 is amended to reflect nonsubstantive reorganization of the statutes governing control of deadly weapons.

PENAL CODE SECTION 626.10

At pages 558-59, the 6/24/09 pre-print recommendation proposes to amend Penal Code Section 626.10 to reflect the Commission's proposed nonsubstantive reorganization of the deadly weapon statutes. But Section 626.10 was amended by Senate Bill 870 (Huber), 2009 Cal. Stat. ch. 258, § 1 (§ 1.5 did not become effective because it was contingent on enactment of a bill that was vetoed).

To reflect that development, the amendment shown in the 6/24/09 pre-print recommendation should be replaced with the new amendment shown below, which incorporates the changes made by SB 870. To facilitate review of this new amendment, each paragraph affected by SB 870 is shaded gray. The proposed conforming revisions are shown in ~~strikeout~~ and underscore.

Penal Code § 626.10 (amended). Bringing or possessing weapons on school grounds

SEC. ____ . Section 626.10 of the Penal Code is amended to read:

626.10. (a)(1) Any person, except a duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a full-time paid peace officer of another state or the federal government who is carrying out official duties while in this state, a person summoned by any officer to assist in making arrests or preserving the peace while the person is actually engaged in assisting any officer, or a member of the military forces of this state or the United States who is engaged in the performance of his or her duties, who brings or possesses any dirk, dagger, ice pick, knife having a blade longer than 2½ inches, folding knife with a blade that locks into place, razor with an unguarded blade, taser, or stun gun, as defined in subdivision (a) of Section 244.5, any instrument that expels a metallic projectile such as a BB or a pellet, through the force of air pressure, CO₂ pressure, or spring action, or any spot marker gun, upon the grounds of, or within, any public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, is guilty of a public offense, punishable by imprisonment in a county jail not exceeding one year, or by imprisonment in the state prison.

(2) Any person, except a duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a full-time paid peace officer of another state or the federal government who is carrying out official duties while in this state, a person summoned by any officer to assist in making arrests or preserving the peace while the person is actually engaged in assisting any officer, or a member of the military forces of this state or the United States who is engaged in the performance of his or her duties, who brings or possesses a razor blade or a box cutter upon the grounds of, or within, any public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, is guilty of a public offense, punishable by imprisonment in a county jail not exceeding one year.

(b) Any person, except a duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a full-time paid peace officer of another state or the federal government who is carrying out official duties while in this state, a person summoned by any officer to assist in making arrests or preserving the peace while the person is actually engaged in assisting any officer, or a member of the military forces of this state or the United States who is engaged in the performance of his or her duties, who brings or possesses any dirk, dagger, ice pick, or knife having a fixed blade longer than 2½ inches upon the grounds of, or within, any private university, the University of California, the California State University, or the California Community Colleges is guilty of a public offense, punishable by imprisonment in a county jail not exceeding one year, or by imprisonment in the state prison.

(c) Subdivisions (a) and (b) do not apply to any person who brings or possesses a knife having a blade longer than 2½ inches, or a razor with an unguarded blade, a razor blade, or a box cutter upon the grounds of, or within, a public or private

school providing instruction in kindergarten or any of grades 1 to 12, inclusive, or any private university, state university, or community college at the direction of a faculty member of the private university, state university, or community college, or a certificated or classified employee of the school for use in a private university, state university, community college, or school-sponsored activity or class.

(d) Subdivisions (a) and (b) do not apply to any person who brings or possesses an ice pick, a knife having a blade longer than 2½ inches, a razor with an unguarded blade, a razor blade, or a box cutter upon the grounds of, or within, a public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, or any private university, state university, or community college for a lawful purpose within the scope of the person's employment.

(e) Subdivision (b) does not apply to any person who brings or possesses an ice pick or a knife having a fixed blade longer than 2½ inches upon the grounds of, or within, any private university, state university, or community college for lawful use in or around a residence or residential facility located upon those grounds or for lawful use in food preparation or consumption.

(f) Subdivision (a) does not apply to any person who brings an instrument that expels a metallic projectile such as a BB or a pellet, through the force of air pressure, CO₂ pressure, or spring action, or any spot marker gun, or any razor blade or box cutter upon the grounds of, or within, a public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, if the person has the written permission of the school principal or his or her designee.

(g) Any certificated or classified employee or school peace officer of a public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, may seize any of the weapons described in subdivision (a), and any certificated or classified employee or school peace officer of any private university, state university, or community college may seize any of the weapons described in subdivision (b), from the possession of any person upon the grounds of, or within, the school if he or she knows, or has reasonable cause to know, the person is prohibited from bringing or possessing the weapon upon the grounds of, or within, the school.

(h) As used in this section, "dirk" or "dagger" means a knife or other instrument with or without a handguard that is capable of ready use as a stabbing weapon that may inflict great bodily injury or death.

(i) Any person who, without the written permission of the college or university president or chancellor or his or her designee, brings or possesses a less lethal weapon, as defined in Section ~~12601~~ 16780, or a stun gun, as defined in Section ~~12650~~ 17230, upon the grounds of or within, a public or private college or university campus is guilty of a misdemeanor.

Comment. Subdivision (i) of Section 626.10 is amended to reflect nonsubstantive reorganization of the statutes governing control of deadly weapons.

PENAL CODE SECTION 836

At pages 570-72, the 6/24/09 pre-print recommendation proposes to amend Penal Code Section 836 to reflect the Commission's proposed nonsubstantive reorganization of the deadly weapon statutes. But Section 836 was amended by Assembly Bill 258 (Ma), 2009 Cal. Stat. ch. 92, § 1. To reflect that development, the amendment shown in the 6/24/09 pre-print recommendation should be replaced with the new amendment shown below, which incorporates the changes made by AB 258. To facilitate review of this new amendment, each paragraph affected by AB 258 is shaded gray. The proposed conforming revisions are shown in strikeout and underscore.

Penal Code § 836 (amended). Arrest

SEC. ____ . Section 836 of the Penal Code is amended to read:

836. (a) A peace officer may arrest a person in obedience to a warrant, or, pursuant to the authority granted to him or her by Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, without a warrant, may arrest a person whenever any of the following circumstances occur:

(1) The officer has probable cause to believe that the person to be arrested has committed a public offense in the officer's presence.

(2) The person arrested has committed a felony, although not in the officer's presence.

(3) The officer has probable cause to believe that the person to be arrested has committed a felony, whether or not a felony, in fact, has been committed.

(b) Any time a peace officer is called out on a domestic violence call, it shall be mandatory that the officer make a good faith effort to inform the victim of his or her right to make a citizen's arrest. This information shall include advising the victim how to safely execute the arrest.

(c)(1) When a peace officer is responding to a call alleging a violation of a domestic violence protective or restraining order issued under Section 527.6 of the Code of Civil Procedure, the Family Code, Section 136.2, 646.91, or paragraph (2) of subdivision (a) of Section 1203.097 of this code, Section 213.5 or 15657.03 of the Welfare and Institutions Code, or of a domestic violence protective or restraining order issued by the court of another state, tribe, or territory and the peace officer has probable cause to believe that the person against whom the order is issued has notice of the order and has committed an act in violation of the order, the officer shall, consistent with subdivision (b) of Section 13701, make a lawful arrest of the person without a warrant and take that person into custody whether or not the violation occurred in the presence of the arresting officer. The officer shall, as soon as possible after the arrest, confirm with the appropriate authorities or the Domestic Violence Protection Order Registry maintained pursuant to Section 6380 of the Family Code that a true copy of the protective order has been registered, unless the victim provides the officer with a copy of the protective order.

(2) The person against whom a protective order has been issued shall be deemed to have notice of the order if the victim presents to the officer proof of service of the order, the officer confirms with the appropriate authorities that a true copy of the proof of service is on file, or the person against whom the protective order was issued was present at the protective order hearing or was informed by a peace officer of the contents of the protective order.

(3) In situations where mutual protective orders have been issued under Division 10 (commencing with Section 6200) of the Family Code, liability for arrest under this subdivision applies only to those persons who are reasonably believed to have been the dominant aggressor. In those situations, prior to making an arrest under this subdivision, the peace officer shall make reasonable efforts to identify, and may arrest, the dominant aggressor involved in the incident. The dominant aggressor is the person determined to be the most significant, rather than the first, aggressor. In identifying the dominant aggressor, an officer shall consider (A) the intent of the law to protect victims of domestic violence from continuing abuse, (B) the threats creating fear of physical injury, (C) the history of domestic violence between the persons involved, and (D) whether either person involved acted in self-defense.

(d) Notwithstanding paragraph (1) of subdivision (a), if a suspect commits an assault or battery upon a current or former spouse, fiancé, fiancée, a current or former cohabitant as defined in Section 6209 of the Family Code, a person with whom the suspect currently is having or has previously had an engagement or dating relationship, as defined in paragraph (10) of subdivision (f) of Section 243, a person with whom the suspect has parented a child, or is presumed to have parented a child pursuant to the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code), a child of the suspect, a child whose parentage by the suspect is the subject of an action under the Uniform Parentage Act, a child of a person in one of the above categories, any other person related to the suspect by consanguinity or affinity within the second degree, or any person who is 65 years of age or older and who is related to the suspect by blood or legal guardianship, a peace officer may arrest the suspect without a warrant where both of the following circumstances apply:

(1) The peace officer has probable cause to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed.

(2) The peace officer makes the arrest as soon as probable cause arises to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed.

(e) In addition to the authority to make an arrest without a warrant pursuant to paragraphs (1) and (3) of subdivision (a), a peace officer may, without a warrant, arrest a person for a violation of Section ~~12025~~ 25400 when all of the following apply:

(1) The officer has reasonable cause to believe that the person to be arrested has committed the violation of Section ~~12025~~ 25400.

(2) The violation of Section ~~12025~~ 25400 occurred within an airport, as defined in Section 21013 of the Public Utilities Code, in an area to which access is controlled by the inspection of persons and property.

(3) The peace officer makes the arrest as soon as reasonable cause arises to believe that the person to be arrested has committed the violation of Section ~~12025~~ 25400.

Comment. Subdivision (e) of Section 836 is amended to reflect nonsubstantive reorganization of the statutes governing control of deadly weapons.

PENAL CODE SECTION 1203

At pages 578-82, the 6/24/09 pre-print recommendation proposes to amend Penal Code Section 1203 to reflect the Commission's proposed nonsubstantive reorganization of the deadly weapon statutes. But Section 1203 was amended by Senate Bill 325 (Alquist), 2009 Cal. Stat. ch. 582, § 5. To reflect that development, the amendment shown in the 6/24/09 pre-print recommendation should be replaced with the new amendment shown below, which incorporates the changes made by SB 325. To facilitate review of this new amendment, each paragraph affected by SB 325 is shaded gray. The proposed conforming revisions are shown in strikeout and underscore.

Penal Code § 1203 (amended). Probation and conditional sentence

SEC. ____ . Section 1203 of the Penal Code is amended to read:

1203. (a) As used in this code, "probation" means the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of a probation officer. As used in this code, "conditional sentence" means the suspension of the imposition or execution of a sentence and the order of revocable release in the community subject to conditions established by the court without the supervision of a probation officer. It is the intent of the Legislature that both conditional sentence and probation are authorized whenever probation is authorized in any code as a sentencing option for infractions or misdemeanors.

(b)(1) Except as provided in subdivision (j), if a person is convicted of a felony and is eligible for probation, before judgment is pronounced, the court shall immediately refer the matter to a probation officer to investigate and report to the court, at a specified time, upon the circumstances surrounding the crime and the prior history and record of the person, which may be considered either in aggravation or mitigation of the punishment.

(2)(A) The probation officer shall immediately investigate and make a written report to the court of his or her findings and recommendations, including his or her recommendations as to the granting or denying of probation and the conditions of probation, if granted.

(B) Pursuant to Section 828 of the Welfare and Institutions Code, the probation officer shall include in his or her report any information gathered by a law

enforcement agency relating to the taking of the defendant into custody as a minor, which shall be considered for purposes of determining whether adjudications of commissions of crimes as a juvenile warrant a finding that there are circumstances in aggravation pursuant to Section 1170 or to deny probation.

(C) If the person was convicted of an offense that requires him or her to register as a sex offender pursuant to Sections 290 to 290.23, inclusive, or if the probation report recommends that registration be ordered at sentencing pursuant to Section 290.006, the probation officer's report shall include the results of the State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO) administered pursuant to Sections 290.04 to 290.06, inclusive, if applicable.

(D) The probation officer shall also include in the report his or her recommendation of both of the following:

(i) The amount the defendant should be required to pay as a restitution fine pursuant to subdivision (b) of Section 1202.4.

(ii) Whether the court shall require, as a condition of probation, restitution to the victim or to the Restitution Fund and the amount thereof.

(E) The report shall be made available to the court and the prosecuting and defense attorneys at least five days, or upon request of the defendant or prosecuting attorney nine days, prior to the time fixed by the court for the hearing and determination of the report, and shall be filed with the clerk of the court as a record in the case at the time of the hearing. The time within which the report shall be made available and filed may be waived by written stipulation of the prosecuting and defense attorneys that is filed with the court or an oral stipulation in open court that is made and entered upon the minutes of the court.

(3) At a time fixed by the court, the court shall hear and determine the application, if one has been made, or, in any case, the suitability of probation in the particular case. At the hearing, the court shall consider any report of the probation officer, including the results of the SARATSO, if applicable, and shall make a statement that it has considered the report, which shall be filed with the clerk of the court as a record in the case. If the court determines that there are circumstances in mitigation of the punishment prescribed by law or that the ends of justice would be served by granting probation to the person, it may place the person on probation. If probation is denied, the clerk of the court shall immediately send a copy of the report to the Department of Corrections and Rehabilitation at the prison or other institution to which the person is delivered.

(4) The preparation of the report or the consideration of the report by the court may be waived only by a written stipulation of the prosecuting and defense attorneys that is filed with the court or an oral stipulation in open court that is made and entered upon the minutes of the court, except that there shall be no waiver unless the court consents thereto. However, if the defendant is ultimately sentenced and committed to the state prison, a probation report shall be completed pursuant to Section 1203c.

(c) If a defendant is not represented by an attorney, the court shall order the probation officer who makes the probation report to discuss its contents with the defendant.

(d) If a person is convicted of a misdemeanor, the court may either refer the matter to the probation officer for an investigation and a report or summarily pronounce a conditional sentence. If the person was convicted of an offense that requires him or her to register as a sex offender pursuant to Sections 290 to 290.23, inclusive, or if the probation officer recommends that the court, at sentencing, order the offender to register as a sex offender pursuant to Section 290.006, the court shall refer the matter to the probation officer for the purpose of obtaining a report on the results of the State-Authorized Risk Assessment Tool for Sex Offenders administered pursuant to Sections 290.04 to 290.06, inclusive, if applicable, which the court shall consider. If the case is not referred to the probation officer, in sentencing the person, the court may consider any information concerning the person that could have been included in a probation report. The court shall inform the person of the information to be considered and permit him or her to answer or controvert the information. For this purpose, upon the request of the person, the court shall grant a continuance before the judgment is pronounced.

(e) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any of the following persons:

(1) Unless the person had a lawful right to carry a deadly weapon, other than a firearm, at the time of the perpetration of the crime or his or her arrest, any person who has been convicted of arson, robbery, carjacking, burglary, burglary with explosives, rape with force or violence, torture, aggravated mayhem, murder, attempt to commit murder, trainwrecking, kidnapping, escape from the state prison, or a conspiracy to commit one or more of those crimes and who was armed with the weapon at either of those times.

(2) Any person who used, or attempted to use, a deadly weapon upon a human being in connection with the perpetration of the crime of which he or she has been convicted.

(3) Any person who willfully inflicted great bodily injury or torture in the perpetration of the crime of which he or she has been convicted.

(4) Any person who has been previously convicted twice in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony.

(5) Unless the person has never been previously convicted once in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony, any person who has been convicted of burglary with explosives, rape with force or violence, torture, aggravated mayhem, murder, attempt to commit murder, trainwrecking, extortion, kidnapping, escape

from the state prison, a violation of Section 286, 288, 288a, or 288.5, or a conspiracy to commit one or more of those crimes.

(6) Any person who has been previously convicted once in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony, if he or she committed any of the following acts:

(A) Unless the person had a lawful right to carry a deadly weapon at the time of the perpetration of the previous crime or his or her arrest for the previous crime, he or she was armed with a weapon at either of those times.

(B) The person used, or attempted to use, a deadly weapon upon a human being in connection with the perpetration of the previous crime.

(C) The person willfully inflicted great bodily injury or torture in the perpetration of the previous crime.

(7) Any public official or peace officer of this state or any city, county, or other political subdivision who, in the discharge of the duties of his or her public office or employment, accepted or gave or offered to accept or give any bribe, embezzled public money, or was guilty of extortion.

(8) Any person who knowingly furnishes or gives away phencyclidine.

(9) Any person who intentionally inflicted great bodily injury in the commission of arson under subdivision (a) of Section 451 or who intentionally set fire to, burned, or caused the burning of, an inhabited structure or inhabited property in violation of subdivision (b) of Section 451.

(10) Any person who, in the commission of a felony, inflicts great bodily injury or causes the death of a human being by the discharge of a firearm from or at an occupied motor vehicle proceeding on a public street or highway.

(11) Any person who possesses a short-barreled rifle or a short-barreled shotgun under Section ~~12020~~ 33215, a machinegun under Section ~~12220~~ 32625, or a silencer under Section ~~12520~~ 33410.

(12) Any person who is convicted of violating Section 8101 of the Welfare and Institutions Code.

(13) Any person who is described in ~~paragraph (2) or (3) of subdivision (g) of Section 12072~~ subdivision (b) or (c) of Section 27590.

(f) When probation is granted in a case which comes within subdivision (e), the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(g) If a person is not eligible for probation, the judge shall refer the matter to the probation officer for an investigation of the facts relevant to determination of the amount of a restitution fine pursuant to subdivision (b) of Section 1202.4 in all cases where the determination is applicable. The judge, in his or her discretion, may direct the probation officer to investigate all facts relevant to the sentencing of the person. Upon that referral, the probation officer shall immediately investigate the circumstances surrounding the crime and the prior record and history of the person and make a written report to the court of his or her findings.

The findings shall include a recommendation of the amount of the restitution fine as provided in subdivision (b) of Section 1202.4.

(h) If a defendant is convicted of a felony and a probation report is prepared pursuant to subdivision (b) or (g), the probation officer may obtain and include in the report a statement of the comments of the victim concerning the offense. The court may direct the probation officer not to obtain a statement if the victim has in fact testified at any of the court proceedings concerning the offense.

(i) No probationer shall be released to enter another state unless his or her case has been referred to the Administrator of the Interstate Probation and Parole Compacts, pursuant to the Uniform Act for Out-of-State Probationer or Parolee Supervision (Article 3 (commencing with Section 11175) of Chapter 2 of Title 1 of Part 4) and the probationer has reimbursed the county that has jurisdiction over his or her probation case the reasonable costs of processing his or her request for interstate compact supervision. The amount and method of reimbursement shall be in accordance with Section 1203.1b.

(j) In any court where a county financial evaluation officer is available, in addition to referring the matter to the probation officer, the court may order the defendant to appear before the county financial evaluation officer for a financial evaluation of the defendant's ability to pay restitution, in which case the county financial evaluation officer shall report his or her findings regarding restitution and other court-related costs to the probation officer on the question of the defendant's ability to pay those costs.

Any order made pursuant to this subdivision may be enforced as a violation of the terms and conditions of probation upon willful failure to pay and at the discretion of the court, may be enforced in the same manner as a judgment in a civil action, if any balance remains unpaid at the end of the defendant's probationary period.

(k) Probation shall not be granted to, nor shall the execution of, or imposition of sentence be suspended for, any person who is convicted of a violent felony, as defined in subdivision (c) of Section 667.5, or a serious felony, as defined in subdivision (c) of Section 1192.7, and who was on probation for a felony offense at the time of the commission of the new felony offense.

Comment. Subdivision (e) of Section 1203 is amended to reflect nonsubstantive reorganization of the statutes governing control of deadly weapons.

PENAL CODE SECTION 1203.1

At pages 582-86, the 6/24/09 pre-print recommendation proposes to amend Penal Code Section 1203.1 to reflect the Commission's proposed nonsubstantive reorganization of the deadly weapon statutes. But Section 1203.1 was amended by Senate Bill 676 (Wolk), 2009 Cal. Stat. ch. 606, § 5. To reflect that development, the amendment shown in the 6/24/09 pre-print recommendation should be replaced with the new amendment shown below, which incorporates the changes made by SB 676. To facilitate review of this new amendment, each paragraph

affected by SB 676 is shaded gray. The proposed conforming revisions are shown in strikeout and underscore.

Penal Code § 1203.1 (amended). Terms and conditions of probation

SEC. ____. Section 1203.1 of the Penal Code is amended to read:

1203.1. (a) The court, or judge thereof, in the order granting probation, may suspend the imposing or the execution of the sentence and may direct that the suspension may continue for a period of time not exceeding the maximum possible term of the sentence, except as hereinafter set forth, and upon those terms and conditions as it shall determine. The court, or judge thereof, in the order granting probation and as a condition thereof, may imprison the defendant in a county jail for a period not exceeding the maximum time fixed by law in the case.

However, where the maximum possible term of the sentence is five years or less, then the period of suspension of imposition or execution of sentence may, in the discretion of the court, continue for not over five years. The following shall apply to this subdivision:

(1) The court may fine the defendant in a sum not to exceed the maximum fine provided by law in the case.

(2) The court may, in connection with granting probation, impose either imprisonment in a county jail or a fine, both, or neither.

(3) The court shall provide for restitution in proper cases. The restitution order shall be fully enforceable as a civil judgment forthwith and in accordance with Section 1202.4 of the Penal Code.

(4) The court may require bonds for the faithful observance and performance of any or all of the conditions of probation.

(b) The court shall consider whether the defendant as a condition of probation shall make restitution to the victim or the Restitution Fund. Any restitution payment received by a court or probation department in the form of cash or money order shall be forwarded to the victim within 30 days from the date the payment is received by the department. Any restitution payment received by a court or probation department in the form of a check or draft shall be forwarded to the victim within 45 days from the date the payment is received, provided, that payment need not be forwarded to a victim until 180 days from the date the first payment is received, if the restitution payments for that victim received by the court or probation department total less than fifty dollars (\$50). In cases where the court has ordered the defendant to pay restitution to multiple victims and where the administrative cost of disbursing restitution payments to multiple victims involves a significant cost, any restitution payment received by a probation department shall be forwarded to multiple victims when it is cost effective to do so, but in no event shall restitution disbursements be delayed beyond 180 days from the date the payment is received by the probation department.

(c) In counties or cities and counties where road camps, farms, or other public work is available the court may place the probationer in the road camp, farm, or

other public work instead of in jail. In this case, Section 25359 of the Government Code shall apply to probation and the court shall have the same power to require adult probationers to work, as prisoners confined in the county jail are required to work, at public work. Each county board of supervisors may fix the scale of compensation of the adult probationers in that county.

(d) In all cases of probation the court may require as a condition of probation that the probationer go to work and earn money for the support of his or her dependents or to pay any fine imposed or reparation condition, to keep an account of his or her earnings, to report them to the probation officer and apply those earnings as directed by the court.

(e) The court shall also consider whether the defendant as a condition of probation shall make restitution to a public agency for the costs of an emergency response pursuant to Article 8 (commencing with Section 53150) of Chapter 1 of Part 1 of Division 2 of the Government Code.

(f) In all felony cases in which, as a condition of probation, a judge of the superior court sitting by authority of law elsewhere than at the county seat requires a convicted person to serve his or her sentence at intermittent periods the sentence may be served on the order of the judge at the city jail nearest to the place at which the court is sitting, and the cost of his or her maintenance shall be a county charge.

(g)(1) The court and prosecuting attorney shall consider whether any defendant who has been convicted of a nonviolent or nonserious offense and ordered to participate in community service as a condition of probation shall be required to engage in the removal of graffiti in the performance of the community service. For the purpose of this subdivision, a nonserious offense shall not include the following:

(A) Offenses in violation of the Dangerous ~~Weapons'~~ Weapons Control Law (~~Chapter 1 (commencing with Section 12000) of Title 2 of Part 4~~), as defined in Section 23500.

(B) Offenses involving the use of a dangerous or deadly weapon, including all violations of Section 417.

(C) Offenses involving the use or attempted use of violence against the person of another or involving injury to a victim.

(D) Offenses involving annoying or molesting children.

(2) Notwithstanding subparagraph (A) of paragraph (1), any person who violates ~~Section 12101 Chapter 1 (commencing with Section 29610) of Division 9 of Title 4 of Part 6~~ shall be ordered to perform not less than 100 hours and not more than 500 hours of community service as a condition of probation.

(3) The court and the prosecuting attorney need not consider a defendant pursuant to paragraph (1) if the following circumstances exist:

(A) The defendant was convicted of any offense set forth in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7.

(B) The judge believes that the public safety may be endangered if the person is ordered to do community service or the judge believes that the facts or

circumstances or facts and circumstances call for imposition of a more substantial penalty.

(h) The probation officer or his or her designated representative shall consider whether any defendant who has been convicted of a nonviolent and nonserious offense and ordered to participate in community service as a condition of probation shall be required to engage in the performance of house repairs or yard services for senior citizens and the performance of repairs to senior centers through contact with local senior service organizations in the performance of the community service.

(i)(1) Upon conviction of any offense involving child abuse or neglect, the court may require, in addition to any or all of the above-mentioned terms of imprisonment, fine, and other reasonable conditions, that the defendant shall participate in counseling or education programs, or both, including, but not limited to, parent education or parenting programs operated by community colleges, school districts, other public agencies, or private agencies.

(2) Upon conviction of any sex offense subjecting the defendant to the registration requirements of Section 290, the court may order as a condition of probation, at the request of the victim or in the court's discretion, that the defendant stay away from the victim and the victim's residence or place of employment, and that the defendant have no contact with the victim in person, by telephone or electronic means, or by mail.

(j) The court may impose and require any or all of the above-mentioned terms of imprisonment, fine, and conditions, and other reasonable conditions, as it may determine are fitting and proper to the end that justice may be done, that amends may be made to society for the breach of the law, for any injury done to any person resulting from that breach, and generally and specifically for the reformation and rehabilitation of the probationer, and that should the probationer violate any of the terms or conditions imposed by the court in the matter, it shall have authority to modify and change any and all the terms and conditions and to reimprison the probationer in the county jail within the limitations of the penalty of the public offense involved. Upon the defendant being released from the county jail under the terms of probation as originally granted or any modification subsequently made, and in all cases where confinement in a county jail has not been a condition of the grant of probation, the court shall place the defendant or probationer in and under the charge of the probation officer of the court, for the period or term fixed for probation. However, upon the payment of any fine imposed and the fulfillment of all conditions of probation, probation shall cease at the end of the term of probation, or sooner, in the event of modification. In counties and cities and counties in which there are facilities for taking fingerprints, those of each probationer shall be taken and a record of them kept and preserved.

(k) Notwithstanding any other provisions of law to the contrary, except as provided in Section 13967, as operative on or before September 28, 1994, of the Government Code and Section 13967.5 of the Government Code and Sections

1202.4, 1463.16, paragraph (1) of subdivision (a) of Section 1463.18, and Section 1464, and Section 1203.04, as operative on or before August 2, 1995, all fines collected by a county probation officer in any of the courts of this state, as a condition of the granting of probation or as a part of the terms of probation, shall be paid into the county treasury and placed in the general fund for the use and benefit of the county.

(l) If the court orders restitution to be made to the victim, the entity collecting the restitution may add a fee to cover the actual administrative cost of collection, but not to exceed 15 percent of the total amount ordered to be paid. The amount of the fee shall be set by the board of supervisors if it is collected by the county and the fee collected shall be paid into the general fund of the county treasury for the use and benefit of the county. The amount of the fee shall be set by the court if it is collected by the court and the fee collected shall be paid into the Trial Court Operations Fund or account established by Section 77009 of the Government Code for the use and benefit of the court.

Comment. Subdivision (g) of Section 1203.1 is amended to reflect nonsubstantive reorganization of the statutes governing control of deadly weapons. That subdivision is also amended to make a technical revision.

PENAL CODE SECTION 1203.4

At pages 586-88, the 6/24/09 pre-print recommendation proposes to amend Penal Code Section 1203.4 to reflect the Commission's proposed nonsubstantive reorganization of the deadly weapon statutes. But Section 1203.4 was amended by Senate Bill 676 (Wolk), 2009 Cal. Stat. ch. 606, § 7. To reflect that development, the amendment shown in the 6/24/09 pre-print recommendation should be replaced with the new amendment shown below, which incorporates the changes made by SB 676. To facilitate review of this new amendment, each paragraph affected by SB 676 is shaded gray. The proposed conforming revisions are shown in strikeout and underscore.

Penal Code § 1203.4 (amended). Dismissal of information or accusation

SEC. _____. Section 1203.4 of the Penal Code is amended to read:

1203.4. (a) In any case in which a defendant has fulfilled the conditions of probation for the entire period of probation, or has been discharged prior to the termination of the period of probation, or in any other case in which a court, in its discretion and the interests of justice, determines that a defendant should be granted the relief available under this section, the defendant shall, at any time after the termination of the period of probation, if he or she is not then serving a sentence for any offense, on probation for any offense, or charged with the commission of any offense, be permitted by the court to withdraw his or her plea of guilty or plea of nolo contendere and enter a plea of not guilty; or, if he or she has been convicted after a plea of not guilty, the court shall set aside the verdict of guilty; and, in either case, the court shall thereupon dismiss the accusations or

information against the defendant and except as noted below, he or she shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she has been convicted, except as provided in Section 13555 of the Vehicle Code. The probationer shall be informed, in his or her probation papers, of this right and privilege and his or her right, if any, to petition for a certificate of rehabilitation and pardon. The probationer may make the application and change of plea in person or by attorney, or by the probation officer authorized in writing. However, in any subsequent prosecution of the defendant for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if probation had not been granted or the accusation or information dismissed. The order shall state, and the probationer shall be informed, that the order does not relieve him or her of the obligation to disclose the conviction in response to any direct question contained in any questionnaire or application for public office, for licensure by any state or local agency, or for contracting with the California State Lottery.

Dismissal of an accusation or information pursuant to this section does not permit a person to own, possess, or have in his or her custody or control any firearm or prevent his or her conviction under ~~Section 12021~~ Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6.

Dismissal of an accusation or information underlying a conviction pursuant to this section does not permit a person prohibited from holding public office as a result of that conviction to hold public office.

This subdivision shall apply to all applications for relief under this section which are filed on or after November 23, 1970.

(b) Subdivision (a) of this section does not apply to any misdemeanor that is within the provisions of subdivision (b) of Section 42001 of the Vehicle Code, to any violation of subdivision (c) of Section 286, Section 288, subdivision (c) of Section 288a, Section 288.5, or subdivision (j) of Section 289, any felony conviction pursuant to subdivision (d) of Section 261.5, or to any infraction.

(c)(1) Except as provided in paragraph (2), subdivision (a) does not apply to a person who receives a notice to appear or is otherwise charged with a violation of an offense described in subdivisions (a) to (e), inclusive, of Section 12810 of the Vehicle Code.

(2) If a defendant who was convicted of a violation listed in paragraph (1) petitions the court, the court in its discretion and in the interests of justice, may order the relief provided pursuant to subdivision (a) to that defendant.

(d) A person who petitions for a change of plea or setting aside of a verdict under this section may be required to reimburse the court for the actual costs of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the court not to exceed one hundred fifty dollars (\$150), and to reimburse the county for the actual costs of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the county board of supervisors not to

exceed one hundred fifty dollars (\$150), and to reimburse any city for the actual costs of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the city council not to exceed one hundred fifty dollars (\$150). Ability to make this reimbursement shall be determined by the court using the standards set forth in paragraph (2) of subdivision (g) of Section 987.8 and shall not be a prerequisite to a person's eligibility under this section. The court may order reimbursement in any case in which the petitioner appears to have the ability to pay, without undue hardship, all or any portion of the costs for services established pursuant to this subdivision.

(e) Relief shall not be granted under this section unless the prosecuting attorney has been given 15 days' notice of the petition for relief. The probation officer shall notify the prosecuting attorney when a petition is filed, pursuant to this section.

It shall be presumed that the prosecuting attorney has received notice if proof of service is filed with the court.

(f) If, after receiving notice pursuant to subdivision (e), the prosecuting attorney fails to appear and object to a petition for dismissal, the prosecuting attorney may not move to set aside or otherwise appeal the grant of that petition.

(g) Notwithstanding the above provisions or any other provision of law, the Governor shall have the right to pardon a person convicted of a violation of subdivision (c) of Section 286, Section 288, subdivision (c) of Section 288a, Section 288.5, or subdivision (j) of Section 289, if there are extraordinary circumstances.

Comment. Subdivision (a) of Section 1203.4 is amended to reflect nonsubstantive reorganization of the statutes governing control of deadly weapons.

PENAL CODE SECTION 2933.5

At pages 597-98, the 6/24/09 pre-print recommendation proposes to amend Penal Code Section 2933.5 to reflect the Commission's proposed nonsubstantive reorganization of the deadly weapon statutes. But Section 2933.5 was amended by Senate Bill 18 (3d Ex. Sess.) (Evans), 2009 Cal. Stat. ch. 19 (3d Ex. Sess.), § 43. To reflect that development, the amendment shown in the 6/24/09 pre-print recommendation should be replaced with the new amendment shown below, which incorporates the changes made by SBX3 18. To facilitate review of this new amendment, each paragraph affected by SBX3 18 is shaded gray. The proposed conforming revisions are shown in strikeout and underscore.

Penal Code § 2933.5 (amended). Persons ineligible for credit on term of imprisonment

SEC. ____ . Section 2933.5 of the Penal Code is amended to read:

2933.5. (a)(1) Notwithstanding any other law, every person who is convicted of any felony offense listed in paragraph (2), and who previously has been convicted two or more times, on charges separately brought and tried, and who previously has served two or more separate prior prison terms, as defined in subdivision (g)

of Section 667.5, of any offense or offenses listed in paragraph (2), shall be ineligible to earn credit on his or her term of imprisonment pursuant to this article.

(2) As used in this subdivision, “felony offense” includes any of the following:

(A) Murder, as defined in Sections 187 and 189.

(B) Voluntary manslaughter, as defined in subdivision (a) of Section 192.

(C) Mayhem as defined in Section 203.

(D) Aggravated mayhem, as defined in Section 205.

(E) Kidnapping, as defined in Section 207, 209, or 209.5.

(F) Assault with vitriol, corrosive acid, or caustic chemical of any nature, as described in Section 244.

(G) Rape, as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.

(H) Sodomy by means of force, violence, duress, menace or fear of immediate and unlawful bodily injury on the victim or another person, as described in subdivision (c) of Section 286.

(I) Sodomy while voluntarily acting in concert, as described in subdivision (d) of Section 286.

(J) Lewd or lascivious acts on a child under the age of 14 years, as described in subdivision (b) of Section 288.

(K) Oral copulation by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, as described in subdivision (c) of Section 288a.

(L) Continuous sexual abuse of a child, as described in Section 288.5.

(M) Sexual penetration, as described in subdivision (a) of Section 289.

(N) Exploding a destructive device or explosive with intent to injure, as described in Section ~~12303.3~~ 18740, with intent to murder, as described in Section ~~12308~~ 18745, or resulting in great bodily injury or mayhem, as described in Section ~~12309~~ 18750.

(O) Any felony in which the defendant personally inflicted great bodily injury, as provided in Section ~~12022.53~~ or ~~12022.7~~.

(b) A prior conviction of an offense listed in subdivision (a) shall include a conviction in another jurisdiction for an offense which includes all of the elements of the particular felony as defined under California law.

(c) This section shall apply whenever the present felony is committed on or after the effective date of this section, regardless of the date of commission of the prior offense or offenses resulting in credit-earning ineligibility.

(d) This section shall be in addition to, and shall not preclude the imposition of, any applicable sentence enhancement terms, or probation ineligibility and habitual offender provisions authorized under any other section.

Comment. Subdivision (a) of Section 2933.5 is amended to reflect nonsubstantive reorganization of the statutes governing control of deadly weapons.

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

PENAL CODE SECTION 11105

At pages 604-13, the 6/24/09 pre-print recommendation proposes to amend Penal Code Section 11105 to reflect the Commission's proposed nonsubstantive reorganization of the deadly weapon statutes. But Section 11105 was amended by Assembly Bill 428 (Fletcher), 2009 Cal. Stat. ch. 441, § 1. To reflect that development, the amendment shown in the 6/24/09 pre-print recommendation should be replaced with the new amendment shown below, which incorporates the changes made by AB 428. To facilitate review of this new amendment, each paragraph affected by AB 428 is shaded gray. The proposed conforming revisions are shown in strikeout and underscore.

(Note: Penal Code Section 11105 was also amended by Assembly Bill 297 (Solorio), 2009 Cal. Stat. ch. 97, § 1. That amendment was chaptered out by AB 428, but AB 428 incorporated all of the reforms made by AB 297.)

Penal Code § 11105 (amended). State and federal summary criminal history information furnished by Department of Justice

SEC. ____ . Section 11105 of the Penal Code is amended to read:

11105. (a)(1) The Department of Justice shall maintain state summary criminal history information.

(2) As used in this section:

(A) "State summary criminal history information" means the master record of information compiled by the Attorney General pertaining to the identification and criminal history of any person, such as name, date of birth, physical description, fingerprints, photographs, date of arrests, arresting agencies and booking numbers, charges, dispositions, and similar data about the person.

(B) "State summary criminal history information" does not refer to records and data compiled by criminal justice agencies other than the Attorney General, nor does it refer to records of complaints to or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice.

(b) The Attorney General shall furnish state summary criminal history information to any of the following, if needed in the course of their duties, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity, in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and Section 432.7 of the Labor Code shall apply:

(1) The courts of the state.

(2) Peace officers of the state, as defined in Section 830.1, subdivisions (a) and (e) of Section 830.2, subdivision (a) of Section 830.3, subdivisions (a) and (b) of Section 830.5, and subdivision (a) of Section 830.31.

(3) District attorneys of the state.

(4) Prosecuting city attorneys of any city within the state.

(5) City attorneys pursuing civil gang injunctions pursuant to Section 186.22a, or drug abatement actions pursuant to Section 3479 or 3480 of the Civil Code, or Section 11571 of the Health and Safety Code.

(6) Probation officers of the state.

(7) Parole officers of the state.

(8) A public defender or attorney of record when representing a person in proceedings upon a petition for a certificate of rehabilitation and pardon pursuant to Section 4852.08.

(9) A public defender or attorney of record when representing a person in a criminal case, or parole revocation or revocation extension proceeding, and if authorized access by statutory or decisional law.

(10) Any agency, officer, or official of the state if the criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct. The agency, officer, or official of the state authorized by this paragraph to receive state summary criminal history information may also transmit fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation.

(11) Any city or county, city and county, district, or any officer or official thereof if access is needed in order to assist that agency, officer, or official in fulfilling employment, certification, or licensing duties, and if the access is specifically authorized by the city council, board of supervisors, or governing board of the city, county, or district if the criminal history information is required to implement a statute, ordinance, or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct. The city or county, city and county, district, or the officer or official thereof authorized by this paragraph may also transmit fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation.

(12) The subject of the state summary criminal history information under procedures established under Article 5 (commencing with Section 11120).

(13) Any person or entity when access is expressly authorized by statute if the criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct.

(14) Health officers of a city, county, city and county, or district when in the performance of their official duties enforcing Section 120175 of the Health and Safety Code.

(15) Any managing or supervising correctional officer of a county jail or other county correctional facility.

(16) Any humane society, or society for the prevention of cruelty to animals, for the specific purpose of complying with Section 14502 of the Corporations Code for the appointment of level 1 humane officers.

(17) Local child support agencies established by Section 17304 of the Family Code. When a local child support agency closes a support enforcement case containing summary criminal history information, the agency shall delete or purge from the file and destroy any documents or information concerning or arising from offenses for or of which the parent has been arrested, charged, or convicted, other than for offenses related to the parent's having failed to provide support for minor children, consistent with the requirements of Section 17531 of the Family Code.

(18) County child welfare agency personnel who have been delegated the authority of county probation officers to access state summary criminal history information pursuant to Section 272 of the Welfare and Institutions Code for the purposes specified in Section 16504.5 of the Welfare and Institutions Code. Information from criminal history records provided pursuant to this subdivision shall not be used for any purposes other than those specified in this section and Section 16504.5 of the Welfare and Institutions Code. When an agency obtains records obtained both on the basis of name checks and fingerprint checks, final placement decisions shall be based only on the records obtained pursuant to the fingerprint check.

(19) The court of a tribe, or court of a consortium of tribes, that has entered into an agreement with the state pursuant to Section 10553.1 of the Welfare and Institutions Code. This information may be used only for the purposes specified in Section 16504.5 of the Welfare and Institutions Code and for tribal approval or tribal licensing of foster care or adoptive homes. Article 6 (commencing with Section 11140) shall apply to officers, members, and employees of a tribal court receiving criminal record offender information pursuant to this section.

(20) Child welfare agency personnel of a tribe or consortium of tribes that has entered into an agreement with the state pursuant to Section 10553.1 of the Welfare and Institutions Code and to whom the state has delegated duties under paragraph (2) of subdivision (a) of Section 272 of the Welfare and Institutions Code. The purposes for use of the information shall be for the purposes specified in Section 16504.5 of the Welfare and Institutions Code and for tribal approval or tribal licensing of foster care or adoptive homes. When an agency obtains records on the basis of name checks and fingerprint checks, final placement decisions shall be based only on the records obtained pursuant to the fingerprint check. Article 6 (commencing with Section 11140) shall apply to child welfare agency personnel receiving criminal record offender information pursuant to this section.

(21) An officer providing conservatorship investigations pursuant to Sections 5351, 5354, and 5356 of the Welfare and Institutions Code.

(22) A court investigator providing investigations or reviews in conservatorships pursuant to Section 1826, 1850, 1851, or 2250.6 of the Probate Code.

(23) A person authorized to conduct a guardianship investigation pursuant to Section 1513 of the Probate Code.

(c) The Attorney General may furnish state summary criminal history information and, when specifically authorized by this subdivision, federal level criminal history information upon a showing of a compelling need to any of the following, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and Section 432.7 of the Labor Code shall apply:

(1) Any public utility, as defined in Section 216 of the Public Utilities Code, that operates a nuclear energy facility when access is needed in order to assist in employing persons to work at the facility, provided that, if the Attorney General supplies the data, he or she shall furnish a copy of the data to the person to whom the data relates.

(2) To a peace officer of the state other than those included in subdivision (b).

(3) To an illegal dumping enforcement officer as defined in subdivision (j) of Section 830.7.

(4) To a peace officer of another country.

(5) To public officers, other than peace officers, of the United States, other states, or possessions or territories of the United States, provided that access to records similar to state summary criminal history information is expressly authorized by a statute of the United States, other states, or possessions or territories of the United States if the information is needed for the performance of their official duties.

(6) To any person when disclosure is requested by a probation, parole, or peace officer with the consent of the subject of the state summary criminal history information and for purposes of furthering the rehabilitation of the subject.

(7) The courts of the United States, other states, or territories or possessions of the United States.

(8) Peace officers of the United States, other states, or territories or possessions of the United States.

(9) To any individual who is the subject of the record requested if needed in conjunction with an application to enter the United States or any foreign nation.

(10)(A) Any public utility, as defined in Section 216 of the Public Utilities Code, or any cable corporation as defined in subparagraph (B), if receipt of criminal history information is needed in order to assist in employing current or prospective employees, contract employees, or subcontract employees who, in the course of their employment may be seeking entrance to private residences or adjacent grounds. The information provided shall be limited to the record of convictions and any arrest for which the person is released on bail or on his or her own recognizance pending trial.

If the Attorney General supplies the data pursuant to this paragraph, the Attorney General shall furnish a copy of the data to the current or prospective employee to whom the data relates.

Any information obtained from the state summary criminal history is confidential and the receiving public utility or cable corporation shall not disclose its contents, other than for the purpose for which it was acquired. The state summary criminal history information in the possession of the public utility or cable corporation and all copies made from it shall be destroyed not more than 30 days after employment or promotion or transfer is denied or granted, except for those cases where a current or prospective employee is out on bail or on his or her own recognizance pending trial, in which case the state summary criminal history information and all copies shall be destroyed not more than 30 days after the case is resolved.

A violation of this paragraph is a misdemeanor, and shall give the current or prospective employee who is injured by the violation a cause of action against the public utility or cable corporation to recover damages proximately caused by the violations. Any public utility's or cable corporation's request for state summary criminal history information for purposes of employing current or prospective employees who may be seeking entrance to private residences or adjacent grounds in the course of their employment shall be deemed a "compelling need" as required to be shown in this subdivision.

Nothing in this section shall be construed as imposing any duty upon public utilities or cable corporations to request state summary criminal history information on any current or prospective employees.

(B) For purposes of this paragraph, "cable corporation" means any corporation or firm that transmits or provides television, computer, or telephone services by cable, digital, fiber optic, satellite, or comparable technology to subscribers for a fee.

(C) Requests for federal level criminal history information received by the Department of Justice from entities authorized pursuant to subparagraph (A) shall be forwarded to the Federal Bureau of Investigation by the Department of Justice. Federal level criminal history information received or compiled by the Department of Justice may then be disseminated to the entities referenced in subparagraph (A), as authorized by law.

(D)(i) Authority for a cable corporation to request state or federal level criminal history information under this paragraph shall commence July 1, 2005.

(ii) Authority for a public utility to request federal level criminal history information under this paragraph shall commence July 1, 2005.

(11) To any campus of the California State University or the University of California, or any four year college or university accredited by a regional accreditation organization approved by the United States Department of Education, if needed in conjunction with an application for admission by a convicted felon to any special education program for convicted felons, including,

but not limited to, university alternatives and halfway houses. Only conviction information shall be furnished. The college or university may require the convicted felon to be fingerprinted, and any inquiry to the department under this section shall include the convicted felon's fingerprints and any other information specified by the department.

(12) To any foreign government, if requested by the individual who is the subject of the record requested, if needed in conjunction with the individual's application to adopt a minor child who is a citizen of that foreign nation. Requests for information pursuant to this paragraph shall be in accordance with the process described in Sections 11122 to 11124, inclusive. The response shall be provided to the foreign government or its designee and to the individual who requested the information.

(d) Whenever an authorized request for state summary criminal history information pertains to a person whose fingerprints are on file with the Department of Justice and the department has no criminal history of that person, and the information is to be used for employment, licensing, or certification purposes, the fingerprint card accompanying the request for information, if any, may be stamped "no criminal record" and returned to the person or entity making the request.

(e) Whenever state summary criminal history information is furnished as the result of an application and is to be used for employment, licensing, or certification purposes, the Department of Justice may charge the person or entity making the request a fee that it determines to be sufficient to reimburse the department for the cost of furnishing the information. In addition, the Department of Justice may add a surcharge to the fee to fund maintenance and improvements to the systems from which the information is obtained. Notwithstanding any other law, any person or entity required to pay a fee to the department for information received under this section may charge the applicant a fee sufficient to reimburse the person or entity for this expense. All moneys received by the department pursuant to this section, Sections 11105.3 and ~~42054~~ 26190 of the Penal Code, and Section 13588 of the Education Code shall be deposited in a special account in the General Fund to be available for expenditure by the department to offset costs incurred pursuant to those sections and for maintenance and improvements to the systems from which the information is obtained upon appropriation by the Legislature.

(f) Whenever there is a conflict, the processing of criminal fingerprints and fingerprints of applicants for security guard or alarm agent registrations or firearms qualification permits submitted pursuant to Section 7583.9, 7583.23, 7596.3, or 7598.4 of the Business and Professions Code shall take priority over the processing of other applicant fingerprints.

(g) It is not a violation of this section to disseminate statistical or research information obtained from a record, provided that the identity of the subject of the record is not disclosed.

(h) It is not a violation of this section to include information obtained from a record in (1) a transcript or record of a judicial or administrative proceeding or (2) any other public record if the inclusion of the information in the public record is authorized by a court, statute, or decisional law.

(i) Notwithstanding any other law, the Department of Justice or any state or local law enforcement agency may require the submission of fingerprints for the purpose of conducting summary criminal history information checks that are authorized by law.

(j) The state summary criminal history information shall include any finding of mental incompetence pursuant to Chapter 6 (commencing with Section 1367) of Title 10 of Part 2 arising out of a complaint charging a felony offense specified in Section 290.

(k)(1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization and the information is to be used for peace officer employment or certification purposes. As used in this subdivision, a peace officer is defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

(2) Notwithstanding any other provision of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(C) Every arrest or detention, except for an arrest or detention resulting in an exoneration, provided however that where the records of the Department of Justice do not contain a disposition for the arrest, the Department of Justice first makes a genuine effort to determine the disposition of the arrest.

(D) Every successful diversion.

(E) Every date and agency name associated with all retained peace officer or nonsworn law enforcement agency employee preemployment criminal offender record information search requests.

(l)(1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by a criminal justice agency or organization as defined in Section 13101 of the Penal Code, and the information is to be used for criminal justice employment, licensing, or certification purposes.

(2) Notwithstanding any other provision of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(C) Every arrest for an offense for which the records of the Department of Justice do not contain a disposition or did not result in a conviction, provided that the Department of Justice first makes a genuine effort to determine the disposition of the arrest. However, information concerning an arrest shall not be disclosed if the records of the Department of Justice indicate or if the genuine effort reveals that the subject was exonerated, successfully completed a diversion or deferred entry of judgment program, or the arrest was deemed a detention.

(D) Every date and agency name associated with all retained peace officer or nonsworn law enforcement agency employee preemployment criminal offender record information search requests.

(m)(1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization pursuant to Section 1522, 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or any statute that incorporates the criteria of any of those sections or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other provision of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction of an offense rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(C) Every arrest for an offense for which the Department of Social Services is required by paragraph (1) of subdivision (a) of Section 1522 of the Health and Safety Code to determine if an applicant has been arrested. However, if the records of the Department of Justice do not contain a disposition for an arrest, the Department of Justice shall first make a genuine effort to determine the disposition of the arrest.

(3) Notwithstanding the requirements of the sections referenced in paragraph (1) of this subdivision, the Department of Justice shall not disseminate information about an arrest subsequently deemed a detention or an arrest that resulted in either the successful completion of a diversion program or exoneration.

(n)(1) This subdivision shall apply whenever state or federal summary criminal history information, to be used for employment, licensing, or certification purposes, is furnished by the Department of Justice as the result of an application by an authorized agency, organization, or individual pursuant to any of the following:

(A) Paragraph (9) of subdivision (c), when the information is to be used by a cable corporation.

(B) Section 11105.3 or 11105.4.

(C) Section 15660 of the Welfare and Institutions Code.

(D) Any statute that incorporates the criteria of any of the statutory provisions listed in subparagraph (A), (B), or (C), or of this subdivision, by reference.

(2) With the exception of applications submitted by transportation companies authorized pursuant to Section 11105.3, and notwithstanding any other provision of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant for a violation or attempted violation of any offense specified in subdivision (a) of Section 15660 of the Welfare and Institutions Code. However, with the exception of those offenses for which registration is required pursuant to Section 290, the Department of Justice shall not disseminate information pursuant to this subdivision unless the conviction occurred within 10 years of the date of the agency's request for information or the conviction is over 10 years old but the subject of the request was incarcerated within 10 years of the agency's request for information.

(B) Every arrest for a violation or attempted violation of an offense specified in subdivision (a) of Section 15660 of the Welfare and Institutions Code for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(o)(1) This subdivision shall apply whenever state or federal summary criminal history information is furnished by the Department of Justice as the result of an application by an authorized agency or organization pursuant to Section 261 or 550 of the Financial Code, or any statute that incorporates the criteria of either of those sections or this subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other provision of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant for a violation or attempted violation of any offense specified in Section 550 of the Financial Code.

(B) Every arrest for a violation or attempted violation of an offense specified in Section 550 of the Financial Code for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(p)(1) This subdivision shall apply whenever state or federal criminal history information is furnished by the Department of Justice as the result of an application by an agency, organization, or individual not defined in subdivision (k), (l), (m), (n), or (o), or by a transportation company authorized pursuant to Section 11105.3, or any statute that incorporates the criteria of that section or this

subdivision by reference, and the information is to be used for employment, licensing, or certification purposes.

(2) Notwithstanding any other provisions of law, whenever state summary criminal history information is furnished pursuant to paragraph (1), the Department of Justice shall disseminate the following information:

(A) Every conviction rendered against the applicant.

(B) Every arrest for an offense for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(q) All agencies, organizations, or individuals defined in subdivisions (k), (l), (m), (n), (o), and (p) may contract with the Department of Justice for subsequent arrest notification pursuant to Section 11105.2. This subdivision shall not supersede sections that mandate an agency, organization, or individual to contract with the Department of Justice for subsequent arrest notification pursuant to Section 11105.2.

(r) Nothing in this section shall be construed to mean that the Department of Justice shall cease compliance with any other statutory notification requirements.

(s) The provisions of Section 50.12 of Title 28 of the Code of Federal Regulations are to be followed in processing federal criminal history information.

Comment. Subdivision (e) of Section 11105 is amended to reflect nonsubstantive reorganization of the statutes governing control of deadly weapons.

ADDITIONAL CONFORMING REVISIONS
NECESSITATED BY 2009 LEGISLATION

The Commission’s 6/24/09 pre-print recommendation on *Nonsubstantive Reorganization of Deadly Weapon Statutes* includes conforming revisions of numerous provisions that cross-refer to statutes the Commission is proposing to reorganize.

After the Commission submitted its report, new provisions were added, some of which include cross-references that would need to be conformed to the proposed reorganization. In addition, some existing provisions were amended to include new cross-references that would need to be conformed.

The Commission’s report should be updated to reflect these developments, as discussed in more detail below.

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BUSINESS AND PROFESSIONS CODE SECTION 7574.14

Business and Professions Code Section 7574.14 was added by Senate Bill 741 (Maldonado), 2009 Cal. Stat. ch. 361, § 2. Section 7574.14 cross-refers to three provisions that the Commission is proposing to reorganize: Penal Code Sections 12027(a), 12031(b)(1), and 12033. If the Commission’s proposal were enacted, a conforming revision of Section 7574.14 would be needed, as shown in strikeout and underscore below:

Bus. & Prof. Code § 7574.14 (amended). Persons exempt from chapter

SEC. ____ . Section 7574.14 of the Business and Professions Code is amended to read:

7574.14. This chapter shall not apply to the following:

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

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

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

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

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

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

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

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

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

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

(k) A retired peace officer of the state or political subdivision thereof when the retired peace officer is employed by a private employer in employment approved by the chief law enforcement officer of the jurisdiction where the employment takes place, provided that the retired officer is in a uniform of a public law enforcement agency, has registered with the bureau on a form approved by the director, and has met any training requirements or their equivalent as established for security personnel under Section 7583.5. This officer may not carry a loaded or concealed firearm unless he or she is exempted under the provisions of ~~subdivision (a) of Section 12027~~ Sections 25450 to 25475, inclusive, of the Penal Code or

~~paragraph (1) of subdivision (b) of Section 12031~~ Sections 25900 to 25910, inclusive, of the Penal Code or has met the requirements set forth in ~~Section 12033~~ subdivision (d) of Section 26030 of the Penal Code. However, nothing herein shall exempt the retired peace officer who contracts for his or her services or the services of others as a private patrol operator.

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

(m) Any savings association subject to the jurisdiction of the Commissioner of financial Institutions or the Office of Thrift Supervision.

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

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

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

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

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

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

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

(q) An armored contract carrier operating armored vehicles pursuant to the authority of the Department of the California Highway Patrol or the Public Utilities Commission, or an armored vehicle guard employed by an armored contract carrier.

Comment. Subdivision (j) of Section 7574.14 is amended to make a technical revision.

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

BUSINESS AND PROFESSIONS CODE SECTION 21628

Business and Professions Code Section 21628 was added by Senate Bill 449 (Padilla), 2009 Cal. Stat. ch. 335, § 2.5 (§ 2 will not become operative because the conditions for operation of § 2.5 were satisfied).

Section 21628 cross-refers to two items the Commission is proposing to reorganize: Penal Code Section 12071 and "Article 4 (commencing with Section 12071) of Chapter 1 of Title 2 of Part 4 of the Penal Code." If the Commission's

proposal were enacted, a conforming revision of Section 21628 would be needed, as shown in strikeout and underscore below:

Bus. & Prof. Code § 21628 (amended). Reporting by secondhand dealer or coin dealer relating to property other than firearms

SEC. ____ . Section 21628 of the Business and Professions Code, as it reads in Section 2.5 of Chapter 335 of the Statutes of 2009, is amended to read:

21628. Every secondhand dealer or coin dealer described in Section 21626 shall report daily, or on the first working day after receipt or purchase of the property, on forms either approved or provided at actual cost by the Department of Justice, all tangible personal property, except for firearms, which he or she has purchased, taken in trade, taken in pawn, accepted for sale on consignment, or accepted for auctioning, to the chief of police or to the sheriff, in accordance with the provisions of Sections 21630 and 21633 and subdivision (j) of this section. The report shall be legible, prepared in English, completed where applicable, and include, but not be limited to, the following information:

(a) The name and current address of the intended seller or pledger of the property.

(b) The identification of the intended seller or pledger. The identification of the seller or pledger of the property shall be verified by the person taking the information. The verification shall be valid if the person taking the information reasonably relies on any one of the following documents, provided that the document is currently valid or has been issued within five years and contains a photograph or description, or both, of the person named on it, and, where applicable, is signed by the person, and bears a serial or other identifying number:

(1) A passport of the United States.

(2) A driver's license issued by any state, or Canada.

(3) An identification card issued by any state.

(4) An identification card issued by the United States.

(5) A passport from any other country in addition to another item of identification bearing an address.

(6) A Matricula Consular in addition to another item of identification bearing an address.

(c) A complete and reasonably accurate description of serialized property, including, but not limited to, the following: serial number and other identifying marks or symbols, owner-applied numbers, manufacturer's named brand, and model name or number. Watches need not be disassembled when special skill or special tools are required to obtain the required information, unless specifically requested to do so by a peace officer. A special tool does not include a penknife, caseknife, or similar instrument and disassembling a watch with a penknife, caseknife, or similar instrument does not constitute a special skill. In all instances where the required information may be obtained by removal of a watchband, then

the watchband shall be removed. The cost associated with opening the watch shall be borne by the pawnbroker, secondhand dealer, or customer.

(d) A complete and reasonably accurate description of nonserialized property, including, but not limited to, the following: size, color, material, manufacturer's pattern name (when known), owner-applied numbers and personalized inscriptions, and other identifying marks or symbols. Watches need not be disassembled when special skill or special tools are required to obtain the required information, unless specifically requested to do so by a peace officer. A special tool does not include a penknife, caseknife, or similar instrument and disassembling a watch with a penknife, caseknife, or similar instrument does not constitute a special skill. In all instances where the required information may be obtained by removal of a watchband, then the watchband shall be removed. The cost associated with opening the watch shall be borne by the pawnbroker, secondhand dealer, or customer.

(e) A certification by the intended seller or pledger that he or she is the owner of the property or has the authority of the owner to sell or pledge the property.

(f) A certification by the intended seller or pledger that to his or her knowledge and belief the information is true and complete.

(g) A legible fingerprint taken from the intended seller or pledger, as prescribed by the Department of Justice. This requirement does not apply to a coin dealer, unless required pursuant to local regulation.

(h) When a secondhand dealer complies with all of the provisions of this section, he or she shall be deemed to have received from the seller or pledger adequate evidence of authority to sell or pledge the property for all purposes included in this article, and Division 8 (commencing with Section 21000) of the Financial Code.

In enacting this subdivision, it is the intent of the Legislature that its provisions shall not adversely affect the implementation of, or prosecution under, any provision of the Penal Code.

(i) Any person who conducts business as a secondhand dealer at any gun show or event, as defined in Section 478.100 of Title 27 of the Code of Federal Regulations, or its successor, outside the jurisdiction that issued the secondhand dealer license in accordance with subdivision (d) of Section 21641, may be required to submit a duplicate of the transaction report prepared pursuant to this section to the local law enforcement agency where the gun show or event is conducted.

(j)(1) The Department of Justice shall, in consultation with appropriate local law enforcement agencies, develop clear and comprehensive descriptive categories denoting tangible personal property subject to the reporting requirements of this section. These categories shall be incorporated by secondhand dealers and coin dealers described in Section 21626 for purposes of the reporting requirements set forth herein. Any required report shall be transmitted by electronic means. The Department of Justice and local law enforcement agencies, in consultation with representatives from the secondhand dealer and coin dealer businesses, shall

develop a standard format to be used statewide to transmit this report electronically.

(2) Twelve months after the format and the categories described in paragraph (1) have been developed, each secondhand dealer and coin dealer shall electronically report using this format the information required by this section under these reporting categories. Until that time, each secondhand dealer and coin dealer may either continue to report this information using existing forms and procedures or may begin electronically reporting this information under the reporting categories and using the format described in paragraph (1) as soon as each has been developed.

(3) A coin dealer who engages in less than 10 transactions each week in which he or she has purchased, taken in trade, taken in pawn, accepted for sale or consignment, or accepted for auctioning tangible personal property, shall report the information required by this section under the reporting categories described in paragraph (1) on a form developed by the Attorney General that the coin dealer shall transmit each day by facsimile transmission or by mail to the chief of police or sheriff. A transaction shall consist of not more than one item. Nothing in this section shall prohibit up to 10 transactions with the same customer per week, provided that the cumulative total per week for all customers does not exceed 10 transactions. Until that form is developed, these coin dealers shall continue to report information required by this section using existing forms and procedures. If these transactions increase to 10 per week, the coin dealer shall electronically report using the format described in paragraph (1) the information required by this section beginning six months after his or her transactions exceed 10 per week or 12 months after the format described in paragraph (1) has been developed, whichever occurs later.

(4) For purposes of this subdivision, "item" shall mean any single physical article. However, with respect to a commonly accepted grouping of articles that are purchased as a set, including, but not limited to, a pair of earrings or place settings of china, silverware, or other tableware, "item" shall mean that commonly accepted grouping.

(5) Nothing in this subdivision shall be construed as excepting a secondhand dealer from the fingerprinting requirement of subdivision (g).

(k) Nothing in this section shall be construed to exempt a person licensed as a firearms dealer pursuant to ~~Article 4 (commencing with Section 12071) of Chapter 1 of Title 2 of Part 4 Sections 26700 to 26915, inclusive,~~ of the Penal Code from the reporting requirements for the delivery of firearms pursuant to ~~Section 12071 Sections 26700 to 26915, inclusive,~~ of the Penal Code.

(l) This section shall become operative on July 1, 2010.

Comment. Subdivision (k) of Section 21628 (operative July 1, 2010) is amended to reflect nonsubstantive reorganization of the statutes governing control of deadly weapons.

BUSINESS AND PROFESSIONS CODE SECTION 21628.2

Business and Professions Code Section 21628.2 was added by Senate Bill 449 (Padilla), 2009 Cal. Stat. ch. 335, § 5. Section 21628.2 cross-refers to Penal Code Section 12071, which the Commission is proposing to reorganize. If the Commission's proposal were enacted, a conforming revision of Section 21628.2 would be needed, as shown in ~~strikeout~~ and underscore below:

Bus. & Prof. Code § 21628.2 (amended). Reporting by secondhand dealer relating to firearms

SEC. _____. Section 21628.2 of the Business and Professions Code, as it reads in Section 5 of Chapter 335 of the Statutes of 2009, is amended to read:

21628.2. (a) For purposes of this section, the "department" shall mean the Department of Justice.

(b) Every secondhand dealer described in Section 21626 shall, in a format prescribed by the department, and on the day of the transaction, electronically report to the department each firearm purchased, taken in trade, taken in pawn, accepted for sale on consignment, or accepted for auctioning. The secondhand dealer shall retain a copy of the report submitted to the department and make it available for inspection by the department, any peace officer, or any local law enforcement employee who is authorized by ~~Section 12071~~ Sections 26700 to 26915, inclusive, of the Penal Code to inspect a firearms transaction record.

(c) The department may retain secondhand dealer reports to determine whether a firearm taken in by a secondhand dealer has been reported lost or stolen. If the department's records indicate that the firearm is lost or stolen, the department shall notify the law enforcement agency that entered the information in the department's records and a law enforcement agency with jurisdiction over the secondhand dealer's business location about the status of the firearm. The Dealers' Record of Sale shall be retained by the department pursuant to paragraph (1) of subdivision (b) of Section 11106 of the Penal Code.

(d) All information in the secondhand dealer report of each firearm described in subdivision (a) shall be electronically provided by the department to the secure mailbox of the local law enforcement agency described in Section 21630 within one working day of receipt by the department.

(e) This section shall become operative on July 1, 2010.

Comment. Subdivision (b) of Section 21628.2 (operative July 1, 2010) is amended to reflect nonsubstantive reorganization of the statutes governing control of deadly weapons.

CODE OF CIVIL PROCEDURE SECTION 527.85

Code of Civil Procedure Section 527.85 was added by Senate Bill 188 (Runner), 2009 Cal. Stat. ch. 566, § 1. In two places, Section 527.85 cross-refers to Penal Code Section 12021(g), which the Commission is proposing to relocate. If the

Commission's proposal were enacted, a conforming revision of Section 527.85 would be needed, as shown in ~~strikeout~~ and underscore below:

Code Civ. Proc. § 527.85 (amended). Temporary restraining order on behalf of student at postsecondary educational institution

SEC. ____ . Section 527.85 of the Code of Civil Procedure is amended to read:

527.85. (a) Any chief administrative officer of a postsecondary educational institution, or an officer or employee designated by the chief administrative officer to maintain order on the school campus or facility, a student of which has suffered a credible threat of violence made off the school campus or facility from any individual, which can reasonably be construed to be carried out or to have been carried out at the school campus or facility, may, with the written consent of the student, seek a temporary restraining order and an injunction, on behalf of the student and, at the discretion of the court, any number of other students at the campus or facility who are similarly situated.

(b) For the purposes of this section, the following definitions shall apply:

(1) "Chief administrative officer" means the principal, president, or highest ranking official of the postsecondary educational institution.

(2) "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including any of the following:

(A) Following or stalking a student to or from school.

(B) Entering the school campus or facility.

(C) Following a student during school hours.

(D) Making telephone calls to a student.

(E) Sending correspondence to a student by any means, including, but not limited to, the use of the public or private mails, interoffice mail, fax, or computer e-mail.

(3) "Credible threat of violence" means a knowing and willful statement or course of conduct that would place a reasonable person in fear for his or her safety, or the safety of his or her immediate family, and that serves no legitimate purpose.

(4) "Postsecondary educational institution" means a private institution of vocational, professional, or postsecondary education.

(5) "Student" means an adult currently enrolled in or applying for admission to a postsecondary educational institution.

(6) "Unlawful violence" means any assault or battery, or stalking as prohibited in Section 646.9 of the Penal Code, but shall not include lawful acts of self-defense or defense of others.

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

(d) Upon filing a petition for an injunction under this section, the plaintiff may obtain a temporary restraining order in accordance with subdivision (a) of Section 527, if the plaintiff also files an affidavit that, to the satisfaction of the court, shows reasonable proof that a student has suffered a credible threat of violence made off the school campus or facility by the defendant, and that great or irreparable harm would result to the student. In the discretion of the court, and on a showing of good cause, a temporary restraining order or injunction issued under this section may include other named family or household members who reside with the student, or other students at the campus or facility. A temporary restraining order granted under this section shall remain in effect, at the court's discretion, for a period not to exceed 15 days, unless otherwise modified or terminated by the court.

(e) Within 15 days of the filing of the petition, a hearing shall be held on the petition for the injunction. The defendant may file a response that explains, excuses, justifies, or denies the alleged credible threats of violence or may file a cross-complaint under this section. At the hearing, the judge shall receive any testimony that is relevant and may make an independent inquiry. Moreover, if the defendant is a current student of the entity requesting the injunction, the judge shall receive evidence concerning the decision of the postsecondary educational institution decision to retain, terminate, or otherwise discipline the defendant. If the judge finds by clear and convincing evidence that the defendant made a credible threat of violence off the school campus or facility, an injunction shall be issued prohibiting further threats of violence. An injunction issued pursuant to this section shall have a duration of not more than three years. At any time within three months before the expiration of the injunction, the plaintiff may apply for a renewal of the injunction by filing a new petition for an injunction under this section.

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

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

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

(2) At the request of the plaintiff, an order issued under this section shall be served on the defendant, regardless of whether the defendant has been taken into custody, by any law enforcement officer who is present at the scene of reported unlawful violence or a credible threat of violence involving the parties to the proceedings.

The plaintiff shall provide the officer with an endorsed copy of the order and proof of service that the officer shall complete and send to the issuing court.

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

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

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

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

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

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

(k) Nothing in this section may be construed as expanding, diminishing, altering, or modifying the duty, if any, of a postsecondary educational institution to provide a safe environment for students and other persons.

(l) The Judicial Council shall develop forms, instructions, and rules for scheduling of hearings and other procedures established pursuant to this section.

The forms for the petition and response shall be simple and concise, and their use by parties in actions brought pursuant to this section shall be mandatory.

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

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

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

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

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

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

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

Comment. Subdivisions (h) and (i) of Section 527.85 are amended to reflect nonsubstantive reorganization of the statutes governing control of deadly weapons.

PENAL CODE SECTION 538d

Penal Code Section 538d was amended by Senate Bill 169 (Benoit), 2009 Cal. Stat. ch. 345, § 1. The amendment inserts a cross-reference to Penal Code Section 12027(a)(1)(A), which the Commission is proposing to reorganize. If the Commission's proposal were enacted, a conforming revision of Section 538d would be needed, as shown in ~~strikeout~~ and underscore below:

Penal Code § 538d (amended). Fraudulently impersonating peace officer

SEC. ____ . Section 538d of the Penal Code is amended to read:

538d. (a) Any person other than one who by law is given the authority of a peace officer, who willfully wears, exhibits, or uses the authorized uniform, insignia, emblem, device, label, certificate, card, or writing, of a peace officer, with the intent of fraudulently impersonating a peace officer, or of fraudulently inducing the belief that he or she is a peace officer, is guilty of a misdemeanor.

(b)(1) Any person, other than the one who by law is given the authority of a peace officer, who willfully wears, exhibits, or uses the badge of a peace officer with the intent of fraudulently impersonating a peace officer, or of fraudulently inducing the belief that he or she is a peace officer, is guilty of a misdemeanor punishable by imprisonment in a county jail not to exceed one year, by a fine not to exceed two thousand dollars (\$2,000), or by both that imprisonment and fine.

(2) Any person who willfully wears or uses any badge that falsely purports to be authorized for the use of one who by law is given the authority of a peace officer, or which so resembles the authorized badge of a peace officer as would deceive any ordinary reasonable person into believing that it is authorized for the use of one who by law is given the authority of a peace officer, for the purpose of fraudulently impersonating a peace officer, or of fraudulently inducing the belief that he or she is a peace officer, is guilty of a misdemeanor punishable by imprisonment in a county jail not to exceed one year, by a fine not to exceed two thousand dollars (\$2,000), or by both that imprisonment and fine.

(c) Except as provided in subdivision (d), any person who willfully wears, exhibits, or uses, or who willfully makes, sells, loans, gives, or transfers to another, any badge, insignia, emblem, device, or any label, certificate, card, or writing, which falsely purports to be authorized for the use of one who by law is given the authority of a peace officer, or which so resembles the authorized badge, insignia, emblem, device, label, certificate, card, or writing of a peace officer as would deceive an ordinary reasonable person into believing that it is authorized for the use of one who by law is given the authority of a peace officer, is guilty of a misdemeanor, except that any person who makes or sells any badge under the circumstances described in this subdivision is subject to a fine not to exceed fifteen thousand dollars (\$15,000).

(d)(1) The head of an agency that employs peace officers, as defined in Sections 830.1 and 830.2, is authorized to issue identification in the form of a badge, insignia, emblem, device, label, certificate, card, or writing that clearly states that the person has honorably retired following service as a peace officer from that agency. The identification authorized pursuant to this subdivision is separate and distinct from the identification authorized by ~~subparagraph (A) of paragraph (1) of subdivision (a) of Section 12027~~ Article 2 (commencing with Section 25450) of Chapter 2 of Division 5 of Title 4 of Part 6.

(2) If the head of an agency issues a badge to an honorably retired peace officer that is not affixed to a plaque or other memento commemorating the retiree's

service for the agency, the words “Honorably Retired” shall be clearly visible above, underneath, or on the badge itself.

(3) The head of an agency that employs peace officers as defined in Sections 830.1 and 830.2 is authorized to revoke identification granted pursuant to this subdivision in the event of misuse or abuse.

(4) For the purposes of this subdivision, the term “honorably retired” does not include an officer who has agreed to a service retirement in lieu of termination.

(e)(1) Vendors of law enforcement uniforms shall verify that a person purchasing a uniform identifying a law enforcement agency is an employee of the agency identified on the uniform. Presentation and examination of a valid identification card with a picture of the person purchasing the uniform and identification, on the letterhead of the law enforcement agency, of the person buying the uniform as an employee of the agency identified on the uniform shall be sufficient verification.

(2) Any uniform vendor who sells a uniform identifying a law enforcement agency, without verifying that the purchaser is an employee of the agency, is guilty of a misdemeanor, punishable by a fine of not more than one thousand dollars (\$1,000).

(3) This subdivision shall not apply if the uniform is to be used solely as a prop for a motion picture, television, video production, or a theatrical event, and prior written permission has been obtained from the identified law enforcement agency.

Comment. Subdivision (d) of Section 538d is amended to reflect nonsubstantive reorganization of the statutes governing control of deadly weapons.

PENAL CODE SECTION 1524

Penal Code Section 1524 was amended by Assembly Bill 789 (DeLeon), 2009 Cal. Stat. ch. 345, § 1.5 (§ 1 will not become operative because the conditions for operation of § 2.5 were satisfied).

In two places, the amendment inserts a cross-reference to Penal Code Section 12028.5(b), which the Commission is proposing to reorganize. If the Commission’s proposal were enacted, a conforming revision of Section 1524 would be needed, as shown in ~~strikeout~~ and underscore below:

Penal Code § 1524 (amended). Search warrant

SEC. ____ . Section 1524 of the Penal Code is amended to read:

1524. (a) A search warrant may be issued upon any of the following grounds:

(1) When the property was stolen or embezzled.

(2) When the property or things were used as the means of committing a felony.

(3) When the property or things are in the possession of any person with the intent to use them as a means of committing a public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing them from being discovered.

(4) When the property or things to be seized consist of any item or constitute any evidence that tends to show a felony has been committed, or tends to show that a particular person has committed a felony.

(5) When the property or things to be seized consist of evidence that tends to show that sexual exploitation of a child, in violation of Section 311.3, or possession of matter depicting sexual conduct of a person under the age of 18 years, in violation of Section 311.11, has occurred or is occurring.

(6) When there is a warrant to arrest a person.

(7) When a provider of electronic communication service or remote computing service has records or evidence, as specified in Section 1524.3, showing that property was stolen or embezzled constituting a misdemeanor, or that property or things are in the possession of any person with the intent to use them as a means of committing a misdemeanor public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing their discovery.

(8) When the property or things to be seized include an item or any evidence that tends to show a violation of Section 3700.5 of the Labor Code, or tends to show that a particular person has violated Section 3700.5 of the Labor Code.

(9) When the property or things to be seized include a firearm or any other deadly weapon at the scene of, or at the premises occupied or under the control of the person arrested in connection with, a domestic violence incident involving a threat to human life or a physical assault as provided in ~~subdivision (b) of Section 12028.5~~ Section 18250.

This section does not affect warrantless seizures otherwise authorized by ~~subdivision (b) of Section 12028.5~~ Section 18250.

(10) When the property or things to be seized include a firearm or any other deadly weapon that is owned by, or in the possession of, or in the custody or control of, a person described in subdivision (a) of Section 8102 of the Welfare and Institutions Code.

(11) When the property or things to be seized include a firearm that is owned by, or in the possession of, or in the custody or control of, a person who is subject to the prohibitions regarding firearms pursuant to Section 6389 of the Family Code, if a prohibited firearm is possessed, owned, in the custody of, or controlled by a person against whom a protective order has been issued pursuant to Section 6218 of the Family Code, the person has been lawfully served with that order, and the person has failed to relinquish the firearm as required by law.

(b) The property, things, person, or persons described in subdivision (a) may be taken on the warrant from any place, or from any person in whose possession the property or things may be.

(c) Notwithstanding subdivision (a) or (b), no search warrant shall issue for any documentary evidence in the possession or under the control of any person who is a lawyer as defined in Section 950 of the Evidence Code, a physician as defined in Section 990 of the Evidence Code, a psychotherapist as defined in Section 1010 of

the Evidence Code, or a member of the clergy as defined in Section 1030 of the Evidence Code, and who is not reasonably suspected of engaging or having engaged in criminal activity related to the documentary evidence for which a warrant is requested unless the following procedure has been complied with:

(1) At the time of the issuance of the warrant, the court shall appoint a special master in accordance with subdivision (d) to accompany the person who will serve the warrant. Upon service of the warrant, the special master shall inform the party served of the specific items being sought and that the party shall have the opportunity to provide the items requested. If the party, in the judgment of the special master, fails to provide the items requested, the special master shall conduct a search for the items in the areas indicated in the search warrant.

(2)(A) If the party who has been served states that an item or items should not be disclosed, they shall be sealed by the special master and taken to court for a hearing.

(B) At the hearing, the party searched shall be entitled to raise any issues that may be raised pursuant to Section 1538.5 as well as a claim that the item or items are privileged, as provided by law. The hearing shall be held in the superior court. The court shall provide sufficient time for the parties to obtain counsel and make any motions or present any evidence. The hearing shall be held within three days of the service of the warrant unless the court makes a finding that the expedited hearing is impracticable. In that case the matter shall be heard at the earliest possible time.

(C) If an item or items are taken to court for a hearing, any limitations of time prescribed in Chapter 2 (commencing with Section 799) of Title 3 of Part 2 shall be tolled from the time of the seizure until the final conclusion of the hearing, including any associated writ or appellate proceedings.

(3) The warrant shall, whenever practicable, be served during normal business hours. In addition, the warrant shall be served upon a party who appears to have possession or control of the items sought. If, after reasonable efforts, the party serving the warrant is unable to locate the person, the special master shall seal and return to the court, for determination by the court, any item that appears to be privileged as provided by law.

(d)(1) As used in this section, a “special master” is an attorney who is a member in good standing of the California State Bar and who has been selected from a list of qualified attorneys that is maintained by the State Bar particularly for the purposes of conducting the searches described in this section. These attorneys shall serve without compensation. A special master shall be considered a public employee, and the governmental entity that caused the search warrant to be issued shall be considered the employer of the special master and the applicable public entity, for purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, relating to claims and actions against public entities and public employees. In selecting the special master, the court shall make every reasonable effort to ensure that the person selected has no relationship with any of

the parties involved in the pending matter. Any information obtained by the special master shall be confidential and may not be divulged except in direct response to inquiry by the court.

(2) In any case in which the magistrate determines that, after reasonable efforts have been made to obtain a special master, a special master is not available and would not be available within a reasonable period of time, the magistrate may direct the party seeking the order to conduct the search in the manner described in this section in lieu of the special master.

(e) Any search conducted pursuant to this section by a special master may be conducted in a manner that permits the party serving the warrant or his or her designee to accompany the special master as he or she conducts his or her search. However, that party or his or her designee may not participate in the search nor shall he or she examine any of the items being searched by the special master except upon agreement of the party upon whom the warrant has been served.

(f) As used in this section, “documentary evidence” includes, but is not limited to, writings, documents, blueprints, drawings, photographs, computer printouts, microfilms, X-rays, files, diagrams, ledgers, books, tapes, audio and video recordings, films, and papers of any type or description.

(g) No warrant shall issue for any item or items described in Section 1070 of the Evidence Code.

(h) Notwithstanding any other law, no claim of attorney work product as described in Chapter 4 (commencing with Section 2018.010) of Title 4 of Part 4 of the Code of Civil Procedure shall be sustained where there is probable cause to believe that the lawyer is engaging or has engaged in criminal activity related to the documentary evidence for which a warrant is requested unless it is established at the hearing with respect to the documentary evidence seized under the warrant that the services of the lawyer were not sought or obtained to enable or aid anyone to commit or plan to commit a crime or a fraud.

(i) Nothing in this section is intended to limit an attorney’s ability to request an in camera hearing pursuant to the holding of the Supreme Court of California in *People v. Superior Court (Laff)* (2001) 25 Cal.4th 703.

(j) In addition to any other circumstance permitting a magistrate to issue a warrant for a person or property in another county, when the property or things to be seized consist of any item or constitute any evidence that tends to show a violation of Section 530.5, the magistrate may issue a warrant to search a person or property located in another county if the person whose identifying information was taken or used resides in the same county as the issuing court.

Comment. Paragraph (a)(9) of Section 1524 is amended to reflect nonsubstantive reorganization of the statutes governing control of deadly weapons.