

REPORT OF THE CALIFORNIA LAW REVISION COMMISSION  
ON CHAPTER 711 OF THE STATUTES OF 2010  
(SENATE BILL 1080)

Nonsubstantive Reorganization of Deadly Weapon Statutes

Chapter 711 of the Statutes of 2010 was introduced as Senate Bill 1080, authored by the Committee on Public Safety. The measure implements the California Law Revision Commission recommendation on *Nonsubstantive Reorganization of Deadly Weapon Statutes*, 38 Cal. L. Revision Comm'n Reports 217 (2009), except the conforming revisions. The material set out below (statutes, Comments, disposition table, and supplemental disposition table) supplements the recommendation and supersedes comparable material in the recommendation. This new material reflects revisions made to coordinate SB 1080 with other legislation enacted in 2010.

**Penal Code § 12021.5 (as operative Jan. 1, 2012). Weapon enhancement for street gang crime**

12021.5. (a) Every person who carries a loaded or unloaded firearm on his or her person, or in a vehicle, during the commission or attempted commission of any street gang crimes described in subdivision (a) or (b) of Section 186.22, shall, upon conviction of the felony or attempted felony, be punished by an additional term of imprisonment in the state prison for one, two, or three years in the court's discretion. The court shall impose the middle term unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record at the time of sentence.

(b) Every person who carries a loaded or unloaded firearm together with a detachable shotgun magazine, a detachable pistol magazine, a detachable magazine, or a belt-feeding device on his or her person, or in a vehicle, during the commission or attempted commission of any street gang crimes described in subdivision (a) or (b) of Section 186.22, shall, upon conviction of the felony or attempted felony, be punished by an additional term of imprisonment in the state prison for two, three, or four years in the court's discretion. The court shall impose the middle term unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record at the time of sentence.

(c) As used in this section, the following definitions shall apply:

(1) "Detachable magazine" means a device that is designed or redesigned to do all of the following:

(A) To be attached to a rifle that is designed or redesigned to fire ammunition.

(B) To be attached to, and detached from, a rifle that is designed or redesigned to fire ammunition.

(C) To feed ammunition continuously and directly into the loading mechanism of a rifle that is designed or redesigned to fire ammunition.

(2) “Detachable pistol magazine” means a device that is designed or redesigned to do all of the following:

(A) To be attached to a semiautomatic firearm that is not a rifle or shotgun that is designed or redesigned to fire ammunition.

(B) To be attached to, and detached from, a firearm that is not a rifle or shotgun that is designed or redesigned to fire ammunition.

(C) To feed ammunition continuously and directly into the loading mechanism of a firearm that is not a rifle or a shotgun that is designed or redesigned to fire ammunition.

(3) “Detachable shotgun magazine” means a device that is designed or redesigned to do all of the following:

(A) To be attached to a firearm that is designed or redesigned to fire a fixed shotgun shell through a smooth or rifled bore.

(B) To be attached to, and detached from, a firearm that is designed or redesigned to fire a fixed shotgun shell through a smooth bore.

(C) To feed fixed shotgun shells continuously and directly into the loading mechanism of a firearm that is designed or redesigned to fire a fixed shotgun shell.

(4) “Belt-feeding device” means a device that is designed or redesigned to continuously feed ammunition into the loading mechanism of a machinegun or a semiautomatic firearm.

(5) “Rifle” shall have the same meaning as specified in Section 17090.

(6) “Shotgun” shall have the same meaning as specified in Section 17190.

(d) This section shall become operative on January 1, 2012.

**Comment.** Section 12021.5 continues former Section 12021.5 (as operative Jan. 1, 2012) without change, except that subdivisions (c)(5)-(6) are revised to correct cross-references to the definitions of “rifle” and “shotgun.”

See also Section 12001 (“firearm” defined).

**Penal Code § 12022.2 (as operative Jan. 1, 2012). Possession of armor penetrating ammunition or wearing of body vest**

12022.2. (a) Any person who, while armed with a firearm in the commission or attempted commission of any felony, has in his or her immediate possession ammunition for the firearm designed primarily to penetrate metal or armor, shall upon conviction of that felony or attempted felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony, be punished by an additional term of 3, 4, or 10 years. The court shall order the middle term unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record at the time of the sentence.

(b) Any person who wears a body vest in the commission or attempted commission of a violent offense, as defined in Section 29905, shall, upon conviction of that felony or attempted 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 by an additional term of one, two, or five years. The court shall order the middle term unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record at the time of the sentence.

(c) As used in this section, “body vest” means any bullet-resistant material intended to provide ballistic and trauma protection for the wearer.

(d) This section shall become operative on January 1, 2012.

**Comment.** Section 12022.2 continues former Section 12022.2 (as operative Jan. 1, 2012) without change, except that subdivision (b) is revised to correct a cross-reference to the definition of “violent offense.”

See also Section 12001 (“firearm” defined).

**Penal Code § 12022.4 (as operative Jan. 1, 2012). Furnishing firearm**

12022.4. (a) Any person who, during the commission or attempted commission of a felony, furnishes or offers to furnish a firearm to another for the purpose of aiding, abetting, or enabling that person or any other person to commit a felony shall, in addition and consecutive to the punishment prescribed by the felony or attempted felony of which the person has been convicted, be punished by an additional term of one, two, or three years in the state prison. The court shall order the middle term unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record at the time of the sentence. The additional term provided in this section shall not be imposed unless the fact of the furnishing is charged in the accusatory pleading and admitted or found to be true by the trier of fact.

(b) This section shall become operative on January 1, 2012.

**Comment.** Section 12022.4 continues former Section 12022.4 (as operative Jan. 1, 2012) without change.

See also Section 12001 (“firearm” defined).

**Penal Code § 16288. “Body armor”**

16288. As used in Section 31360, “body armor” means any bullet-resistant material intended to provide ballistic and trauma protection for the person wearing the body armor.

**Comment.** Section 16288 continues former Section 12370(f) without substantive change.

**Penal Code § 16650. “Handgun ammunition”**

16650. (a) As used in this part, “handgun ammunition” means ammunition principally for use in pistols, revolvers, and other firearms capable of being concealed upon the person, notwithstanding that the ammunition may also be used in some rifles.

(b) As used in Section 30312 and in Article 3 (commencing with Section 30345) of Chapter 1 of Division 10 of Title 4, “handgun ammunition” does not include either of the following:

- (1) Ammunition designed and intended to be used in an antique firearm.
- (2) Blanks.

**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)(2) (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”).

**Penal Code § 22295. Wooden club or baton for law enforcement purposes**

22295. (a) Nothing in any provision listed in Section 16580 prohibits any police officer, special police officer, peace officer, or law enforcement officer from carrying any wooden club or baton.

(b) Nothing in any provision listed in Section 16580 prohibits a uniformed security guard, regularly employed and compensated by a person engaged in any lawful business, while actually employed and engaged in protecting and preserving property or life within the scope of employment, from carrying any wooden club or baton if the uniformed security guard has satisfactorily completed a course of instruction certified by the Department of Consumer Affairs in the carrying and use of the club or baton. The training institution certified by the Department of Consumer Affairs to present this course, whether public or private, is authorized to charge a fee covering the cost of the training.

(c) The Department of Consumer Affairs, in cooperation with the Commission on Peace Officer Standards and Training, shall develop standards for a course in the carrying and use of a club or baton.

(d) Any uniformed security guard who successfully completes a course of instruction under this section is entitled to receive a permit to carry and use a club or baton within the scope of employment, issued by the Department of Consumer Affairs. The department may authorize a certified training institution to issue permits to carry and use a club or baton. A fee in the amount provided by law shall be charged by the Department of Consumer Affairs to offset the costs incurred by the department in course certification, quality control activities associated with the course, and issuance of the permit.

(e) Any person who has received a permit or certificate that indicates satisfactory completion of a club or baton training course approved by the Commission on Peace Officer Standards and Training prior to January 1, 1983, shall not be required to obtain a club or baton permit or complete a course certified by the Department of Consumer Affairs.

(f) Any person employed as a county sheriff's or police security officer, as defined in Section 831.4, shall not be required to obtain a club or baton permit or to complete a course certified by the Department of Consumer Affairs in the carrying and use of a club or baton, provided that the person completes a course

approved by the Commission on Peace Officer Standards and Training in the carrying and use of the club or baton, within 90 days of employment.

(g) Nothing in any provision listed in Section 16580 prohibits an animal control officer, as described in Section 830.9, or an illegal dumping enforcement officer, as described in Section 830.7, from carrying any wooden club or baton if the animal control officer or illegal dumping enforcement officer has satisfactorily completed the course of instruction certified by the Commission on Peace Officer Standards and Training in the carrying and use of the club or baton. The training institution certified by the Commission on Peace Officer Standards and Training to present this course, whether public or private, is authorized to charge a fee covering the cost of the training.

**Comment.** With respect to a wooden club or baton, subdivision (a) of Section 22295 continues former Section 12002(a) without substantive change. The remainder of former Section 12002(a) is continued in Section 17515 without substantive change.

Subdivisions (b)-(g) continue former Section 12002(b)-(g) without substantive change.

**Penal Code § 27120. Exception for return of unloaded firearms to wholesaler to treat as merchandise**

27120. Article 1 (commencing with Section 26700) and Article 2 (commencing with Section 26800) do not apply to the sale, delivery, or transfer of unloaded firearms to a wholesaler if the firearms are being returned to the wholesaler and are intended as merchandise in the wholesaler's business.

**Comment.** Section 27120 continues former Section 12078(k)(3) without substantive change, as that provision applied to former Section 12071.

See Sections 16520 ("firearm"), 17340 ("wholesaler"), 26700 ("dealer," "licensee," or "person licensed pursuant to Sections 26700 to 26915, inclusive").

**Penal Code § 29805. Firearm access by person convicted of misdemeanor violation of certain statutes or other specified offense**

29805. Except as provided in Section 29855 or subdivision (a) of Section 29800, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, Section 171b, paragraph (1) of subdivision (a) of Section 171c, 171d, 186.28, 240, 241, 242, 243, 243.4, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6, 417, 417.6, 422, 626.9, 646.9, or 830.95, subdivision (a) of former Section 12100, as that section read at any time from when it was enacted by Section 3 of Chapter 1386 of the Statutes of 1988 to when it was repealed by Section 18 of Chapter 23 of the Statutes of 1994, Section 17500, 17510, 25300, 25800, 30315, or 32625, subdivision (b) or (d) of Section 26100, or Section 27510, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, or of the conduct punished in subdivision (c) of Section 27590, and who, within 10 years of the conviction, owns, purchases, receives, or has in possession or under custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in

a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this section. However, the prohibition in this section may be reduced, eliminated, or conditioned as provided in Section 29855 or 29860.

**Comment.** Section 29805 continues former Section 12021(c)(1) without substantive change.

For an exemption from this provision, see Section 29850 (justifiable violation of Section 29800, 29805, 29815, or 29820). For guidance on petitioning for relief from this provision, see Sections 29855 (petition by peace officer for relief from prohibition in Section 29805) and 29860 (petition by person who was convicted of offense before that offense was added to Section 29805). For guidance on false arrest arising from enforcement of this provision, see Section 29865 (immunity from liability for false arrest). For a notice requirement relating to this provision, see Section 29810 (notice to person who is subject to Section 29800 or 29805).

See Section 16520 (“firearm”).

**Penal Code § 29825. Firearm access by person subject to temporary restraining order, injunction, or protective order**

29825. (a) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that the person is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6, 527.8, or 527.85 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

(b) Every person who owns or possesses a firearm knowing that the person is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6, 527.8, or 527.85 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

(c) If probation is granted upon conviction of a violation of this section, the court shall impose probation consistent with Section 1203.097.

(d) The Judicial Council shall provide notice on all protective orders that the respondent is prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive a firearm while the protective order is in effect. The order shall also state that the firearm shall be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale shall be filed within a specified time of receipt of the

order. The order shall state the penalties for a violation of the prohibition. The order shall also state on its face the expiration date for relinquishment.

**Comment.** Subdivision (a) of Section 29825 continues former Section 12021(g)(1) without substantive change.

Subdivision (b) continues former Section 12021(g)(2) without substantive change.

Subdivision (c) continues former Section 12021(g)(4) without substantive change.

Subdivision (d) continues former Section 12021(g)(3) without substantive change.

See Sections 16520 (“firearm”), 26700 (“dealer,” “licensee,” or “person licensed pursuant to Sections 26700 to 26915, inclusive”).

**Penal Code § 31360. Purchase, ownership, or possession of body armor by person convicted of violent felony**

31360. (a) A person who has been convicted of a violent felony under the laws of the United States, the State of California, or any other state, government, or country, who purchases, owns, or possesses body armor, as defined in Section 16288, except as authorized under subdivision (b), is guilty of a felony, punishable by imprisonment in a state prison for 16 months, or two or three years.

(b) A person whose employment, livelihood, or safety is dependent on the ability to legally possess and use body armor, who is subject to the prohibition imposed by subdivision (a) due to a prior violent felony conviction, may file a petition for an exception to this prohibition with the chief of police or county sheriff of the jurisdiction in which that person seeks to possess and use the body armor. The chief of police or sheriff may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the chief of police or sheriff deems appropriate, based on the following:

(1) A finding that the petitioner is likely to use body armor in a safe and lawful manner.

(2) A finding that the petitioner has a reasonable need for this type of protection under the circumstances.

In making its decision, the chief of police or sheriff shall consider the petitioner’s continued employment, the interests of justice, any relevant evidence, and the totality of the circumstances. It is the intent of the Legislature that law enforcement officials exercise broad discretion in fashioning appropriate relief under this paragraph in cases in which relief is warranted. However, this paragraph may not be construed to require law enforcement officials to grant relief to any particular petitioner. Relief from this prohibition does not relieve any other person or entity from any liability that might otherwise be imposed.

(c) The chief of police or sheriff shall require, as a condition of granting an exception under subdivision (b), that the petitioner agree to maintain on the petitioner’s person a certified copy of the law enforcement official’s permission to possess and use body armor, including any conditions or limitations.

(d) Law enforcement officials who enforce the prohibition specified in subdivision (a) against a person who has been granted relief pursuant to

subdivision (b), shall be immune from any liability for false arrest arising from the enforcement of this subdivision unless the person has in possession a certified copy of the permission granting the person relief from the prohibition, as required by subdivision (c). This immunity from liability does not relieve any person or entity from any other liability that might otherwise be imposed.

**Comment.** Section 31360 continues former Section 12370(a)-(d) without substantive change. See Sections 16288 (“body armor”), 17320 (“violent felony”).