

Memorandum 2015-49

Deadly Weapons: Minor Clean-Up Issues (Draft Recommendation)

The Commission's recommendation on *Nonsubstantive Reorganization of Deadly Weapon Statutes*¹ 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). In enacting that recommendation, the Legislature authorized the Commission to study the clean-up items included in the list.²

At its October 2015 meeting, the Commission approved the circulation of a tentative recommendation addressing some of the items on the clean-up list discussed above, as well as some related minor improvements to the weapons provisions in the Penal Code.³ The deadline for public comment on the tentative recommendation was November 23, 2015.

The Commission has not received any formal public comment on the tentative recommendation. That is not surprising. The proposals in the tentative recommendation are all fairly technical and modest in effect.

However, the staff did receive some informal input from the Department of Justice, which is discussed below. The staff also identified one further technical issue that warrants discussion.

A draft of a final recommendation is attached for the Commission's review. **After considering the points raised in this memorandum, the Commission will need to decide whether to approve the draft as a final recommendation for publication and submission to the Legislature and Governor.**

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

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

2. 2010 Cal. Stat. ch. 711, § 7.

3. Tentative Recommendation on *Deadly Weapons: Minor Clean-Up Issues (Part 2)* (Oct. 2015) (hereafter, "Tentative Recommendation").

INFORMAL DEPARTMENT OF JUSTICE INPUT

Department of Justice (“DOJ”) staff who specialize in firearms law reached out to let us know about a concern they have regarding one of the revisions proposed in the Tentative Recommendation. This was not an official comment by DOJ, but it was nonetheless informative and helpful. The staff appreciates the input.

The Tentative Recommendation proposes to amend Penal Code Section 27245 to replace the term “gun show producer license” with “certificate of eligibility.” As the tentative recommendation explained:

Gun Show Producer Certificate of Eligibility

Penal Code Sections 27200-27245 regulate gun shows and events. Section 27200(a) requires that a person possess a valid “certificate of eligibility” from the Department of Justice before producing, promoting, sponsoring, operating, or organizing a gun show or event. For the most part, Sections 27200-27245 are consistent in using the term “certificate of eligibility” to refer to that document.

However, Section 27245 twice refers to a “gun show producer license.” The Commission did not find any evidence indicating that this inconsistency was intentional. To the contrary, there is good reason to believe that “gun show producer license” was intended to mean the same thing as “certificate of eligibility.”/n3/ The proposed law would replace “gun show producer license” with “certificate of eligibility.”

/n3/ See, e.g., Sections 16800 (“gun show producer” means person issued “certificate of eligibility”), 27200(e) (“licensed gun show producer” assessed fee to cover the cost of “certificate of eligibility”).⁴

DOJ staff explained that the Commission’s conclusion is incorrect. Apparently, there is in fact a “gun show producer license” that is distinct from the “certificate of eligibility.” For that reason, the proposed amendments would be problematic.

The staff has no reason to doubt the DOJ’s expertise on this point. They are the entity charged with administering the statutes governing gun show producers. **For that reason, the staff recommends that the gun show producer license revisions be omitted from the Commission’s final recommendation.**

4. Tentative Recommendation at 2-3.

That is the approach taken in the attached draft. If the Commission disagrees, that content can be restored in the final recommendation.

ADDITIONAL TECHNICAL POINT

The Tentative Recommendation proposes technical amendments to Penal Code Section 31700. On further review of that provision, the staff has spotted what seems to be a typographical error in the existing language. Subdivision (c) of that section provides:

A person, validly identified, who has been issued a valid hunting license that is unexpired or that was issued for the hunting season immediately preceding the calendar year in which the person takes *title of possession* of a firearm is exempt from the firearm safety certificate requirement in subdivision (a) of Section 31615, except as to handguns.⁵

The italicized words “title of possession” do not make clear sense. The staff is not familiar with the concept of taking “title of possession.” However, it is common for the law to distinguish between title *or* possession. The staff is fairly sure that the use of “of” rather than “or” was a typographical error. This was confirmed informally by DOJ firearms staff, who agreed that the section should be revised to use “or.”

The staff recommends that this apparent error be corrected in the final recommendation. That is the approach taken in the attached draft. If the Commission disagrees, that content can be omitted from the final recommendation.

RECOMMENDATION

The staff recommends that the attached draft be approved as a final recommendation for publication and submission to the Legislature and Governor.

Respectfully submitted,

Brian Hebert
Executive Director

5. Emphasis added.

#M-301

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

STAFF DRAFT

RECOMMENDATION

Deadly Weapons: Minor Clean-Up Issues (Part 2)

December 2015

California Law Revision Commission
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SUMMARY OF RECOMMENDATION

In June 2009, the Commission completed a recommendation on *Nonsubstantive Reorganization of Deadly Weapon Statutes*. The Legislature implemented the recommendation through its enactment of Chapters 178 and 711 of the Statutes of 2010. This legislation became operative on January 1, 2012.

In the course of its Deadly Weapons study, the Commission identified a number of minor problems that could not be addressed without potentially making a substantive change. Given the nonsubstantive nature of the Commission's initial study, these clean-up issues were not addressed in the June 2009 recommendation, but were instead identified and set aside for future work.

This recommendation proposes amendments to address several of the minor clean-up issues. It also proposes some minor improvements that were not included in the 2009 list of clean-up issues.

This recommendation was prepared pursuant to Section 7 of Chapter 711 of the Statutes of 2010 and Government Code Section 8298.

DEADLY WEAPONS: MINOR CLEAN-UP ISSUES

1 In 2006, the Legislature directed the Law Revision Commission to conduct a
2 study and recommend nonsubstantive changes to the statutes relating to control of
3 deadly weapons to simplify and provide better organization to this area of law.¹
4 The Commission was expressly directed not to make any change that would affect
5 the existing scope of criminal liability.²

6 In June 2009, the Commission submitted its recommendation on *Nonsubstantive*
7 *Reorganization of Deadly Weapons Statutes*³ (“Deadly Weapons
8 Recommendation”) to the Legislature. In 2010, the recommendation was enacted,
9 reorganizing the deadly weapons statutes into a new Part 6 of the Penal Code,⁴
10 structuring the provisions in a more user-friendly form and making conforming
11 revisions to the law.⁵

12 During the course of the study, the Commission found a number of minor issues
13 that could not be addressed without potentially effecting a substantive change.
14 Consistent with the Commission’s limited mandate, the Commission did not
15 address any of these minor issues in its Deadly Weapons Recommendation.
16 Instead, these minor issues were listed in Appendix B of the Deadly Weapons
17 Recommendation and set aside for possible future work. In the Deadly Weapons
18 Recommendation, the Commission requested authority to study these clean-up
19 issues. The Legislature granted the Commission authority to study and make
20 recommendations on the issues identified in Appendix B.⁶

21 Pursuant to that authority, the Law Revision Commission now recommends
22 minor clean-up amendments to address some of the issues identified in Appendix
23 B of the Deadly Weapons Recommendation.⁷ This recommendation also includes
24 a few minor improvements that were not identified in Appendix B. They are

1. ACR 73 (McCarthy), 2006 Cal. Stat. res. ch. 128.

2. *Id.*

3. *Nonsubstantive Reorganization of Deadly Weapon Statutes*, 38 Cal. L. Revision Comm’n Reports 217 (2009).

4. All references contained herein are to the Penal Code unless otherwise noted.

5. SB 1080 (Committee on Public Safety), 2010 Cal. Stat. ch. 711; SB 1115 (Committee on Public Safety), 2010 Cal. Stat. ch. 178. See also *Nonsubstantive Reorganization of Deadly Weapon Statutes: Clean-Up Legislation*, 41 Cal. L. Revision Comm’n Reports 135 (2011); 2011 Cal. Stat. ch. 285; 2012 Cal. Stat. ch. 162, §§ 12-14, 203, 207; 2013 Cal. Stat. ch. 76, §§ 145.5, 145.7, 147.3, 147.5, 153.5; 2013 Cal. Stat. ch. 291, § 52.

6. 2010 Cal. Stat. ch. 711, § 7 (SB 1080 (Committee on Public Safety)).

7. An earlier recommendation addressed some other issues identified in Appendix B of the Deadly Weapons Recommendation. See *Deadly Weapons: Minor Clean-Up Issues*, 43 Cal. L. Revision Comm’n Reports 63 (2013); 2014 Cal. Stat. ch. 103. Additional issues remain to be addressed in the future.

1 proposed pursuant to the Commission’s general authority to recommend minor
2 technical and substantive reforms.⁸

3 The proposed reforms are described below.

4 STANDARDIZED TERMINOLOGY

5 This recommendation addresses a Penal Code provision that uses inconsistent
6 terminology when referring to a single thing. Such inconsistency can create
7 uncertainty as to the meaning of the law, based on the assumption that different
8 terms must have been intended to have different meanings. The Commission
9 recommends that such terminology be standardized, as discussed below.

10 **Written Firearm Safety Test**

11 Penal Code Section 31640 requires the Department of Justice to develop a
12 written firearm safety test to be administered by a certified instructor. The section
13 uses inconsistent terminology.

14 The word “test” is used in 17 of 18 references in Section 31640 and related
15 provisions.⁹ In only one instance, the word “examination” is used. The
16 Commission could find no evidence that the term “examination” was intended to
17 have a different meaning than “test.” The proposed law would replace
18 “examination” with “test.”

19 In three of four instances, Section 31640 speaks of a test being “administered.”
20 In one instance, the section refers to a test being “applied.” Again, the
21 Commission could find no evidence showing that this inconsistency was
22 intentional. The proposed law would replace “applied” with “administered.”

23 CLARIFYING REVISIONS

24 In two sections, the Commission recommends rewording an existing provision
25 to make its meaning easier to understand, without changing its meaning.

26 **Laboratory Testing of Firearms**

27 Penal Code Section 32010 requires that certain firearms be tested by an
28 independent laboratory to ensure that they meet applicable standards. Under
29 subdivision (b) of that section, the Department of Justice is charged with certifying
30 laboratories to perform that function. The proposed law would restate subdivision
31 (b) to make its meaning clearer, without changing its substance.

8. Gov’t Code § 8298.

9. Sections 31645-31650.

1 **Firearm Injury to a Child**

2 Penal Code Section 23685 requires law enforcement to report specified
3 information when a child sustains a firearm injury. The proposed law would
4 restate the section to make its meaning clearer, without changing its substance.

5 **TECHNICAL ERRORS**

6 The recommendation would correct some clear drafting errors, as explained
7 below.

8 **Duplicated Language**

9 Penal Code Section 31700(b)(2) contains superfluous duplicated language (as
10 shown in italics below):

11 (b) The following persons who take title or possession of a firearm by operation
12 of law in a representative capacity, until or unless they transfer title ownership of
13 the firearm to themselves in a personal capacity, are exempted from the firearm
14 safety certificate requirement in subdivision (a) of Section 31615:

15 ...

16 (2) A secured creditor or an agent or employee thereof when the firearms are
17 possessed as collateral for, or as a result of, *or an agent or employee thereof when*
18 *the firearms are possessed as collateral for, or as a result of*, a default under a
19 security agreement under the Commercial Code.

20 The proposed law would delete the duplicated language. Section 31700 would
21 also be revised to correct a typographical error.

22 **Erroneous Cross-Reference**

23 Penal Code Section 25850 establishes the offense of carrying a loaded firearm
24 while in a public place.

25 Penal Code Section 26045 provides a defense to prosecution for that offense.
26 Section 26045 contains an erroneous cross-reference to a *different* provision,
27 Section 25400, which establishes a different firearm offense. The proposed law
28 would correct that error.

29 **Erroneous Use of “Or”**

30 Penal Code Section 26890 regulates the storage of firearms inventory when a
31 licensed dealer is not open for business.

32 Subdivision (a) of that section requires that the firearms be stored in a secure
33 facility that is part of the licensee’s business premises or that they be secured with
34 a steel rod and lock. Subdivision (b) allows the licensing authority of an
35 unincorporated area of a county or city to impose stricter security requirements
36 than those in subdivision (a).

1 Subdivision (d) of Section 26890 provides a limited exemption from the
2 requirements of subdivisions (a) and (b) but erroneously refers to “subdivision (a)
3 or (b).” The proposed law would replace “or” with “and.”

4 SEIZURE OF WEAPON AT DOMESTIC VIOLENCE INCIDENT

5 Penal Code Sections 18250-18500 provide for the seizure of a firearm or other
6 deadly weapon at the scene of domestic violence. The Commission has identified
7 a number of problems with these provisions, as explained below.

8 **Terminology**

9 With one exception, the weapon seizure provisions use the defined term
10 “domestic violence.”¹⁰ However, there is one provision, Section 18405(b), that
11 uses the term “family violence.”

12 The use of the term “family violence” appears to have been an accidental hold-
13 over from an earlier version of the section. Prior to 1999, former Section 12028.5
14 (which was recodified in Sections 18250-18500) consistently used the term
15 “family violence.” In 1999, that section was amended to replace “family violence”
16 with “domestic violence” throughout.¹¹ The Legislative Counsel’s Digest for that
17 bill explained:

18 Existing law authorizes specified law enforcement officers who are at the scene
19 of a family violence incident involving a threat to human life or physical assault,
20 to take temporary custody of any firearm or other deadly weapon in plain sight or
21 discovered pursuant to a consensual search. This provision also defines the terms
22 “abuse,” “family violence,” and “family or household member.”

23 This bill instead would replace the term “family violence” with the term
24 “domestic violence,” would delete the above-mentioned definitions and would
25 replace them with definitions of the terms “abuse” and “domestic violence” that
26 track the definitions of those terms in the Family Code.¹²

27 Despite that intention, the bill left one reference to “family violence”
28 unchanged. The proposed legislation would amend Section 18405 to correct that
29 oversight.

30 **Seizure of “Firearm or Other Deadly Weapon”**

31 In general, the weapon seizure provisions refer to the seizure of a “firearm or
32 other deadly weapon.” However, two of the sections are inconsistent on that point.
33 They initially refer to a “firearm or other deadly weapon,” but later refer only to a
34 “firearm.” That inconsistency could be confusing.

10. Section 16490 (“domestic violence” defined).

11. See 1999 Cal. Stat. ch. 662.

12. *Id.*

1 The Commission found no evidence that the inconsistent references were
2 intentional. To avoid any misunderstanding of the effect of the law, the
3 Commission recommends that Sections 18255 and 18260 be amended to
4 consistently include a reference to “other deadly weapons.”

5 **Mailing Address**

6 Section 18405 provides for notice to the owner of a seized weapon, if a petition
7 is filed with the court for forfeiture of the weapon. The notice must be sent to the
8 owner’s last known address. Under Section 18405(b), the last known address is
9 presumed to be the “address provided to the law enforcement officer by that
10 person at the time of the family violence incident.” However, there is nothing in
11 the statutory scheme that expressly provides an opportunity for law enforcement to
12 record the weapon owner’s address.

13 In order to avoid any confusion on this issue, the proposed law would amend
14 Section 18255 to fill that procedural gap — a police officer would take the weapon
15 owner’s residential mailing address when providing a receipt for a seized weapon.

16 REFERENCE TO “IMITATION FIREARM”
17 REGULATED BY FEDERAL LAW

18 Existing Penal Code Section 20155 makes it a California misdemeanor to fail to
19 comply with “any applicable federal law or regulation governing the marking of a
20 toy, look-alike, or imitation firearm, as defined by federal law or regulation.”

21 That provision is potentially confusing, because of a mismatch between federal
22 and state definitions of key terms. The governing federal statute defines the term
23 “look-alike firearm,” but does not define the term “imitation firearm.”¹³ California
24 law defines “imitation firearm,” but does not define “look-alike firearm.”

25 While the state and federal definitions are largely the same, the federal
26 definition of “look-alike firearm” is slightly narrower than the state definition of
27 “imitation firearm.” The federal definition excludes BB guns and certain types of
28 replicas. The state definition includes them. This could lead to confusion as to the
29 scope of the rule in Section 20155.

30 The purpose of Section 20155 is to provide a state penalty for a violation of
31 federal law. This means that the provision only has effect if federal law has been
32 violated. Consequently, the narrower federal definition should be controlling —
33 conduct involving an object that is excluded from the federal definition can never
34 be a violation of the federal statute.

35 The Commission recommends that Section 20155 be revised to make clear that
36 the federal terminology is controlling.

13. 15 U.S.C. § 5001.

1

LIABILITY FOR MINOR’S USE OF TEAR GAS

2

Under existing Penal Code Section 22815, it is lawful to sell or furnish tear gas or a tear gas weapon to a minor if the minor’s parent or guardian accompanies the minor or has signed a written authorization. Any civil liability that results from the minor’s use of the tear gas may be imposed on the “person, parent, or guardian” who signed a written consent authorizing the minor’s acquisition of the tear gas.

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The Commission recommends that Section 22815 be revised to make two improvements:

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(1) Under existing law, a person is only liable for injuries caused by a minor’s use of tear gas if that person provided *written* authorization to provide tear gas to the minor. The liability rule does not apply to a person who authorizes the minor’s acquisition of tear gas by “accompanying” the minor. The proposed law would extend the liability rule to cover the latter case.

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(2) The reference to the “person, parent, or guardian” is potentially confusing, because parents and guardians are also “persons.” The proposed law would replace “person, parent, or guardian” with “parent, guardian, or other person.”

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PROPOSED LEGISLATION

1 **Penal Code § 18405 (amended). Notice of proposed forfeiture of seized weapon**

2 SEC. _____. Section 18405 of the Penal Code is amended to read:

3 18405. (a) If a petition is filed under Section 18400, the law enforcement agency
4 shall inform the owner or person who had lawful possession of the firearm or other
5 deadly weapon, at that person’s last known address, by registered mail, return
6 receipt requested, that the person has 30 days from the date of receipt of the notice
7 to respond to the court clerk to confirm the person’s desire for a hearing, and that
8 the failure to respond shall result in a default order forfeiting the confiscated
9 firearm or other deadly weapon.

10 (b) For purposes of this section, the person’s last known address shall be
11 presumed to be the address provided to the law enforcement officer by that person
12 at the time of the ~~family~~ domestic violence incident.

13 (c) In the event the person whose firearm or other deadly weapon was seized
14 does not reside at the last address provided to the agency, the agency shall make a
15 diligent, good faith effort to learn the whereabouts of the person and to comply
16 with these notification requirements.

17 **Comment.** Section 18405 is amended to replace an erroneous reference to “family violence”
18 with the defined term “domestic violence.” See Section 16490 (“domestic violence” defined).
19 This is a nonsubstantive change.

20 **Penal Code § 18255 (amended). Receipt for seized weapon**

21 SEC. _____. Section 18255 of the Penal Code is amended to read:

22 18255. (a) Upon taking custody of a firearm or other deadly weapon pursuant to
23 this division, the officer shall give the owner or person who possessed the firearm
24 or other deadly weapon a receipt.

25 (b) The receipt shall describe the firearm or other deadly weapon and list any
26 identification or serial number on the firearm.

27 (c) The receipt shall indicate where the firearm or other deadly weapon can be
28 recovered, the time limit for recovery as required by this division, and the date
29 after which the owner or possessor can recover the firearm or other deadly
30 weapon.

31 (d) The receipt shall include the name and residential mailing address of the
32 owner or person who possessed the firearm or other deadly weapon.

33 **Comment.** Section 18255(a) is amended to add an omitted reference to “other deadly
34 weapon.” This is a nonsubstantive change.

35 Subdivision (d) is new. It provides an opportunity for law enforcement to take the residential
36 mailing address of a person whose weapon is seized. This information is required for the purposes
37 of Section 18405(b).

1 **Penal Code § 18260 (amended). Seizure of weapon by community college or school district**
2 **peace officer**

3 SEC. _____. Section 18260 of the Penal Code is amended to read:

4 18260. Any peace officer, as defined in subdivisions (a) and (b) of Section
5 830.32, who takes custody of a firearm or other deadly weapon pursuant to this
6 division, shall deliver the firearm or other deadly weapon within 24 hours to the
7 city police department or county sheriff's office in the jurisdiction where the
8 college or school is located.

9 **Comment.** Section 18260 is amended to add a reference to "other deadly weapon." This is a
10 nonsubstantive change.

11 **Penal Code § 20155 (amended). Violation of federal law governing look-alike firearms**

12 SEC. _____. Section 20155 of the Penal Code is amended to read:

13 20155. Any manufacturer, importer, or distributor of ~~imitation~~ toy, look-alike, or
14 imitation firearms that fails to comply with any applicable federal law or
15 regulation governing the marking of a toy, look-alike, or imitation firearm, ~~as~~
16 ~~defined by federal law or regulation,~~ is guilty of a misdemeanor. The definition of
17 "imitation firearm" provided in Section 16700 does not apply to this section.

18 **Comment.** Section 20155 is amended to make clear that it is governed by the terminology used
19 in the applicable federal law. See 15 U.S.C. § 5001(c) ("look-alike firearm" defined). This is a
20 nonsubstantive change.

21 **Penal Code § 22815 (amended). Providing tear gas weapon to minor**

22 SEC. _____. Section 22815 of the Penal Code is amended to read:

23 22815. (a) Notwithstanding subdivision (d) of Section 22810, a minor who has
24 attained the age of 16 years may purchase and possess tear gas or a tear gas
25 weapon pursuant to this division if the minor is accompanied by a parent or
26 guardian, or has the written consent of a parent or guardian.

27 (b) Notwithstanding subdivision (c) of Section 22810, a person may sell or
28 furnish tear gas or a tear gas weapon to a minor who has attained the age of 16
29 years and who is accompanied by a parent or guardian, or who presents a
30 statement of consent signed by the minor's parent or guardian.

31 (c) Any civil liability of a minor arising out of the minor's use of tear gas or a
32 tear gas weapon other than for self-defense is imposed upon the ~~person, parent, or~~
33 guardian, or other person who signed the authorized the provision of tear gas to a
34 minor by signing a statement of consent or accompanying the minor, as specified
35 in subdivision (b). That ~~person, parent, or~~ guardian, or other person shall be jointly
36 and severally liable with the minor for any damages proximately resulting from
37 the negligent or wrongful act or omission of the minor in the use of the tear gas or
38 a tear gas weapon.

39 **Comment.** Section 22815 is amended to make clear that civil liability for a minor's use of tear
40 gas or a tear gas weapon may be imposed on any person who authorized the provision of the tear
41 gas or tear gas weapon to the minor.

1 **Penal Code § 23685 (amended). Firearm injury to child**

2 SEC. _____. Section 23685 of the Penal Code is amended to read:

3 23685. Each lead law enforcement agency investigating an incident shall report
4 to the State Department of Health Services any information obtained that
5 reasonably supports the conclusion ~~that:~~

6 ~~(a) A~~ that a child 18 years of age or younger suffered an unintentional or self-
7 inflicted gunshot wound inflicted by a firearm that was sold or transferred in this
8 state, or manufactured in this state. The report shall also indicate whether

9 ~~(b) Whether~~ as a result of that incident the child died, suffered serious injury, or
10 was treated for an injury by a medical professional.

11 **Comment.** Section 23685 is amended for clarity. This is a nonsubstantive change.

12 **Penal Code § 26045 (amended). Justification for carrying loaded firearm**

13 SEC. _____. Section 26045 of the Penal Code is amended to read:

14 26045. (a) Nothing in Section 25850 is intended to preclude the carrying of any
15 loaded firearm, under circumstances where it would otherwise be lawful, by a
16 person who reasonably believes that any person or the property of any person is in
17 immediate, grave danger and that the carrying of the weapon is necessary for the
18 preservation of that person or property.

19 (b) A violation of Section 25850 is justifiable when a person who possesses a
20 firearm reasonably believes that person is in grave danger because of
21 circumstances forming the basis of a current restraining order issued by a court
22 against another person who has been found to pose a threat to the life or safety of
23 the person who possesses the firearm. This subdivision may not apply when the
24 circumstances involve a mutual restraining order issued pursuant to Division 10
25 (commencing with Section 6200) of the Family Code absent a factual finding of a
26 specific threat to the person's life or safety. It is not the intent of the Legislature to
27 limit, restrict, or narrow the application of current statutory or judicial authority to
28 apply this or other justifications to a defendant charged with violating Section
29 ~~25400~~ 25850 or committing another similar offense. Upon trial for violating
30 Section 25850, the trier of fact shall determine whether the defendant was acting
31 out of a reasonable belief that the defendant was in grave danger.

32 (c) As used in this section, "immediate" means the brief interval before and after
33 the local law enforcement agency, when reasonably possible, has been notified of
34 the danger and before the arrival of its assistance.

35 **Comment.** Section 26045 is amended to correct an erroneous cross-reference. This is a
36 nonsubstantive change.

37 **Penal Code § 26890 (amended). Storage of inventory firearms**

38 SEC. _____. Section 26890 of the Penal Code is amended to read:

39 26890. (a) Except as provided in subdivisions (b) and (c) of Section 26805, any
40 time when the licensee is not open for business, all inventory firearms shall be

1 stored in the licensed location. All firearms shall be secured using one of the
2 following methods as to each particular firearm:

3 (1) Store the firearm in a secure facility that is a part of, or that constitutes, the
4 licensee's business premises.

5 (2) Secure the firearm with a hardened steel rod or cable of at least one-eighth
6 inch in diameter through the trigger guard of the firearm. The steel rod or cable
7 shall be secured with a hardened steel lock that has a shackle. The lock and
8 shackle shall be protected or shielded from the use of a boltcutter and the rod or
9 cable shall be anchored in a manner that prevents the removal of the firearm from
10 the premises.

11 (3) Store the firearm in a locked fireproof safe or vault in the licensee's business
12 premises.

13 (b) The licensing authority in an unincorporated area of a county or within a city
14 may impose security requirements that are more strict or are at a higher standard
15 than those specified in subdivision (a).

16 (c) Upon written request from a licensee, the licensing authority may grant an
17 exemption from compliance with the requirements of subdivision (a) if the
18 licensee is unable to comply with those requirements because of local ordinances,
19 covenants, lease conditions, or similar circumstances not under the control of the
20 licensee.

21 ~~(d) Subdivision (a) or~~ Subdivisions (a) and (b) shall not apply to a licensee
22 organized as a nonprofit public benefit corporation pursuant to Part 2
23 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations
24 Code, or as a mutual benefit corporation pursuant to Part 3 (commencing with
25 Section 7110) of Division 2 of Title 1 of the Corporations Code, if both of the
26 following conditions are satisfied:

27 (1) The nonprofit public benefit or mutual benefit corporation obtained the
28 dealer's license solely and exclusively to assist that corporation or local chapters
29 of that corporation in conducting auctions or similar events at which firearms are
30 auctioned off to fund the activities of that corporation or the local chapters of the
31 corporation.

32 (2) The firearms are not handguns.

33 **Comment.** Section 26890(d) is amended to correct an erroneous use of "or." This is a
34 nonsubstantive change.

35 **Penal Code § 31640 (amended). Firearm safety test**

36 SEC. _____. Section 31640 of the Penal Code is amended to read:

37 31640. (a) The department shall develop a written objective test, in English and
38 in Spanish, and prescribe its content, form, and manner, to be administered by an
39 instructor certified by the department.

40 (b) If the person taking the test is unable to read, the ~~examination test~~ shall be
41 administered orally. If the person taking the test is unable to read English or
42 Spanish, the test may be ~~applied~~ administered orally by a translator.

- 1 (c) The test shall cover, but not be limited to, all of the following:
- 2 (1) The laws applicable to carrying and handling firearms, particularly
- 3 handguns.
- 4 (2) The responsibilities of ownership of firearms, particularly handguns.
- 5 (3) Current law as it relates to the private sale and transfer of firearms.
- 6 (4) Current law as it relates to the permissible use of lethal force.
- 7 (5) What constitutes safe firearm storage.
- 8 (6) Issues associated with bringing a firearm into the home.
- 9 (7) Prevention strategies to address issues associated with bringing firearms into
- 10 the home.
- 11 (d) The department shall update test materials related to this article every five
- 12 years.
- 13 (e) If a dealer licensed pursuant to Sections 26700 to 26915, inclusive, or his or
- 14 her employee, or where the managing officer or partner is certified as an instructor
- 15 pursuant to this article, he or she shall also designate a separate room or
- 16 partitioned area for a person to take the objective test, and maintain adequate
- 17 supervision to ensure that no acts of collusion occur while the objective test is
- 18 being administered.
- 19 (f) This section shall become operative on January 1, 2015.
- 20 **Comment.** Section 31640 is amended to use consistent terminology. This is a nonsubstantive
- 21 change.

22 **Penal Code § 31700 (amended). Exemptions from firearm safety certificate requirement**

- 23 SEC. ____ . Section 31700 of the Penal Code is amended to read:
- 24 31700. (a) The following persons, properly identified, are exempted from the
- 25 firearm safety certificate requirement in subdivision (a) of Section 31615:
- 26 (1) Any active or honorably retired peace officer, as defined in Chapter 4.5
- 27 (commencing with Section 830) of Title 3 of Part 2.
- 28 (2) Any active or honorably retired federal officer or law enforcement agent.
- 29 (3) Any reserve peace officer, as defined in Section 832.6.
- 30 (4) Any person who has successfully completed the course of training specified
- 31 in Section 832.
- 32 (5) A firearms dealer licensed pursuant to Sections 26700 to 26915, inclusive,
- 33 who is acting in the course and scope of that person's activities as a person
- 34 licensed pursuant to Sections 26700 to 26915, inclusive.
- 35 (6) A federally licensed collector who is acquiring or being loaned a firearm that
- 36 is a curio or relic, as defined in Section 478.11 of Title 27 of the Code of Federal
- 37 Regulations, who has a current certificate of eligibility issued by the department
- 38 pursuant to Section 26710.
- 39 (7) A person to whom a firearm is being returned, where the person receiving
- 40 the firearm is the owner of the firearm.
- 41 (8) A family member of a peace officer or deputy sheriff from a local agency
- 42 who receives a firearm pursuant to Section 50081 of the Government Code.

1 (9) Any individual who has a valid concealed weapons permit issued pursuant to
2 Chapter 4 (commencing with Section 26150) of Division 5.

3 (10) An active or honorably retired member of the United States Armed Forces,
4 the National Guard, the Air National Guard, or the active reserve components of
5 the United States, where individuals in those organizations are properly identified.
6 For purposes of this section, proper identification includes the Armed Forces
7 Identification Card or other written documentation certifying that the individual is
8 an active or honorably retired member.

9 (11) Any person who is authorized to carry loaded firearms pursuant to Section
10 26025 or 26030.

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

16 (b) The following persons who take title or possession of a firearm by operation
17 of law in a representative capacity, until or unless they transfer title ownership of
18 the firearm to themselves in a personal capacity, are exempted from the firearm
19 safety certificate requirement in subdivision (a) of Section 31615:

20 (1) The executor or administrator of an estate.

21 (2) A secured creditor or an agent or employee thereof when the firearms are
22 possessed as collateral for, or as a result of, ~~or an agent or employee thereof when~~
23 ~~the firearms are possessed as collateral for, or as a result of,~~ a default under a
24 security agreement under the Commercial Code.

25 (3) A levying officer, as defined in Section 481.140, 511.060, or 680.260 of the
26 Code of Civil Procedure.

27 (4) A receiver performing the functions of a receiver.

28 (5) A trustee in bankruptcy performing the duties of a trustee.

29 (6) An assignee for the benefit of creditors performing the functions of an
30 assignee.

31 (c) A person, validly identified, who has been issued a valid hunting license that
32 is unexpired or that was issued for the hunting season immediately preceding the
33 calendar year in which the person takes title ~~of~~ or possession of a firearm is
34 exempt from the firearm safety certificate requirement in subdivision (a) of
35 Section 31615, except as to handguns.

36 (d) This section shall become operative on January 1, 2015.

37 **Comment.** Section 31700(b)(2) is amended to delete duplicative language. This is a
38 nonsubstantive change.

39 Subdivision (c) is amended to correct a typographical error.

40 **Penal Code § 32010 (amended). Laboratory testing of firearm**

41 SEC. _____. Section 32010 of the Penal Code is amended to read:

1 32010. (a) Any pistol, revolver, or other firearm capable of being concealed
2 upon the person manufactured in this state, imported into the state for sale, kept
3 for sale, or offered or exposed for sale, shall be tested within a reasonable period
4 of time by an independent laboratory certified pursuant to subdivision (b) to
5 determine whether that pistol, revolver, or other firearm capable of being
6 concealed upon the person meets or exceeds the standards defined in Section
7 31910.

8 (b) On or before October 1, 2000, the Department of Justice shall certify
9 laboratories to verify compliance with the standards defined in Section 31910. The
10 department may charge ~~any a fee to certify a laboratory that is seeking~~
11 ~~certification~~ to test any pistol, revolver, or other firearm capable of being
12 concealed upon the person pursuant to Sections 31900 to 32110, inclusive, ~~a fee~~
13 ~~not exceeding~~ The fee shall not exceed the costs of certification.

14 (c) The certified testing laboratory shall, at the manufacturer's or importer's
15 expense, test the firearm and submit a copy of the final test report directly to the
16 Department of Justice along with a prototype of the weapon to be retained by the
17 department. The department shall notify the manufacturer or importer of its receipt
18 of the final test report and the department's determination as to whether the
19 firearm tested may be sold in this state.

20 (d)(1) Commencing January 1, 2006, no center-fire semiautomatic pistol may be
21 submitted for testing pursuant to Sections 31900 to 32110, inclusive, if it does not
22 have either a chamber load indicator, or a magazine disconnect mechanism if it
23 has a detachable magazine.

24 (2) Commencing January 1, 2007, no center-fire semiautomatic pistol may be
25 submitted for testing pursuant to Sections 31900 to 32110, inclusive, if it does not
26 have both a chamber load indicator and a magazine disconnect mechanism.

27 (3) Commencing January 1, 2006, no rimfire semiautomatic pistol may be
28 submitted for testing pursuant to Sections 31900 to 32110, inclusive, if it has a
29 detachable magazine, and does not have a magazine disconnect mechanism.

30 **Comment.** Section 32010(b) is amended for clarity. This is a nonsubstantive change.