



November 17, 2008

To: California Sheriffs and Chiefs of Police:

In light of the recent increase in firearms sales and inquiries from law enforcement regarding the acquisition/registration of assault weapons by peace officers, the Department of Justice seeks to clarify how a peace officer may lawfully acquire and register an assault weapon, and/or lawfully dispose of an unregistered assault weapon in California.

California law generally prohibits the possession and sale of assault weapons. (Pen. Code, § 12280.) However, there is an exception from these prohibitions for certain peace officers, including a sworn peace officer member of a California sheriff's office, or police department, who has required authorization from his or her employer to possess or receive the firearm. "Required authorization" is defined as "verifiable written certification from *the head of the agency*, identifying the recipient or possessor of the assault weapon as a peace officer and authorizing him or her to receive or possess the specific assault weapon. *For this exemption to apply . . . the officer shall register the assault weapon pursuant to Section 12285 not later than 90 days after possession or receipt (emphasis added).*" (Pen. Code, § 12280, subd. (f)(2).)

In order to be "required authorization" allowing a sworn peace officer member to purchase or possess an assault weapon, an authorization letter must be from the head of the agency and must identify both the individual peace officer and the specific assault weapon. (Pen. Code, § 12280, subd. (f)(2).) The head of the agency may provide the Department of Justice with written authorization for another individual in the agency to sign authorization letters on behalf of the head of the agency. All authorization letters must be signed by either the head of the agency, or the delegated individual. The Department of Justice does not have discretion to accept a letter from anyone *other than* the head of the agency (or the individual in the agency who is delegated to sign authorization letters on behalf of the head of the agency).

Likewise, the Department of Justice does not have discretion to accept a registration application for an assault weapon that an officer received or possessed *more than 90 days* before the date of the application. Therefore, in order to be exempt from the prohibition against the possession of assault weapons, a peace officer must register an assault weapon within 90 days of receiving or possessing it. (Pen. Code, § 12280, subd. (f)(2).) The 90-day registration requirement is separate from, and in addition to, the requirement for "required authorization" from the head of the law enforcement agency.

An unregistered assault weapon is contraband that cannot be possessed or sold in the state. (*Jackson v. Department of Justice* (2001) 85 Cal.App.4th 1334, 1346.) A peace officer or "[a]ny individual may arrange in advance to relinquish an assault weapon . . . to a police or

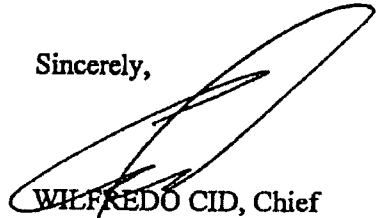
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sheriff's department." (Pen. Code, § 12288.) The law enforcement agency must either destroy an unregistered assault weapon, obtain a court order to retain it to carry out the official duties of the agency. (Pen. Code, §12030, subd. (b).) When a law enforcement agency retains a firearm for official use, it must enter identifying information about the firearm in the Automated Firearms System (AFS) database as a "firearm retained for official use." (Pen. Code, §12030, subd. (d).)

In the case of a firearm that is an "assault weapon" only because of its generic features identified in Penal Code section 12276.1 (a "Category III" assault weapon), a peace officer who removed those features could lawfully retain the firearm without the features.

If you have any questions regarding this issue, please feel free to contact me at (916) 263-0756.

Sincerely,



WILFREDO CID, Chief
Bureau of Firearms
Division of Law Enforcement

For EDMUND G. BROWN JR.
Attorney General