

## Memorandum 2011-14

**Deadly Weapons: Minor Clean-Up Issues  
"Application to Purchase" (Item #1)**

The Commission's recommendation on *Nonsubstantive Reorganization of Deadly Weapon Statutes* includes a list of "Minor Clean-Up Issues for Possible Future Legislative Attention." See 38 Cal. L. Revision Comm'n Reports 217, 265-80 (2009). Item #1 on that list is consideration of whether certain definitions should be expanded to apply to the entirety of new Part 6 of the Penal Code. This memorandum examines the term "application to purchase."

All statutory references in this memorandum are to the Penal Code, except as otherwise indicated. This memorandum examines the existing "old" sections, rather than the reorganized "new" sections that are scheduled to replace them.

## DEFINITION OF "APPLICATION TO PURCHASE"

The term "application to purchase" is defined, *for the purposes of Sections 12071 and 12072 only*, as follows:

As used in Section 12071 or 12072, "application to purchase" means any of the following:

(1) The initial completion of the register by the purchaser, transferee, or person being loaned the firearm as required by subdivision (b) of Section 12076.

(2) The initial completion and transmission to the department of the record of electronic or telephonic transfer by the dealer on the purchaser, transferee, or person being loaned the firearm as required by subdivision (c) of Section 12076.

Section 12001(i).

According to that definition, the term "application to purchase" encompasses two different procedural steps:

- The first is an action taken by the prospective recipient of a firearm, specifically, "the initial completion of the register" pursuant to Section 12076(b).
- The second is an action taken by a firearm dealer, specifically, the "initial completion and transmission" of specified information to the Department of Justice, pursuant to Section 12076(b).

The use of the defined term in Sections 12071 and 12072 is discussed below.

### Section 12071

Section 12071 describes the requirements for attaining a firearms dealer's license and the conditions and terms that apply to licensed firearms dealers.

The term "application to purchase" is used twice in Section 12071(b), which provides grounds for forfeiture of a firearm dealer's license.

One of the grounds for forfeiture is delivering a firearm before the expiration of a 10-day waiting period. Ordinarily, that period begins with the "application to purchase":

(b) A license is subject to forfeiture for a breach of any of the following prohibitions and requirements:

...

(3) No firearm shall be delivered:

(A) Within 10 days of the *application to purchase*, or, after notice by the department pursuant to subdivision (d) of Section 12076, within 10 days of the submission to the department of any correction to the application, or within 10 days of the submission to the department of any fee required pursuant to subdivision (e) of Section 12076, whichever is later.

Section 12071(b)(3)(A) (emphasis added). (While it might seem odd to frame such an important timing rule by reference to a term that can refer to either of two different procedural events — completion of the register by a firearm recipient, or transfer of data by a firearm dealer — this does not appear to present any practical problem. Section 12076(c)(2) requires that the dealer's transmission of information to the Department of Justice occur on the date of the application to purchase. Thus, the two events defined as an "application to purchase" appear to occur on the same day.)

The second usage of the term is in paragraph (b)(7), which provides specific notice language that a licensed firearms dealer must post in the licensed premises. In particular, the notice language in subparagraph (b)(7)(F) reads:

NO PERSON SHALL MAKE AN *APPLICATION TO PURCHASE* MORE THAN ONE PISTOL, REVOLVER, OR OTHER FIREARM CAPABLE OF BEING CONCEALED UPON THE PERSON WITHIN ANY 30-DAY PERIOD AND NO DELIVERY SHALL BE MADE TO ANY PERSON WHO HAS MADE AN *APPLICATION TO PURCHASE* MORE THAN ONE PISTOL, REVOLVER, OR OTHER FIREARM CAPABLE OF BEING CONCEALED UPON THE PERSON WITHIN ANY 30-DAY PERIOD."

(Emphasis added). The notice is alerting a prospective firearm recipient of another important timing rule governing the firearm acquisition process.

### **Section 12072**

Section 12072 prohibits certain transfers, deliveries, or sales of firearms. The term “application to purchase” is used five times in Section 12072.

First, “application to purchase” is used in subparagraph (a)(9)(A), which states that “[n]o person shall make an *application to purchase* more than one handgun within any 30-day period.”

Second, “application to purchase” is used in subparagraph (a)(9)(B), which provides exceptions to the prohibition provided in subparagraph (a)(9)(A). In particular, subparagraph (a)(9)(B)(xi) provides an exception for:

The replacement of a handgun when the person’s handgun was lost or stolen, and the person reported that firearm lost or stolen prior to the completion of the *application to purchase* to any local law enforcement agency of the city, county, or city and county in which he or she resides.

(Emphasis added).

Third, “application to purchase” is used in paragraph (c)(1), which provides:

(c) No dealer, whether or not acting pursuant to Section 12082, shall deliver a firearm to a person, as follows:

(1) Within 10 days of the *application to purchase*, or, after notice by the department pursuant to subdivision (d) of Section 12076, within 10 days of the submission to the department of any correction to the application, or within 10 days of the submission to the department of any fee required pursuant to subdivision (e) of Section 12076, whichever is later.

(Emphasis added).

Fourth, “application to purchase” is used in subdivision (c)(6) which states:

(c) No dealer, whether or not acting pursuant to Section 12082, shall deliver a firearm to a person, as follows:

(6) No handgun shall be delivered whenever the dealer is notified by the Department of Justice that within the preceding 30-day period the purchaser has made another *application to purchase* a handgun and that the previous *application to purchase* involved none of the entities specified in subparagraph (b) of paragraph (9) of subdivision (a).

(Emphasis added).

Fifth, and finally, “application to purchase” is used in subdivision (g) which states: “For purposes of this paragraph each *application to purchase* a handgun in violation of paragraph (9) of subdivision (a) shall be deemed a separate offense.”

As can be seen, all of those provisions relate to timing rules, involving the application to purchase as a procedural event.

#### UNDEFINED USAGE OF THE TERM “APPLICATION TO PURCHASE”

Under Section 12001(i), the definition of “application to purchase” is expressly limited to the use of that term in Sections 12071 and 12072.

However, the term is also used, without definition, in Sections 12076 and 12078. That usage, and its compatibility with the existing definition of the term, is discussed below.

#### **Section 12076**

Section 12076 sets out rules and procedures governing the transmission of firearm purchaser information to the Department of Justice. The section lists various methods for submitting firearm purchaser information. Depending on the date of transmission, the firearms dealer must submit information either by the “register,” “electronic or telephonic transfer of the information contained in the register,” “electronic or telephonic transfer [of] purchaser information,” or by “electronic transfer.” Section 12076(a)(1)-(3).

Section 12076 uses “application to purchase” in two different instances.

First, Section 12076(b) provides procedures for delivery of information when “the register is used.” Paragraph (3) of that subdivision requires delivery of a copy of the register, by mail:

Two copies of the original sheet of the register, on the date of the *application to purchase*, shall be placed in the mail, postage prepaid, and properly addressed to the Department of Justice.

(Emphasis added).

In this context, the reference to the date of the “application to purchase” provides a timing rule. It seems very likely that the “application to purchase” referenced in Section 12076(b) has the meaning provided in the definition of that term, which *expressly references Section 12076(b)*:

As used in Section 12071 or 12072, “application to purchase” means any of the following:

(1) The initial completion of the register by the purchaser, transferee, or person being loaned the firearm *as required by subdivision (b) of Section 12076.*

Section 12000(i) (emphasis added).

Thus, although Section 12001(i) does not explicitly state that the definition applies to Section 12076(b), this cross-reference, and the manner in which the phrase is used, are strong indicators that the legislature intended for “application to purchase” in Section 12076(b)(3) to have the defined meaning.

The second instance in which “application to purchase” is used in Section 12076 is in subdivision (c), which specifies rules for transfer of information to the Department of Justice when “the electronic or telephonic transfer of applicant information is used” as the format of transmission. Section 12076(c)(1). Paragraph (2) of that subdivision requires a dealer to transfer information to the Department of Justice on the date of the application to purchase:

The record of applicant information shall be transmitted to the Department of Justice by electronic or telephonic transfer on the date of the *application to purchase.*

(Emphasis added).

Here too, the definition of “application to purchase” includes a specific reference to the provision under discussion:

As used in Section 12071 or 12072, “application to purchase” means any of the following:

...  
(2) The initial completion and transmission to the department of the record of electronic or telephonic transfer by the dealer on the purchaser, transferee, or person being loaned the firearm *as required by subdivision (c) of Section 12076.*

Section 12000(i) (emphasis added).

Thus, although Section 12001(i) does not explicitly state that the definition applies to Section 12076(c), this cross-reference, and the manner in which the phrase is used, are strong indicators that the legislature intended for “application to purchase” in Section 12076(c)(2) to have the defined meaning.

### **Section 12078**

Section 12078 provides exceptions to rules governing deliveries, sales, transfers, or loans of firearms. Section 12078 uses the phrase “application to purchase” in three different subdivisions.

First, subdivision (g) provides a series of exceptions for the rules regarding delivery of firearms imposed on firearms dealers by Sections 12071 and 12072 (the two sections where the defined meaning of “application to purchase” expressly applies). In particular, Section 12078(g)(3) provides firearms dealers with an exception to the waiting periods imposed by Sections 12071 and 12072:

The waiting period described in *Sections 12071 and 12072* shall not apply to a dealer who delivers a firearm other than a handgun at an auction or similar event described in paragraph (1), as authorized by subparagraph (C) of paragraph (1) of subdivision (b) of Section 12071. Within two business days of completion of the *application to purchase*, the dealer shall forward by prepaid mail to the Department of Justice a report of the same as is indicated in subdivision (c) of Section 12071. If the electronic or telephonic transfer of applicant information is used, within two business days of completion of the *application to purchase*, the dealer delivering the firearm shall transmit to the Department of Justice an electronic or telephonic report of the same as is indicated in subdivision (c) of Section 12077.

(Emphasis added).

As discussed above, the timing rules for these waiting periods are established by the date of the application to purchase. See Sections 12071(b)(3)(A) (dealer may not deliver firearm “[w]ithin 10 days of the application to purchase”); 12072(c)(1) (dealer may not deliver firearm “[w]ithin 10 days of the application to purchase”). Considering that all of the provisions discussed here involve timing rules based on the date of the “application to purchase,” it seems very likely that the term was intended to have the same meaning in all of these related provisions.

Second, subdivision (n) is similar to subdivision (g), in that it provides exceptions to the timing rules provided in Sections 12071 and 12072 (the two sections that are expressly governed by the definition of “application to purchase”). See Section 12078(n)(1).

Subparagraph (n)(2)(B) states a condition that must be satisfied for an exception to apply:

(n) (1) The waiting period described in Section 12071 or 12072 shall not apply to the delivery, sale, or transfer of a handgun by a dealer in either of the following situations:

...

(2) In order for this subdivision to apply, both of the following shall occur:

...

(B) Whether the dealer is delivering, selling, or transferring the firearm to himself or herself or to another dealer, on the date that the *application to purchase* is completed, the dealer delivering the firearm shall forward by prepaid mail to the Department of Justice a report of the same and the type of information concerning the purchaser or transferee as is indicated in subdivision (b) of Section 12077. Where the electronic or telephonic transfer of applicant information is used, on the date that the *application to purchase* is completed, the dealer delivering the firearm shall transmit an electronic or telephonic report of the same and the type of information concerning the purchaser or transferee as is indicated in subdivision (b) of Section 12077.

(Emphasis added). Again, the term “application to purchase” is being used to define a timing rule, which requires the transfer of information to the Department of Justice on the same day as the application to purchase. It seems very likely that the term is intended to have the same meaning in this section that it has in other similar and related provisions.

Third, and finally, subdivision (r) creates another exception to the waiting periods created by Sections 12071 and 12072 (the two sections where the defined meaning specifically applies). Subdivision (r) provides:

The waiting period described in *Section 12071 or 12072* shall not apply to the delivery, sale, or transfer of a firearm to the holder of a special weapons permit issued by the Department of Justice issued pursuant to Section 12095, 12230, 12250, or 12305. On the date that the *application to purchase* is completed, the dealer delivering the firearm shall transmit to the Department of Justice an electronic or telephonic report of the same as is indicated in subdivision (b) or (c) of Section 12077.

(Emphasis added). As before, the term “application to purchase” is being used to define a timing rule, which requires the transfer of information to the Department of Justice on the same day as the application to purchase. Again, it seems very likely that the term is intended to have the same meaning in this section that it has in other similar and related provisions.

#### RECOMMENDATION

All of the sections discussed in this memorandum are closely related, being part of an overall scheme of regulation of the acquisition of a firearm. All relate to the process by which the prospective recipient provides “register” information, which is then transmitted to the Department of Justice by a firearms

dealer. All involve timing rules that incorporate the date of the “application to purchase” as a material procedural event. For the reasons discussed above, it seems very likely that the term was intended to have the same meaning throughout these provisions. There is nothing that would indicate an alternative intended meaning.

Consequently, it would appear to be appropriate to generalize the definition of “application to purchase” to apply to all of new Part 6 of the Penal Code. Doing so would simplify the law and eliminate any uncertainty about the meaning of the term in those sections that use it without definition.

If the Commission agrees, the staff will hold this material for eventual incorporation into a tentative recommendation addressing issues of this type.

Respectfully submitted,

Errol C. Daus  
Legal Extern  
UC Davis School of Law