

Banning Assault Weapons – A Legal Primer for State and Local Action

A Publication of



Legal Community Against Violence

expertise, information & advocacy to end gun violence

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*The views expressed in this publication are those of Legal Community Against Violence.
This publication is not intended as legal advice to any person or entity, and should
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Legal Community Against Violence
Mailing Address: 268 Bush Street, #555
San Francisco, CA 94104
Tel: 415-433-2062 Fax: 415-433-3357
E-mail: stateandlocalbans@lcav.org
Web site: www.lcav.org

Table of Contents

Statement on the Expiration of the Federal Assault Weapon Ban.....	iii
Preface.....	v
I. Introduction: How To Use This Resource	1
II. Why Ban Assault Weapons?	1
III. A Brief History of Assault Weapon Regulation in the U.S.....	3
IV. Is the Federal Assault Weapon Ban Adequate?	3
V. Existing State and Local Assault Weapon Bans.....	5
State Bans.....	5
Local Bans.....	6
VI. Why Push for State and Local Action?	7
VII. The Legal Background	9
The Second Amendment and State Right to Bear Arms Provisions.....	9
Preemption	11
Due Process and Equal Protection	13
Other Legal Challenges to Assault Weapon Bans	14
VIII. How LCAV Can Help	15
Appendices	17
Appendix A: Assault Weapon Laws in the United States	19
Appendix B: Snapshot Comparison of Federal and State Assault Weapon Bans	21
Appendix C: Profiles of Federal and State Assault Weapon Bans and Litigation	25
Appendix D: Common Legal Challenges to Laws Banning Assault Weapons.....	39
Appendix E: Excerpts of the Federal Assault Weapon Ban.....	47
Appendix F: Excerpts of the California Assault Weapon Ban	51
Appendix G: LCAV Model Law to Ban Assault Weapons.....	57

Statement on the Expiration of the Federal Assault Weapon Ban

The federal assault weapon ban expired on September 13, 2004. Despite overwhelming public support for its renewal, Congress and the President allowed the 10-year old law to expire. As a result, semi-automatic, military style weapons that were formerly banned under the federal law are now legal unless banned by state or local laws.

Expiration of the ban, especially in light of the public's strong support for its renewal, is an outrage. Most Americans, including gun owners, not only favored renewal of the assault weapon ban, they supported strengthening it. Law enforcement officials across the country demanded that the law be renewed and made stronger. A recent study conducted by University of Pennsylvania researchers for the National Institute of Justice of the U.S. Department of Justice confirms the importance of strengthening federal regulation of both assault weapons and large capacity ammunition magazines.*

Unfortunately, the failure to renew the federal ban highlights the tremendous political obstacles even the most commonsense gun laws face at the federal level. The Senate voted to extend the ban in March 2004. The vote arose as an amendment to a bill sought by the National Rifle Association (NRA) to provide unprecedented legal immunity to the gun industry. The NRA ultimately directed its supporters to oppose the bill – its top legislative priority – rather than risk renewal of the assault weapon ban.

Legal Community Against Violence (LCAV) will continue to work for swift restoration and strengthening of the federal law. But the inaction of Congress and the President reinforces our belief that we must build momentum for nationwide change through state and local policy reform.

In April 2004, LCAV released *Banning Assault Weapons — A Legal Primer for State and Local Action* as a legal roadmap for public officials and gun violence prevention activists working to ban assault weapons at the state and local level. The model law contained in the report provides a starting point for these efforts. The model defines assault weapons based on a single military feature test, bans conversion kits and large capacity ammunition magazines, and provides two options for dealing with pre-ban weapons and magazines. California's law, the most comprehensive assault weapon ban in the country, was a key source for our model, but we also incorporated the best elements of other state and local assault weapon bans. As a result, LCAV's model is stronger than any existing state or local ban, stronger even than bills introduced in the Senate and House to improve the now-expired federal ban.

The need for strong state and local gun policies is more urgent than ever. Expiration of the federal ban demonstrates that we cannot rely solely on Congress and the President. It is crucial that state and local governments implement innovative laws and policies to fill in gaps in federal law and serve as a catalyst for the nationwide policies we need.

We have reissued our report, with only minor technical revisions, to help public officials and activists to pursue this important objective. Seven states and a number of local communities already have assault weapon bans in place. Many more must act to keep these weapons of war off our streets.

Sue Ann L. Schiff
Executive Director

September 14, 2004

* Christopher S. Koper, with Daniel J. Woods & Jeffrey A. Roth, Jerry Lee Center of Criminology, University of Pennsylvania, *Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets and Gun Violence, 1994-2003*, Report to the National Institute of Justice, U. S. Department of Justice, June 2004.

Preface

Most Americans favor stronger gun laws. But the history of the gun violence prevention movement shows that due to the strength of the pro-gun lobby, federal reform, even under favorable political conditions, is difficult to achieve and incremental at best. In the absence of comprehensive federal regulation, it is up to state and local governments to adopt policies to prevent gun violence. Indeed, the future of the gun violence prevention movement depends on building grassroots strength to achieve reform at the state and local level so that, ultimately, nationwide solutions will be more easily achievable. Strong state and local measures can address the concerns of specific communities and regions, improve community health and safety, fill gaps in federal policy, and act as a catalyst for the broader reforms our country needs.

Unfortunately, even in the case of firearms as lethal as assault weapons, Congress has not yet established a loophole-free, permanent ban to ensure that these weapons are not available for civilian use. This year, Congress is debating whether the current federal ban, which expires in September, should be renewed. The ban should not only be renewed, it should be strengthened. Yet to renew the ban as is will be an exceptionally difficult challenge.

Legal Community Against Violence (LCAV) has prepared this report to furnish advocates and public officials with the legal information they need to evaluate and pursue options at the state and local level, options that will fill the gaps in federal law and inspire our national policymakers to ban assault weapons effectively throughout the entire country. We cannot give up on Congress and must continue to advocate for stronger federal law. But we also cannot afford to wait. Too many lives are at stake.

About Legal Community Against Violence

Our Mission and Philosophy

LCAV is a national public interest law center dedicated to preventing gun violence. We focus on policy reform at the state and local level, marshaling the expertise and resources of the legal community to transform America's gun policies from the grassroots up. LCAV fills a unique role as the first and only lawyers' organization in the gun violence prevention movement – and the only organization exclusively dedicated to providing legal assistance in support of gun violence prevention.

LCAV believes that commonsense laws and policies are needed to end the epidemic of gun violence in this country. Community education and action are critical to achieving meaningful gun laws and policies. Lawyers bring an essential set of skills to this challenge. By making complex legal and policy issues understandable, conducting legal research, analyzing existing and emerging policy strategies, and generating model regulations, LCAV informs and educates communities, and empowers advocates and governments to pursue effective measures that are legally defensible.

Our History and Connection to the Issue of Assault Weapons

LCAV was founded in 1993, several days after a gunman with two assault weapons and a 45 caliber semi-automatic pistol shot 14 people, fatally wounding eight of them, at 101 California Street in San Francisco. Recognizing that stronger gun laws might have prevented this massacre and potentially could prevent future tragedies, Bay Area lawyers formed LCAV.

LCAV and its supporters were directly involved in securing the passage of the federal assault weapon ban, enacted as part of the Violent Crime Control and Law Enforcement Act of 1994. Realizing that the federal ban dealt with just some of the assault weapons being produced or imported – and did nothing about the several million assault weapons already in civilian hands – LCAV has continued to support efforts to

strengthen assault weapon bans at the local, state and federal levels. In 1999, with the strong support of LCAV, California expanded and improved its law, making it the most comprehensive assault weapon ban in the country.

Acknowledgments

LCAV wishes to acknowledge a number of individuals from other organizations working to prevent gun violence who reviewed the report in draft form. Their comments were invaluable. We thank Eric Gorovitz of the Educational Fund to Stop Gun Violence; Kristen Rand and Tom Diaz of the Violence Policy Center; Luis Tolley of the Brady Campaign to Prevent Gun Violence united with the Million Mom March; Sue Peschin of Consumer Federation of America; Toby Hoover of the Ohio Coalition Against Gun Violence; and Thom Mannard and Catherine Griffiths of the Illinois Council Against Handgun Violence. We also thank Sayre Weaver, our former Legal Director and Special Counsel, and presently Legal Director of the Educational Fund to Stop Gun Violence and Of Counsel to Richards, Watson & Gershon, for her guidance throughout the preparation of this report.

LCAV's Senior Staff Attorney Andrew Spafford is the report's primary author. Senior Staff Attorney Laura Cutilletta, also a contributor, served as primary editor. Two legal interns supported their efforts – Ben Van Houten provided indispensable research assistance and Kevin Schettig assisted in the final editing process. I also want to acknowledge the support of Juliet Leftwich, Managing Attorney, and Samuel Hoover, Staff Attorney.

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Sue Ann L. Schiff
Executive Director

April 2, 2004

I. Introduction: How To Use This Resource

This report, *Banning Assault Weapons – A Legal Primer for State and Local Action*, has been created to provide elected officials, government attorneys, and gun violence prevention activists with a practical guide to the legal and policy issues surrounding the adoption and strengthening of assault weapon bans – particularly those at the state and local level. Although the report discusses the law in this area of firearms regulation, it does not offer, and is not intended to constitute, legal advice.

Instead, by examining the ongoing threat of assault weapons, the scope of existing federal, state and local bans, and the extensive legal foundation supporting such bans, this report should answer many questions about the options available in individual states and communities. LCAV encourages policymakers and advocates to obtain expert counsel when considering a particular law or provision, and stands ready to provide legal research, analysis, and drafting assistance to those seeking to ban assault weapons in their states and communities.

The report includes a number of appendices with valuable legal information. **Appendices A-D** document and summarize existing laws banning assault weapons and legal challenges to these laws, demonstrating that state and local assault weapon bans are legally viable options. **Appendices E and F** include excerpts of the 1994 federal ban and the current California ban. **Appendix G** provides a model assault weapon ban developed by LCAV.

We believe that the case for banning assault weapons is overwhelming. We hope that those of you who are concerned about the toll assault weapons have taken – and continue to take – on our society, will use this report as a tool in your efforts to bring about change.

II. Why Ban Assault Weapons?

Assault weapons are semi-automatic firearms designed with military features to allow rapid and accurate spray firing. They are not designed for “sport;” they are designed to kill humans quickly and efficiently.

Key assault weapon features include:

- **The ability to accept a detachable ammunition magazine**, allowing for a higher rate and duration of fire, as well as faster reloading;
- **Forward handgrips, barrel shrouds,¹ and magazines protruding in front of the trigger**, allowing the shooter to hold the firearm with two hands for greater control during rapid fire (when the muzzle of the gun can quickly get too hot to hold);
- **Thumbhole stocks and pistol grips** on rifles and shotguns, facilitating spray firing from the hip and permitting increased control of the firearm;
- **Folding or telescoping stocks** for concealability and mobility in combat; and
- **Muzzle brakes/compensators**, which help reduce recoil and muzzle movement caused by rapid fire.

¹ A barrel shroud is a covering attached to the barrel of a gun, or that partially or completely encircles the barrel, that allows the bearer to hold the firearm with the non-trigger hand without being burned.

These features serve to clearly distinguish assault weapons from standard sporting firearms. Some bans on assault weapons, including the federal ban, list other military features (such as bayonet mounts and grenade launchers) that are extraneous to what makes an assault weapon so deadly in civilian hands.²

Unlike machine guns – fully automatic weapons that continue to fire as long as the trigger is held down (or the ammunition is expended) – semi-automatic assault weapons fire one round of ammunition each time the trigger is pulled. However, assault weapons still can fire many rounds per second, limited only by the speed of the shooter’s trigger finger. Indeed, many experts agree that semi-automatic fire is actually more accurate than automatic fire, and thus more lethal.³

In short, assault weapons are well designed to perform the military function of killing large numbers of people by making spray firing easy.

Tragically, assault weapons have been all too effective at performing this task. A recent study analyzing FBI data shows that 20% of the law enforcement officers killed in the line of duty from 1998 to 2001 were killed with an assault weapon.⁴ Some assault rifles are also accurate enough for use as sniper rifles, as illustrated by the D.C. area sniper shootings in October 2002. The end result is the same – more deaths and more injuries.

Mass Shootings Using Assault Weapons – A Tragic History *Partial List*

- July 18, 1984 – San Ysidro, CA (McDonald’s restaurant) – 21 killed, 19 wounded. Firearms included a 9mm UZI rifle.
- April 23, 1987 – Palm Bay, FL (shopping center) – 6 killed, 14 wounded. Ruger Mini-14.
- January 17, 1989 – Stockton, CA (elementary school) – 5 children killed, 29 children and 1 teacher wounded. AK-47.
- September 14, 1989 – Louisville, KY (printing plant) – 8 killed, 12 wounded. Firearms included two MAC-11s and an AK-47.
- January 25, 1993 – Langley, VA (CIA Headquarters) – 2 employees killed, 3 wounded. AK-47.
- February 28, 1993 – Waco, TX (Branch Davidian compound) – 4 ATF special agents killed, 16 others wounded. Firearms included 123 AR-15s, 44 AK-47s, 2 Barrett 50 caliber rifles, 2 Street Sweepers, and an unknown number of MAC-10 and MAC-11s.
- July 1, 1993 – San Francisco, CA (office building) – 8 killed, 6 wounded (one of the wounded subsequently died). Firearms included two TEC-DC9s.
- April 20, 1999 – Columbine, CO (high school) – 13 killed, 23 wounded. Firearms included a TEC-DC9.
- October 2002 – Washington, D.C. area (sniper shootings) – 10 killed, 3 wounded during a 3-week period. Bushmaster XM-15 E2S rifle (not banned under the federal assault weapon law, but banned as an assault weapon in California, Connecticut, Maryland and New Jersey).

² See Educational Fund to Stop Gun Violence, *Killing Machines – The Case for Banning Assault Weapons*, Sept. 2003; Violence Policy Center, *Bullet Hoses: Semiautomatic Assault Weapons – What Are They? What’s So Bad About Them?*, May 2003.

³ The National Firearms Act of 1934 regulated machine guns by imposing an excise tax and registration requirements on their manufacture and transfer. 26 U.S.C. § 5801 *et seq.* In 1986 Congress banned the transfer and possession of machine guns not already in lawful circulation. 18 U.S.C. § 922(o); *see also* 18 U.S.C. § 922(b)(4).

⁴ Violence Policy Center, “*Officer Down*” – *Assault Weapons and the War on Law Enforcement*, May 2003.

III. A Brief History of Assault Weapon Regulation in the U.S.

The first ban in the nation on semi-automatic assault weapons was a Los Angeles ordinance passed in February 1989. The ordinance was adopted in response to a Stockton, California schoolyard shooting in which a mentally ill individual with a criminal record used an AK-47 assault rifle to kill five children and wound 30 others. The ban prohibited the transfer and possession of assault weapons within the City of Los Angeles.⁵

Later that year, California became the first state to pass an assault weapon ban, prohibiting the sale of 75 types, models, and series of firearms. Also in 1989, during the administration of President George H.W. Bush, the federal government took its first major action to restrict the marketing of semi-automatic weapons. Using authority granted to the Secretary of the Treasury in the Gun Control Act of 1968, the Bureau of Alcohol, Tobacco and Firearms (ATF) banned the importation of more than 40 types of military-style assault rifles because they did not meet the “sporting purposes” test imposed by that law.⁶

In 1994, after several other states (including Hawaii, New Jersey, Connecticut and Maryland) and local governments had passed laws to ban assault weapons, Congress adopted a federal ban on the manufacture and possession of semi-automatic assault weapons. The ban included a 10-year sunset clause and several significant loopholes.

On November 14, 1997, President Clinton directed ATF to temporarily block the importation of nearly 600,000 assault rifles that had been granted import permits and freeze pending applications to import another one million assault rifles. In April 1998, ATF determined that these weapons (covering at least 59 models of assault rifles) did not meet the “sporting purposes” test and could not, therefore, be legally imported into the country.⁷

Since then, Massachusetts and New York have enacted assault weapon bans, while California has strengthened its ban by incorporating additional provisions that are stronger than federal law. For a listing of current federal, state and local assault weapon laws, and a comparison of existing federal and state assault weapon bans, see **Appendices A** and **B**, respectively.

IV. Is the Federal Assault Weapon Ban Adequate?

The federal assault weapon ban prohibits the manufacture, transfer and possession of semi-automatic assault weapons and the transfer and possession of large capacity ammunition feeding devices (i.e., those capable of holding more than 10 rounds of ammunition). The law bans 19 named types, models and series of assault weapons (and copies or duplicates of those weapons), and any semi-automatic firearm with at least two specified military features and the ability to accept a detachable magazine (this last criterion does not apply to shotguns).⁸

⁵ City of Los Angeles Ordinance No. 164388 defined “assault weapon” to include 13 specific makes and models, and “any semiautomatic, centerfire rifle or carbine which accepts a detachable magazine of twenty rounds or more....”

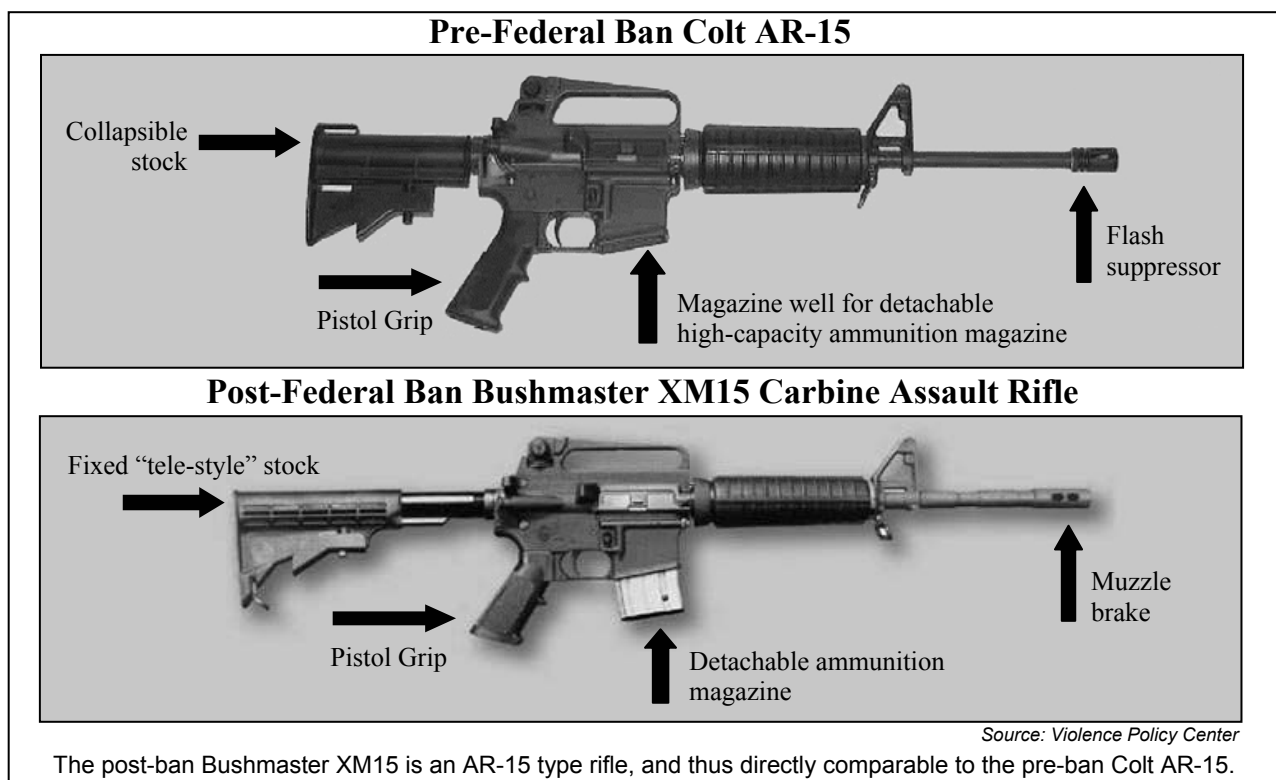
⁶ The Gun Control Act of 1968 included restrictions on weapons manufactured outside the United States. Under 18 U.S.C. § 925(d)(3), the import approval authority of the Secretary of the Treasury is limited to firearms and ammunition “generally recognized as particularly suitable for or readily adaptable to sporting purposes.”

⁷ U.S. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, *Department of the Treasury Study on the Sporting Suitability of Modified Semiautomatic Assault Rifles*, 2-3, Apr. 1998.

⁸ 18 U.S.C. § 921(a)(30).

While the federal ban was a phenomenal achievement when it was passed in 1994, it also was a victim of numerous compromises, unfortunate regulatory decisions, and, ultimately, exploitation by the gun industry. The data available indicate that the 1994 law has reduced the availability and use of assault weapons in crimes, but such data also show that the law has significant limitations:

- The generic definition of "assault weapon" requires each weapon to have **two** specified military features. In contrast, in 1989 when the administration of President George H.W. Bush blocked the importation of semi-automatic assault rifles based on the "sporting purposes" provision of the Gun Control Act of 1968, and again in 1997-98 when President Clinton took similar action, ATF used a test requiring only **one** specified military feature.⁹
- The law only bans the transfer and possession of assault weapons and large capacity ammunition feeding devices manufactured *after* the effective date of the Act (September 13, 1994). Unlike several state bans that require the registration of "grandfathered" assault weapons, the federal law has no such requirement, leaving millions of unregulated assault weapons and large capacity feeding devices on the civilian market.
- Many firearms manufacturers wasted little time redesigning their assault weapons to skirt the ban – a tactic the gun industry calls "sporterization" – either by removing a military feature without compromising the gun's ability to spray large amounts of ammunition rapidly and accurately, or by replacing suspect components with substitutes not named under federal law (but which serve similar or related functions). For example, pistol grips were sometimes swapped for thumbhole stocks, and flash suppressors were replaced with muzzle breaks or muzzle compensators.¹⁰



⁹ The features specified by ATF in 1989 were: folding/telescoping stocks, separate pistol grips, the ability to accept a bayonet, flash suppressors, bipods, grenade launchers, and night sights. In 1997-98, ATF added to the list the ability to accept a detachable magazine (a feature that it had considered but excluded in 1989). See U.S. Department of the Treasury, *supra* note 7.

¹⁰ Thumbhole stocks are already a specified military feature under the California and Connecticut bans.

- The provision of the law banning “copies or duplicates” was intended to prevent manufacturers from re-releasing the 19 named assault weapons under new names with superficial changes.¹¹ Unfortunately, the phrase “copies or duplicates” was not defined in the statute, and ATF has not enforced the provision. As a result, despite numerous cases of manufacturers exploiting this loophole, no firearms have been banned for being a copy or duplicate.¹²
- The law contains a sunset provision and will expire on September 13, 2004, unless it is renewed.

Renewal of the federal assault weapon ban is essential – but so is strengthening the law and removing its numerous loopholes. For a profile and excerpts of the federal ban, see **Appendices C** and **E**, respectively.

V. Existing State and Local Assault Weapon Bans

State Bans

Although the federal assault weapon ban applies throughout the country, states are permitted to adopt their own bans to supplement or exceed federal law.¹³ State bans can be broken into four basic categories based on how the provisions in the ban compare to the federal law (which is the minimum restriction in every state). The four categories are as follows:

- 1. States that ban most or all assault weapons, and significantly exceed federal law:**
California
- 2. States that ban many assault weapons, and exceed federal law in numerous respects:**
Connecticut and New Jersey
- 3. States that exceed federal law in some respects, but defer to federal law in others:**
Hawaii, Maryland and Massachusetts
- 4. States that essentially duplicate federal law:**
New York

In addition, although the District of Columbia does not have a specific ban for assault weapons, its handgun ban encompasses assault pistols and its machine gun ban encompasses firearms that can discharge “[s]emiautomatically, more than 12 shots without manual reloading.”¹⁴ Under a separate law, the District

¹¹ Of the nine assault weapon brand/types listed by manufacturer in the law, six have been remarketed in new, “sporterized” configurations. See Violence Policy Center, *Illinois – Land of Post-Ban Assault Weapons*, Mar. 2004.

¹² For example, Colt simply removed the flash suppressor from the banned AR-15 “Sporter” and renamed it the “Match Target” to make the weapon post-ban compliant (the “Match Target” is now available with a muzzle brake instead of a flash suppressor). Another example is the AB-10 post-ban version of the TEC-9 and TEC-DC 9. The AB-10 removes the threaded barrel included on the TEC, but is otherwise virtually identical.

¹³ At least two states regulate assault weapons without imposing a true ban. Minnesota prohibits the possession of “semi-automatic military style assault weapons” by persons under 18 years of age, and imposes some restrictions on transfers through firearms dealers. Minn. Stat. § 624.712 *et seq.* Virginia limits the possession and transportation of certain semi-automatic “assault firearms” to citizens and permanent residents. Virginia also imposes a general ban on the importation, sale, possession and transfer of the “Striker 12” and semi-automatic folding stock shotguns of like kind, but does not refer to them as “assault firearms.” Va. Code § 18.2-308.2 *et seq.*

¹⁴ D.C. Code § 7-2501.01(10)(B). For prohibitions on possession of handguns and machine guns, see D.C. Code § 7-2502.01 *et seq.*; on sale, see D.C. Code § 7-2505.01 *et seq.*; and on manufacture, see D.C. Code § 7-2504.01.

of Columbia imposes strict tort liability on manufacturers, importers and dealers of assault weapons for all direct and consequential damages that arise from injury or death due to the discharge of an assault weapon in the District (with limited exceptions).¹⁵

While some states ban specific assault weapons by name, others use a military features test to define and ban assault weapons. Still other states combine both approaches.

California's ban is significant for several reasons. Initially, California named and banned 75 types, models and series of assault weapons, plus minor variations; required assault weapons that were lawfully owned prior to the ban to be registered; and generally prohibited the transfer of those weapons within the state. After several years, however, it became apparent that manufacturers were altering their assault weapons just enough to evade the ban. As noted above, similar problems arose with the federal ban.

California responded in 1999 by making a key improvement to its ban, applying a “**one** specified military feature” standard to determine which firearms qualify as assault weapons (rather than the two feature standard used in the federal ban and by several other states). By using this standard, almost all semi-automatic firearms designed for rapid and accurate spray firing are barred from the civilian market. In 2002 another enhancement to the ban was adopted, requiring the California Department of Justice to conduct an annual security and safe storage inspection of every person, firm or corporation holding a permit to own or possess an assault weapon, including a reconciliation of the inventory of assault weapons. Permit holders maintaining an inventory of less than five assault weapons are generally subject to inspections only once every five years.

Other noteworthy state provisions include New Jersey’s registration statute, which limits the registration option to assault firearms with a legitimate target-shooting purpose – effectively requiring almost 60 models, types and series of assault weapons to be transferred out of state, rendered inoperable, or surrendered to law enforcement. In addition, Connecticut and New Jersey prohibit the sale of assault weapon conversion kits, and Hawaii bans the manufacture, possession and transfer of **all** large capacity ammunition feeding devices – even those lawfully possessed before the ban.

For profiles of state assault weapon bans, and excerpts of the California statute, see **Appendices C and F**, respectively.

Local Bans

At least 17 counties, cities and villages in four states currently ban assault weapons to some degree. Among the local bans are those in:

- Chicago, Cicero and Cook County, Illinois (which each name and ban at least 59 types, models and series of weapons);
- Cleveland, Ohio (which bans most semi-automatic firearms that accept detachable large capacity ammunition magazines); and
- New York, New York (which bans semi-automatic rifles/shotguns if they have **one** or more specified military features, and which separately regulates, but does not ban, assault pistols under an ordinance applicable to all handguns).

For citations to these and other local assault weapon bans and regulations, see **Appendix A**.

¹⁵ D.C. Code §§ 7-2551.01-03.

VI. Why Push for State and Local Action?

There are many reasons to adopt state and local assault weapon bans. As discussed below, such bans can close loopholes in the federal law, protect the public if the federal law expires, and build momentum for a stronger federal ban. In addition, public support for assault weapon bans makes passage of effective state and local laws a realistic option.

The federal assault weapon ban may expire, resulting in an increase in crime. If Congress and the President do not act before September 13, 2004, the federal assault weapon ban will expire. In the year before the 1994 federal ban went into effect, over 200,000 assault weapons were manufactured.¹⁶ A similar flood of assault weapons is sure to resume if the federal ban expires.

Despite its shortcomings, the federal ban has been effective at reducing crime. There are approximately 2 million assault weapons (as defined under federal law) in circulation in the United States.¹⁷ Although this figure represents only about 1% of the 200 million firearms estimated to be in civilian hands, assault weapons constituted between 8% and 6.8% of all firearm traces – often referred to as crime gun tracing – requested by law enforcement in 1993.¹⁸ Since the federal assault weapon ban went into effect, the percentage of crime gun traces involving assault weapons has dropped dramatically; between 1993 and 2001, the drop was 79% for assault weapons named in the federal ban, and 58% when both named assault weapons and copies or duplicates of those weapons were counted.¹⁹

In light of the sharp reduction in crime gun traces involving federally-defined assault weapons, it seems clear that the federal ban has sharply reduced the use of these once popular crime guns. State and local governments that pass their own bans establish a level of protection for their citizens regardless of what happens federally.

State and local bans can close loopholes. Even if the federal ban is renewed, more can and must be done. Studies show that:

- Twenty percent of the 211 law enforcement officers killed in the line of duty from 1998 to 2001 were killed with an assault weapon.²⁰ Loopholes in the federal ban leave many assault weapons unregulated, creating a threat to the lives of law enforcement officers. State and local bans can help address this serious issue.

¹⁶ Jeffrey A. Roth & Christopher S. Koper, The Urban Institute, *Impact Evaluation of the Public Safety and Recreational Firearms Use Protection Act of 1994*, 3, 48, Mar. 13, 1997.

¹⁷ U.S. Department of Justice, Bureau of Justice Statistics, *Guns Used in Crime*, 6, July 1995.

¹⁸ *Id.*; Roth & Koper, *supra* note 16, at 60-63. “Gun tracing” refers to the tracking of firearms to their original point of sale to assist law enforcement in identifying suspects, providing evidence for prosecution, establishing stolen status and proving ownership.

¹⁹ Brady Center to Prevent Gun Violence, *On Target: The Impact of the 1994 Federal Assault Weapons Act*, Mar. 2004. By averaging tracing data for the pre-ban period (1990-1994) and the post-ban period (1995 and after), the Brady report cites more conservative figures of 66% and 45%, respectively. *See also* Letter from William E. Moschella, Assistant U.S. Attorney General, to Dianne Feinstein, U.S. Senator (Sept. 15, 2003) (on file with LCAV).

²⁰ Violence Policy Center, *supra* note 4.

- In an analysis of firearm homicides in Milwaukee County, Wisconsin between 1992 and 1995, 5.4% of the 149 guns used in 418 gun murders were assault weapons, even though assault weapons only made up about 1% of the firearms in circulation nationwide.²¹
- Researchers evaluating the 1994 Maryland assault pistol ban found that during the first six months of 1995, the Baltimore City Police Department recovered 55% fewer assault weapons than would have been expected if no ban had been in place.²²
- Prior to the passage of the 1989 California assault weapon ban, young adults in California with a criminal history (but whose crimes did not make them prohibited purchasers under federal or state law) were twice as likely to purchase an assault-type handgun as those without such a history. Such young adults were also 1.5 times more likely than other handgun purchasers to be charged with subsequent offenses in the three years following the purchase. Purchasers of assault-type handguns who had a history of violent crime were 2.3 times more likely to have subsequent criminal offenses and 3.0 times as likely to have subsequent firearm or violent offenses.²³

Assault weapon bans have strong public support. The public, including a majority of gun owners, overwhelmingly supports banning assault weapons. Recent polls show that:

- **77 percent** of likely 2004 presidential election voters support renewal of the federal assault weapon ban, while only 21% oppose renewal.²⁴
- **66 percent** of gun owners who are likely 2004 presidential election voters support renewal of the federal assault weapon ban, while only 30% oppose renewal.²⁵
- **65 percent** of Americans favor *strengthening* the federal assault weapon ban, including 51% of gun owners.²⁶
- **67 percent** of *Field & Stream* readers do not consider assault weapons to be legitimate sporting guns.²⁷

State and local action can be a catalyst for national reform. State and local action can have a powerful influence on federal policy. Assault weapon bans adopted at the state and local level can be more rigorous than the federal regulations, serving as models for what federal law should be. In adopting regulations that are stronger than the federal ban, state and local governments build momentum for national reform and demonstrate, even more clearly than polling data, that there is a real base of support for effective regulation of these weapons.

²¹ Roth & Koper, *supra* note 16 at 96.

²² Douglas S. Weil & Rebecca C. Knox, *The Maryland Ban on the Sale of Assault Pistols and High-Capacity Magazines: Estimating the Impact in Baltimore*, 82 Am. J. Pub. Health 297, Feb. 1997.

²³ Garen J. Wintemute et al., *Criminal Activity and Assault-Type Handguns: A Study of Young Adults*, 32 Annals of Emergency Med. 44, July 1998.

²⁴ Americans for Gun Safety, *Taking Back the Second Amendment: A Seven-Step Blueprint for Democrats to Promote Responsibility and Win the Gun Vote*, 7, Oct. 2003 (citing a national poll of 802 likely 2004 presidential election voters conducted by Penn Schoen & Berland from October 1-6, 2003, with a +/-3.46% margin of error).

²⁵ *Id.*

²⁶ Consumer Federation of America, *Consumers Strongly Support Renewing and Strengthening the Federal Assault Weapons Ban*, Feb. 2004 (citing a national survey of more than 1,000 adult Americans conducted by Opinion Research Corporation International from February 18-22, 2004, with a +/-3% margin of error).

²⁷ Field & Stream, *The 2003 National Hunting Survey*, July 2003 (citing an informal survey of 2,897 readers).

VII. The Legal Background

There are a number of judicial opinions analyzing the legality of assault weapon bans now in effect at the federal, state and local levels. The legal challenges against these bans have included alleged violations of the Second Amendment or a state right to bear arms, preemption by federal or state law, and denial of due process or equal protection.

With minor exceptions, none of these challenges has been successful. No federal or state assault weapon ban has ever been overturned by the courts, and only one local jurisdiction (Columbus, Ohio) has had its ban struck down on substantive grounds.²⁸

These legal issues are summarized below, along with a list of less common (and thus far, unsuccessful) challenges.

No federal or state assault weapon ban has ever been overturned by the courts.

The Second Amendment and State Right to Bear Arms Provisions

The Second Amendment

The Second Amendment to the U.S. Constitution states, “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”

The U.S. Supreme Court addressed the scope of the Second Amendment in *United States v. Miller*, 307 U.S. 174 (1939). In that case, the Court rejected a Second Amendment challenge brought by two individuals charged with violating a federal law prohibiting the interstate transportation of sawed-off shotguns. The Court held that the “obvious purpose” of the Amendment is to “assure the continuation and render possible the effectiveness” of the state militia, and the Amendment “must be interpreted and applied with that end in view.” *Id.* at 178.

Since *Miller*, the scope of the Second Amendment has been addressed in nearly 200 federal and state appellate cases. These decisions uniformly reject Second Amendment challenges to firearms laws. The U.S. Supreme Court has had numerous opportunities to review these lower court decisions and has consistently refused to do so.

The Second Amendment is *not* a barrier to federal, state or local assault weapon bans.

The federal assault weapon ban has never been challenged on Second Amendment grounds. Every Second Amendment challenge to state and local assault weapon bans has been rejected.²⁹ In fact, following decisions

²⁸ For discussion of the Columbus, Ohio ordinance, *see infra* p. 13. In three other instances, one involving a state ban and two involving local bans, courts have invalidated specific provisions while upholding the core of the assault weapon ban. *See Silveira v. Lockyer*, 312 F.3d 1052, 1087-92 (9th Cir. 2002), *cert. denied*, 124 S. Ct. 803 (2003), invalidating one of the exceptions in the 1999 amendment to California’s law; *Robertson v. City & County of Denver*, 874 P.2d 325, 334-35 (Colo. 1994), *appeal after remand*, 978 P.2d 156 (Colo. Ct. App. 1999), striking down several minor parts of the definition of assault weapons in a Denver, Colorado ordinance; *Citizens for a Safer Community v. City of Rochester*, 627 N.Y.S.2d 193, 203-5 (N.Y. Gen. Term 1994), invalidating a portion of the definition of assault weapons in a Rochester, New York ordinance.

²⁹ *See Silveira*, 312 F.3d at 1087-92; *Peoples Rights Organization v. City of Columbus*, 152 F.3d 522, 531-32 (6th Cir. 1998); *Citizens for a Safer Community*, 627 N.Y.S.2d at 203-5.

by the U.S. Supreme Court, lower courts considering challenges to state and local gun laws have held that the Second Amendment constrains only the federal government, and not actions by state or local governments.³⁰

State Right to Bear Arms Provisions

No court has struck down a state or local ban on assault weapons for violating a state right to bear arms.

No court has ever struck down a state or local ban on assault weapons based on a state right to bear arms provision.³¹ The constitutions of most states recognize a right to bear arms. Unlike the Second Amendment, many of these state provisions specifically recognize an individual right to bear arms or have been interpreted by the courts to protect an individual right. However, **every** state court that has considered a state right to bear arms challenge to a firearms law has determined that the right at issue is not absolute.³²

Courts have considered and rejected state right to bear arms challenges to state and local assault weapon bans in Colorado, Connecticut, Illinois, Ohio and Oregon.³³ In each challenge, the courts used a *reasonableness* test in determining that the law at issue did not violate the state right to bear arms. For example, the Ohio Supreme Court upheld a Cleveland assault weapon ban as a reasonable regulation designed to promote the welfare and safety of its residents.³⁴

Nearly every state with a right to bear arms clause in its constitution, or a similar statutory provision, uses a

reasonableness test to determine whether a state or local law violates this right.³⁵

States with no right to bear arms

California	Iowa	Maryland
Minnesota	New Jersey	

The District of Columbia also has no right to bear arms provision

States with a right to bear arms only for militia service

Rhode Island	Kansas
Massachusetts	New York

See LCAV's web site, www.lcav.org, for state-by-state information on right to bear arms provisions and related case law.

³⁰ Prior to *Miller*, the Supreme Court held that the Second Amendment is a limitation upon the power of Congress and not upon that of the states. See *Miller v. Texas*, 153 U.S. 535, 538 (1894); *Presser v. Illinois*, 116 U.S. 252, 265 (1886); *United States v. Cruikshank*, 92 U.S. 542, 553 (1875). Federal appellate courts continue to reiterate this position. See *Love v. Pepersack*, 47 F.3d 120, 123-24 (4th Cir. 1995), *cert. denied*, 516 U.S. 813 (1995); *Fresno Rifle & Pistol Club, Inc. v. Van De Kamp*, 965 F.2d 723, 729-31 (9th Cir. 1992); *Quilici v. Village of Morton Grove*, 695 F.2d 261, 270-71 (7th Cir. 1982), *cert. denied*, 464 U.S. 863 (1983).

³¹ In *Ortiz v. Commonwealth*, 681 A.2d 152, 156 (Pa. 1996), the Pennsylvania Supreme Court found that assault weapon bans in Philadelphia County and the City of Pittsburgh were preempted by 18 Pa. Cons. Stat. § 6120. Although the court referenced the state's right to bear arms provision (Pa. Const. Art. 1, § 21), the reference was **only** for the purpose of upholding the preemption statute.

³² Sayre Weaver, *State Right to Bear Arms Provisions: What They Tell Us About Legal Challenges to Gun Regulations Based on an Individual Right to Bear Arms* (© 2003 by Sayre Weaver) (on file with the author).

³³ See *Robertson v. City and County of Denver*, 874 P.2d 325, 334-35 (Colo. Ct. App. 1994); *Benjamin v. Bailey*, 662 A.2d 1226, 1230-35 (Conn. 1995); *City of Chicago v. Taylor*, 774 N.E.2d 22, 28-29 (Ill. App. Ct. 2002); *Arnold v. City of Cleveland*, 616 N.E.2d 163, 166-73 (Ohio 1993); *Oregon State Shooting Ass'n v. Multnomah County*, 858 P.2d 1315, 1318-22 (Or. Ct. App. 1993). Although the Colorado and Oregon Legislatures subsequently adopted broad preemption statutes that prohibited many local firearms regulations, including bans on assault weapons, these statutes did not alter the scope of the states' right to bear arms clauses.

³⁴ See *Arnold*, 616 N.E.2d at 171-73.

³⁵ Weaver, *supra* note 32. Note that Alaska and New Hampshire state courts apply a higher standard than the reasonableness test to firearms laws challenged under the right to bear arms clauses in their state constitutions. *Id.*

Preemption

“Preemption” occurs when a higher level of government removes the regulatory power of a lower level of government. State and local laws are sometimes challenged on the ground that the federal government has preempted state (and thus local) regulation of the subject matter. Similarly, local laws are sometimes challenged on the ground that the state has preempted local regulation of the subject matter.

In the context of banning assault weapons, it is important to note:

- Federal law does not preempt state and local bans on assault weapons.
- States differ considerably in how and to what extent they preempt local assault weapon bans.

Preemption is a complex legal doctrine. Federal and state preemption must be considered separately and are discussed separately below.

Federal Preemption

Under the Supremacy Clause in Article VI of the U.S. Constitution, a federal law is binding on all state and local governments so long as Congress duly enacted the law pursuant to one of its limited powers. In some cases, federal law removes state authority (and thus local authority) to regulate a specific subject matter. This process is called “federal preemption.”

Often, Congress will make its intention to preempt an area of state law clear by expressly stating its intent in the language of a statute. Absent such a statement, courts presume that there is no federal preemption unless they can be “absolutely certain” that Congress intended to preempt the field of regulation.³⁶ If a court is “absolutely certain” that there is a pervasive scheme of federal legislation that leaves no room for state regulation of the particular subject, or an irreconcilable conflict exists between the federal regulation and the challenged law, the court will find that the federal law preempts the state law.³⁷

Federal law does not preempt state and local bans on assault weapons.

Congress has made no express statement of its intent to take over the broad field of firearms regulation. Courts have held that congressional regulation of firearms does not create a scheme so pervasive that it leaves no room for state and local law.³⁸ Thus, absent a specific, irreconcilable conflict between a challenged state or local firearms law and a federal enactment, there is no federal preemption of that state or local law.

State Preemption

“State preemption” refers to a state’s removal of a local government’s power to regulate a specific subject matter. The existence and degree of state preemption of local firearms regulation varies widely.

As with federal preemption, states preempt local laws by adopting constitutional provisions or statutes that expressly remove the authority of local governments to regulate in certain areas. In the absence of such an express declaration, some state courts will determine whether the legislature has implied an intent to preempt. In general, courts will find that a local law is preempted if it conflicts directly with state law by

³⁶ *Gregory v. Ashcroft*, 501 U.S. 452, 464 (1991).

³⁷ *See Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). *See also Richmond Boro Gun Club, Inc. v. City of New York*, 896 F. Supp. 276, 285-86 (E.D.N.Y. 1995), *aff’d*, 97 F.3d 681 (2d Cir. 1996).

³⁸ *See Richmond*, 896 F. Supp. at 285.

States differ considerably in how and to what extent they preempt local bans on assault weapons.

requiring what the state law prohibits, or prohibiting what state law requires. In addition, when a comprehensive scheme of state regulation exists on a particular subject matter, many state courts find that the state legislature thereby indicated an implied intent to assert exclusive authority over that subject matter.

LCAV encourages public officials and activists interested in pursuing local bans on assault weapons to contact us for assistance in understanding the preemption law in their state. See also LCAV's web site, www.lcav.org, for state-by-state information on state preemption of local law.

In this report, solely as general background, we have divided the states into three basic categories as a starting point for considering what legislative options might be available to local communities across the country.

1. States with no provision or statute expressly preempting local regulation of firearms

Connecticut, Hawaii, Illinois, Kansas, Massachusetts, New Jersey, and New York

In these seven states, local governments have broad authority to regulate firearms.

- LCAV has identified local assault weapon laws in four of these states. None of these ordinances has been invalidated because of preemption.
- In two of these states – Illinois and New York – state courts have reviewed and upheld local ordinances banning assault weapons.
- Five of these states – Connecticut, Hawaii, Massachusetts, New Jersey, and New York – have enacted statutes banning assault weapons. In adopting its statute, the New York Legislature provided that nothing in the state law is intended to prohibit local governments from enacting or maintaining stricter local assault weapon laws. In the other four states, the local assault weapon laws have not been challenged on preemption grounds.

Unlike states, the District of Columbia receives its legislative authority from Congress, which has given the District broad regulatory power over all aspects of firearms. As noted previously, the District of Columbia bans the possession, sale and manufacture of handguns and machine guns under provisions which encompass assault pistols and certain other assault weapons, and separately imposes strict tort liability on manufacturers, importers and dealers of assault weapons discharged in the District.

2. States with provisions expressly preempting local regulation of one or more aspects of firearms but otherwise permitting broad regulation of firearms at the local level

Alaska, California, Nebraska, and Ohio

In these four states, local governments retain authority to regulate firearms, but the state legislature has expressly removed this authority in certain areas.

- None of these states has expressly preempted local assault weapon bans, but a local ban would require careful drafting to ensure that it did not conflict with existing preemption provisions.
- In Ohio, local bans are in effect in several communities. None of these ordinances has been challenged on preemption grounds.
- California has enacted a strong and comprehensive statute banning assault weapons. California courts have not evaluated whether the existence of the state law implies an intent to preempt local regulation of assault weapons.

3. States that have enacted broad preemption statutes

In the remaining 39 states, local governments possess limited authority to regulate firearms. The preemption statutes in these states vary, but each one expressly preempts all, or substantially all, aspects of local firearms regulation. In many of these states there are statutory exceptions, although none of the exceptions expressly allows a local ban on assault weapons. In some states, local bans on assault weapons, adopted prior to the enactment of a preemption statute, are grandfathered under the terms of the statute and continue in effect. Even if local bans on assault weapons are preempted, LCAV is available to assist public officials and activists in evaluating other potential local strategies to prevent gun violence.

Due Process and Equal Protection

Due Process under the Fifth and Fourteenth Amendments

The Due Process Clauses of the Fifth and Fourteenth Amendments to the U.S. Constitution provide that no person shall be deprived of “life, liberty, or property, without due process of law...” A law failing to give a person of ordinary intelligence a reasonable opportunity to know what is prohibited, or that fails to provide explicit standards for those who apply the law, violates due process under the federal constitution. As the U.S. Supreme Court explained in *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972), “[i]t is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined.” Note, however, that clearly written laws also can violate due process when they are overbroad, impinging on constitutionally protected conduct. *Id.* at 114-15.

Most courts have rejected due process challenges to assault weapon bans under the U.S. Constitution and analogous state constitutional provisions.³⁹ However, in 1994, the Sixth Circuit Court of Appeals (which covers Kentucky, Michigan, Ohio and Tennessee) overturned a Columbus, Ohio assault weapon ordinance on the ground that its attempt to ban 46 makes and models of assault weapons was unconstitutionally vague under the Due Process Clause of the Fourteenth Amendment.⁴⁰ The court observed that the vagueness problems were “not difficult to remedy,” noting approaches that “provide a general definition of the type of weapon banned,” rather than naming makes and models.⁴¹

In response to the 1994 decision, Columbus drafted a new ordinance using a general definition of assault weapons similar to other Ohio local bans that had been upheld by the Ohio state courts.⁴² This ordinance also was overturned by the Sixth Circuit on the ground that it was unconstitutionally vague.⁴³ No other court has followed the Sixth Circuit’s reasoning, and a subsequent Sixth Circuit decision upholding the federal assault weapon ban’s list of prohibited weapons against a similar challenge may have undermined the 1994 ruling.⁴⁴

³⁹ See *Kasler v. Lockyer*, 2 P.3d 581, 597-600 (Cal. 2000); *Benjamin v. Bailey*, 662 A.2d 1226, 1240-42 (Conn. 1995); *Coalition of N.J. Sportsmen v. Whitman*, 44 F. Supp. 2d 666, 675-84 (D. N.J. 1999), *aff’d* 263 F.3d 157 (3d Cir. 2001).

⁴⁰ *Springfield Armory v. City of Columbus*, 29 F.3d 250, 252-53 (6th Cir. 1994). In particular, the court objected to “similar assault weapons of the same type, function or capability” not being banned, and to terms such as “[firearms] with the same action design” and “slight modifications or enhancements” not being defined in the ordinance. The court also noted the lack of a statement of purpose explaining the City’s reasoning behind the provisions.

⁴¹ *Id.* at 253.

⁴² See *Arnold v. City of Cleveland*, 616 N.E.2d 163 (Ohio 1993); *City of Cincinnati v. Langan*, 640 N.E.2d 163 (Ohio Ct. App. 1994).

⁴³ *Peoples Rights Organization v. City of Columbus*, 152 F.3d 522, 535-39 (6th Cir. 1998). The court determined that the following phrases were unconstitutionally vague: “[any semiautomatic action, center fire rifle or carbine] that accepts a detachable magazine with a capacity of 20 rounds or more,” “may be restored,” and “may be readily assembled.”

⁴⁴ *Olympic Arms v. Buckles*, 301 F.3d 384 (6th Cir. 2002). See also *Coalition of N.J. Sportsmen*, 44 F. Supp. 2d at 675-84, which rejected the Sixth Circuit’s approach.

Equal Protection under the Fifth and Fourteenth Amendments

The Fourteenth Amendment provides that no state shall “deny to any person within its jurisdiction, the equal protection of the laws.” The federal government is similarly limited by the Fifth Amendment. However, when a law makes a classification neither “involving fundamental rights nor proceeding along suspect lines,” the law will withstand constitutional scrutiny so long as it bears a rational relationship to a legitimate governmental interest.⁴⁵

As with due process claims, most courts have rejected equal protection challenges to assault weapon bans under the U.S. Constitution and analogous state constitutional provisions.⁴⁶ When equal protection challenges have been upheld, they have addressed only certain provisions, not the entire law. For example, in *Silveira v. Lockyer*, the Ninth Circuit struck down an exception to the California assault weapon ban for retired peace officers, noting that retired officers had no reasonable need for such weapons.⁴⁷ The effect of this decision, which upheld the rest of the law, was actually to broaden the scope of California’s assault weapon ban.

In *Peoples Rights Organization v. City of Columbus*, the Sixth Circuit struck down a grandfather clause for certain pre-ban assault weapons, and part of another grandfather clause for certain pre-ban large capacity magazines, finding no rational basis to justify the provisions’ different treatment of individuals who registered firearms under a former ordinance and persons who did not do so.⁴⁸ (As noted above, the court overturned the remainder of the ordinance on vagueness grounds.)

Finally, in *Citizens for a Safer Community v. City of Rochester*, the New York Court of Appeals upheld the ordinance’s ban of assault weapons based on a definition of generic features but struck down the listing of specific assault weapon models because identical firearms made by different manufacturers would be treated differently.⁴⁹

LCAV believes that in most instances, successful due process and equal protection challenges can be avoided through careful drafting.

In most instances, careful drafting can avoid successful challenges for denial of due process and equal protection.

Other Legal Challenges To Assault Weapon Bans

Other challenges to assault weapon bans include those based on the First Amendment's freedom of speech and assembly provisions, the Fifth Amendment's Takings Clause (private property shall not be taken for public use without just compensation), the right to privacy, the separation of powers, and the prohibition against bills of attainder (laws that legislatively determine guilt and inflict punishment upon an identifiable individual without judicial trial). None of these challenges has been successful.

For additional information on common legal challenges to laws banning assault weapons, see **Appendix D**. Also see **Appendix C**, which summarizes legal challenges to federal and state assault weapon bans.

⁴⁵ *Heller v. Doe*, 509 U.S. 312, 320 (1993), see also *Schweiker v. Wilson*, 450 U.S. 221, 230 (1981). Classifications along “suspect lines” can include a suspect class (e.g., race) or quasi-suspect class (e.g., gender), see, e.g., *Lavia v. Pennsylvania*, 224 F.3d 190, 200 (3d Cir. 2000).

⁴⁶ See *Olympic Arms v. Buckles*, 301 F.3d 384 (6th Cir. 2002); *Kasler v. Lockyer*, 2 P.3d 581, 584-92 (Cal. 2000); *Benjamin v. Bailey*, 662 A.2d 1226, 1235-39 (Conn. 1995); *Coalition of N.J. Sportsmen*, 44 F. Supp. 2d at 684-87.

⁴⁷ *Silveira v. Lockyer*, 312 F.3d 1052, 1087-92 (9th Cir. 2002), cert. denied, 124 S. Ct. 803 (2003).

⁴⁸ *Peoples Rights Organization*, 152 F.3d at 531-533.

⁴⁹ *Citizens for a Safer Community v. City of Rochester*, 627 N.Y.S.2d 193, 203-5 (N.Y. Gen. Term 1994). Most jurisdictions appear to have avoided this issue by including a provision that prohibits “copies or duplicates” of the listed weapons.

VIII. How LCAV Can Help

Assault weapons are a lethal threat to every community and should be banned from civilian use. Strong local and state laws are needed to supplement the present federal law – and to replace it if it is not renewed before its September 13, 2004 sunset date. There is widespread public support for banning assault weapons, and with careful drafting, such measures should withstand legal challenge.

Public officials and advocates need not wait for Congress to act. State and local governments can and should take advantage of legal options that will limit access to assault weapons in their communities.

For a model assault weapon ban that can serve as a starting point for state or local legislation, see **Appendix G**.

LCAV is available to help public officials and advocates develop effective, legally defensible assault weapon laws. We can review regulatory options, and assist with the research, analysis and drafting of such laws. Please contact us at 415-433-2062, or via e-mail at stateandlocalbans@lcav.org.

Appendices

Appendix A

Assault Weapon Laws in the United States

Appendix B

Snapshot Comparison of Federal and State Assault Weapon Bans

Appendix C

Profiles of Federal and State Assault Weapon Bans and Litigation

Appendix D

Common Legal Challenges to Laws Banning Assault Weapons

Appendix E

Excerpts of the Federal Assault Weapon Ban

Appendix F

Excerpts of the California Assault Weapon Ban

Appendix G

LCAV Model Law to Ban Assault Weapons

Appendix A

Assault Weapon Laws in the United States

This Appendix is part of the report, *Banning Assault Weapons – A Legal Primer for State and Local Action*, a publication of Legal Community Against Violence.

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Assault Weapon Laws in the United States

Below is a list of the major assault weapon bans and regulations at the federal and state levels, known local ordinances banning assault weapons, and citations for each.

Federal Ban 18 U.S.C. § 921 *et seq.*

State Bans

California Cal. Penal Code § 12275 *et seq.*
Connecticut Conn. Gen. Stat. § 53-202a *et seq.*
Hawaii Haw. Rev. Stat. § 134 *et seq.*
Maryland Md. Public Safety Code § 5-101 *et seq.* and Crim. Law § 4-301 *et seq.*
Massachusetts Mass. Gen. Laws ch. 140, § 121 *et seq.*
New Jersey N.J. Rev. Stat. § 2C:39-1 *et seq.*
New York N.Y. Penal Law § 265.00 *et seq.*

State Regulations⁵⁰

Minnesota Minn. Stat. § 624.712 *et seq.*
Virginia Va. Code § 18.2-308.2 *et seq.*

District of Columbia D.C. Code § 7-2551.01 *et seq.*

Local Bans (sorted by state)

Indiana

East Chicago § 9.28.080
Gary § 135.03

Illinois⁵¹

Aurora § 29-49
Chicago §§ 8-20-030 and 8-24-025
Cicero § 62-256 *et seq.*
Cook County Ord. 99-0-27
Niles §§ 66-234 and 235
Oak Park § 27-1-1 *et seq.*

Ohio

Cleveland § 628.01 *et seq.*
Cincinnati § 708-37
Dayton § 138.24 *et seq.*
Dublin § 137.08
Toledo § 549.23

New York

Albany § 193-15 *et seq.*
Buffalo § 180-1
New York City § 10-301 *et seq.*
Rochester § 47-5

Local Regulations (sorted by state)

Kansas

Wichita § 5.88.015

Massachusetts

Boston § 18-1.1(16A)

⁵⁰ Minnesota prohibits the possession of “semi-automatic military style assault weapons” by persons under 18 years of age, and imposes some restrictions on transfers through firearms dealers. Minn. Stat. § 624.712 *et seq.*

Virginia limits the possession and transportation of certain semi-automatic “assault firearms” to citizens and permanent residents. Va. Code § 18.2-308.2 *et seq.* Virginia also imposes a general ban on the importation, sale, possession and transfer of the “Striker 12” and semi-automatic folding stock shotguns of like kind, but does not refer to them as “assault firearms.” *Id.*

The District of Columbia imposes strict tort liability on manufacturers, importers and dealers arising from injury or death due to the discharge of an assault weapon in the District. D.C. Code § 7-2551.01 *et seq.* In addition, although the District of Columbia does not have a specific ban for assault weapons, its handgun ban encompasses assault pistols and its machine gun ban encompasses firearms that can discharge “[s]emiautomatically, more than 12 shots without manual reloading.” D.C. Code § 7-2501.01(10)(B). See also D.C. Code §§ 7-2502.01 *et seq.* (prohibiting possession of handguns and machine guns), 7-2505.01 *et seq.* (prohibiting sale), and 7-2504.01 (prohibiting manufacture).

⁵¹ More than a dozen Illinois communities also ban the sale and/or possession of handguns.

Appendix B

Snapshot Comparison of Federal and State Assault Weapon Bans

This Appendix is part of the report, *Banning Assault Weapons – A Legal Primer for State and Local Action*, a publication of Legal Community Against Violence.

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Snapshot Comparison of Federal and State Assault Weapon Bans*

	<i>List of banned assault weapon (AW) types, models, and series</i>	<i>Generic AW features</i>	<i>Other weapons</i>	<i>Treatment of post-ban weapons</i>	<i>Treatment of pre-ban weapons</i>
Federal**	19 AW types, models and series are named	Firearms w/ any 2 features and can accept a detachable magazine (latter does not apply to shotguns)	None	Possession, transfer and manufacture of AWs prohibited	Grandfathered: AWs lawfully possessed on ban's effective date. No registration
California**	75 AW types, models and series are named	Rifles and pistols: any 1 feature and can accept a detachable magazine. Shotguns: 2 features, or can accept a detachable magazine or revolving cylinder	CA Attorney General may petition court to add to the list of prohibited weapons	Possession, transfer and manufacture of AWs prohibited	Grandfathered: AWs possessed prior to ban's effective date and registered within limited time
Connecticut**	67 AW types, models and series are named	Uses federal definition	Conversion kits prohibited	Possession, transfer and manufacture of AWs prohibited	Grandfathered: named AWs possessed prior to ban's effective date and registered within limited time
Hawaii	None	Uses federal definition—pistols only	None	Possession, transfer and manufacture of assault pistols prohibited	Grandfathered: assault pistols possessed and registered prior to ban's effective date
Maryland	17 "assault pistol" types, models and series are named	None	66 AW types, models and series are named and regulated but not banned	Possession and transfer of assault pistols prohibited	Grandfathered: assault pistols possessed prior to ban's effective date and registered within limited time
Massachusetts	19 AW types, models and series are named	Uses federal definition	"Large Capacity Weapons" are regulated but not banned***	Possession and transfer of AWs prohibited	Grandfathered: AWs possessed prior to ban's effective date. No registration
New Jersey**	63 AW types, models and series are named	Fixed magazine rifles: >15 rounds. Shotguns: any 1 feature. Pistols: no generic feature definition	Conversion kits prohibited	Knowing possession, as well as transfer and manufacture, of AWs prohibited	Grandfathered: some AWs purchased prior to ban's effective date and registered within limited time
New York	19 AW types, models and series are named	Uses federal definition	None	Possession, transfer and manufacture of AWs prohibited	Grandfathered: AWs manufactured prior to federal ban's effective date. No registration

* Almost all firearms referenced are semi-automatic (exceptions include revolving cylinder shotguns).

** Challenged in the courts and upheld.

*** Firearms that have a fixed, or can accept a detachable, large capacity feeding device, and certain rotating cylinder firearms are regulated but not banned.

<i>Is the transfer of grandfathered weapons allowed?</i>	<i>Is the possession of grandfathered weapons allowed?</i>	<i>Large Capacity Magazines (LCM)– possession & transfer</i>	<i>Magazine grandfathering?</i>	<i>Other restrictions</i>	<i>Penalties for manufacture/possession/transfer</i>
Allowed	Allowed	Prohibited	Transfer and possession allowed for magazines	None	Up to 5 years imprisonment (and a fine)
Generally prohibited within the state	Limits on places to possess	Possession allowed, transfer prohibited	Possession allowed, no transfer after ban's effective date	CA DOJ has right to inspect the storage of AWs	Up to 8 years imprisonment
Generally prohibited within the state (named weapons only)	Limits on places to possess	Allowed	N/A	Must report theft within 72 hours	Up to 10 years imprisonment
Generally prohibited within the state	Allowed	Prohibited	No	None	Up to 5 years imprisonment
Generally prohibited	Allowed	Possession allowed, transfer prohibited	Possession allowed	None	Up to 3 years imprisonment (and a maximum fine of \$5,000)
Allowed	Allowed, but an owners' permit/license is required	Prohibited	Transfer and possession allowed for magazines possessed as of ban's effective date	None	Up to 15 years imprisonment (and a maximum fine of \$15,000)
License required for sale	Allowed, but an owners' license is required	Possession allowed w/ a registered AW if the LCM is used in competitive shooting. Transfer prohibited	No	Civil liability for owner unless weapon is stolen and reported w/in 24 hours	Up to 4 years imprisonment
Allowed	Allowed	Prohibited	Transfer and possession allowed for magazines	None	Up to 7 years imprisonment

Appendix C

Profiles of Federal and State Assault Weapon Bans and Litigation

This Appendix is part of the report, *Banning Assault Weapons – A Legal Primer for State and Local Action*, a publication of Legal Community Against Violence.

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Profiles of Federal and State Assault Weapon Bans and Litigation

The following profiles provide a brief overview of current assault weapon bans, focusing on the major provisions of each law and the holdings of relevant legal challenges. Some exceptions and minor provisions are not covered in these profiles (for example, exclusion of 22 caliber tube ammunition feeding devices from bans on large capacity ammunition feeding devices).

Exceptions to assault weapon bans which are generally not summarized in the profiles include those for:

- Antique firearms (those made before 1899);
- Law enforcement and military personnel;
- Licensed firearms dealers, manufacturers and importers;
- Olympic target shooting pistols; and
- Permanently inoperable firearms.

A more detailed review of these bans is available on LCAV's web site (www.lcav.org), or you can contact us at 415-433-2062, or via e-mail at stateandlocalbans@lcav.org.

Federal Assault Weapon Ban

Public Safety and Recreational Firearms Use Protection Act, Title XI, Subtitle A of the Violent Crime Control and Law Enforcement Act of 1994. 18 U.S.C. § 921 *et seq.*

Effective Date: September 13, 1994

What is Banned: Manufacturing, transferring and possessing semi-automatic assault weapons and transferring and possessing large capacity ammunition feeding devices. 18 U.S.C. § 922(v)(1) and (w)(1).

Definition of "Assault Weapon:"

- Nineteen named types, models and series and copies or duplicates of those firearms in any caliber.
- Semi-automatic pistols and rifles that have the ability to accept a detachable magazine and possess at least two specified military features, and semi-automatic shotguns that possess at least two specified military features. 18 U.S.C. § 921(a)(30).

Definition of "Large Capacity Ammunition Feeding Device:" A magazine, belt, drum, feed strip, or similar device that has a capacity of, or that can be readily restored or converted to accept, more than 10 rounds of ammunition. 18 U.S.C. § 921(a)(31).

Key Exceptions:

- Grandfather Clause – The law does not apply to the transfer and possession of assault weapons and large capacity ammunition feeding devices that were otherwise lawfully possessed on September 13, 1994, or to large capacity ammunition feeding devices manufactured on or before September 13, 1994. 18 U.S.C. §§ 921(a)(31), 922(v)(1) and 922(w)(1).
- Certain named firearms (as they were designed on October 1, 1993), as well as their replicas or duplicates, are excluded from the definition of assault weapon. 18 U.S.C. § 922, App. A.
- Absent a serial number, a large capacity ammunition feeding device is presumed to be a pre-ban device with respect to possession. 18 U.S.C. § 922(w)(4).

Penalties: Any person who knowingly and illegally manufactures, transfers, or possesses a semi-automatic assault weapon, or who knowingly and illegally transfers or possesses a large capacity ammunition feeding device, is subject to a fine, imprisonment for up to five years, or both. The potential penalties increase if the violation is intentional, or when an assault weapon is used or carried in certain other crimes. 18 U.S.C. § 924(a)(1)(B), (b) and (c).

Sunset Provision: Unless renewed by Congress, the federal assault weapon ban will expire on September 13, 2004.

Legal Challenges: The federal assault weapon ban has withstood all legal challenges.

In *Olympic Arms v. Buckles*, 301 F.3d 384 (6th Cir. 2002), the Sixth Circuit Court of Appeals rejected equal protection challenges to the federal ban raised by gun manufacturers, retailers, and individual gun owners under the Due Process Clause of the U.S. Constitution's Fifth Amendment. The court found that both the list of prohibited weapons, and the list of generic military features, were rational classifications within Congress' legislative authority. A challenge under the Commerce Clause (which limits the scope of Congress' power to enact legislation) was rejected by the district court, and was not appealed (*see Olympic Arms v. Magaw*, 91 F. Supp. 2d 1061 (E.D. Mich. 2000)).

In *Navegar, Inc. v. United States*, 192 F.3d 1050 (D.C. Cir. 1999), *cert. denied*, 531 U.S. 816 (2000), the United States Court of Appeals for the District of Columbia rejected constitutional challenges to the federal ban raised by gun manufacturers under the Commerce Clause and the Bill of Attainder Clause (which prohibits laws specifically singling out individuals or businesses and imposing punishment on them without trial).

California Assault Weapon Ban

The Roberti-Roos Assault Weapons Control Act of 1989 (AWCA). Cal. Penal Code § 12275 *et seq.*

Effective Date: The original Act generally became effective January 1, 1990.⁵² The 1999 amendments to the AWCA became effective January 1, 2000. Cal. Penal Code §§ 12276.1(e), 12281(c), (f), 12285(g).

What is Banned:

- Manufacturing, causing to be manufactured, distributing, transporting, importing into the state, keeping for sale, offering or exposing for sale, giving, lending and possessing any assault weapon within the state. Cal. Penal Code § 12280(a)(1), (b), (j).
- Manufacturing, importing into the state, keeping for sale, offering or exposing for sale, giving, and lending large-capacity magazines. California does not prohibit the possession of large-capacity magazines. Cal. Penal Code § 12020(a)(2).

Definition of “Assault Weapon:”

- Seventy-five named types, models and series of firearms. California defines “series” to include “all other models that are only variations, with minor differences, of those models listed...regardless of the manufacturer.” Cal. Penal Code § 12276(e).
- Semi-automatic pistols and semi-automatic centerfire rifles that have the capacity to accept a detachable magazine, and possess any specified military feature. Cal. Penal Code § 12276.1.
- Semi-automatic shotguns that have the ability to accept a detachable magazine, or that have two specified military features, or any shotgun with a revolving cylinder. *Id.*
- In addition, the state Attorney General may petition a superior court in a county with a population greater than one million people to add models to the list of prohibited assault weapons. Cal. Penal Code § 12276.5.

Definition of “Large Capacity Ammunition Feeding Device:” California uses the term “large-capacity magazine,” which means any ammunition feeding device with the capacity to accept more than 10 rounds. Cal. Penal Code § 12020(c)(25).

Key Exceptions: Grandfather Clause – Any person who lawfully possessed an assault weapon before the relevant effective dates of the AWCA, its 1999 amendment, or the addition of the weapon to the list of banned assault weapons, as appropriate, could retain possession if the weapon was registered with the state within a limited time. Otherwise, all other assault weapons had to be sold to a licensed firearms dealer, removed from the state, or, in some cases, rendered permanently inoperable. In-state transfers of registered assault weapons can only be made to licensed gun dealers or local law enforcement. Cal. Penal Code §§ 12276.1, 12276.5, 12280(b), (j) and 12285.

Other Regulations:

- Persons who receive a registered assault weapon by bequest or intestate succession are required to render the weapon inoperable, sell it to a licensed gun dealer, remove it from the state, or obtain a permit within ninety days of acquisition. Cal. Penal Code § 12285(b).

⁵² Due to a prolonged legal challenge, which was ultimately unsuccessful, the effective date of provisions relating to AK and AR-15 “series” assault weapons was delayed until August 16, 2000.

- Unless a permit is obtained allowing for additional uses of a registered assault weapon, such a weapon may only be possessed in a limited number of places. Cal. Penal Code § 12285(c).
- The California Department of Justice must conduct an annual security and safe storage inspection of every person, firm or corporation holding a permit to own or possess an assault weapon, including a reconciliation of the inventory of assault weapons. Permit holders maintaining an inventory of less than five assault weapons are generally subject to inspections only once every five years. Cal. Penal Code § 12289.5.

Penalties:

- Any person who illegally manufactures or causes to be manufactured, distributes, transports, imports, sells, gives or lends an assault weapon is subject to imprisonment in the state prison for four, six, or eight years. When the assault weapon is transferred to a minor, an additional year is added to the sentence. Cal. Penal Code § 12280(a).
- Any person who illegally possesses an assault weapon is subject to imprisonment not exceeding one year. Cal. Penal Code § 12280(b).
- Any person who illegally manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives or lends a large-capacity magazine can be sentenced to up to one year in county jail or state prison. Cal. Penal Code § 12020(a)(2).

Sunset Provision: None.

Legal Challenges: With the exception of one minor provision (noted in *Silveira v. Lockyer*, below), the California assault weapon ban has withstood all legal challenges.

In *Silveira v. Lockyer*, 312 F.3d 1052 (9th Cir. 2002), *cert. denied*, 124 S. Ct. 803 (Dec. 1, 2003), the Ninth Circuit Court of Appeals rejected challenges to the 1999 amendments to the AWCA based on the U.S. Constitution’s First Amendment freedom of association, the Second Amendment, the Fifth Amendment Takings Clause (private property shall not be taken for public use without just compensation), and plaintiffs’ informational privacy rights. In addition, while the court found that the AWCA’s exception regarding off-duty police officers did not offend the Fourteenth Amendment’s Equal Protection Clause, it found no rational basis for excluding retired law enforcement officers from the ban, striking down that provision (which actually had the effect of strengthening the ban).

In *Kasler v. Lockyer*, 2 P.3d 581 (Cal. 2000), the California Supreme Court rejected a taxpayers’ suit against the original AWCA, holding that the ban did not violate the equal protection doctrines of the U.S. Constitution’s Fourteenth Amendment or the California Constitution, the separation of powers doctrine (which bars legislative bodies from improperly delegating their authority), or the due process clauses under the U.S. and California Constitutions.

In *Fresno Rifle and Pistol Club, Inc. v. Van De Kamp*, 965 F.2d 723 (9th Cir. 1992), the Ninth Circuit Court of Appeals rejected challenges to the AWCA under several provisions of the U.S. Constitution, including the Bill of Attainder Clause (which prohibits laws specifically singling out individuals or businesses and imposing punishment on them without trial), the Supremacy Clause, and the Second Amendment. A right to privacy challenge was rejected by the district court, and was not appealed (*see Fresno Rifle and Pistol Club, Inc. v. Van De Kamp*, 746 F. Supp. 1415 (E.D. Cal. 1990)).

Connecticut Assault Weapon Ban

Conn. Gen. Stat. §§ 53-202a through 53-202k

Effective Date: October 1, 1993; amended in 2001.

What is Banned: Possessing, distributing, transporting, importing, keeping for sale, offering or exposing for sale, and giving any assault weapon. Conn. Gen. Stat. §§ 53-202b and 53-202c.

Definition of “Assault Weapon:”

- Sixty-seven named types, models and series of firearms. Conn. Gen. Stat. § 53-202a(a)(1) and (2).
- Semi-automatic handguns and rifles that have the ability to accept a detachable magazine and possess at least two specified military features, and semi-automatic shotguns that possess at least two specified military features. Conn. Gen. Stat. § 53-202a(a)(3). This provision is identical to the federal standard at 18 U.S.C. § 921(a)(30).
- A part or combination of parts designed or intended to convert a firearm into an assault weapon, as well as any combination of parts from which an assault weapon may be rapidly assembled if those parts are in the possession or under the control of the same person. Conn. Gen. Stat. § 53-202a(a).

Definition of “Large Capacity Ammunition Feeding Device:” None.

Key Exceptions:

- Grandfather Clause – Any person who lawfully possessed one of the 67 named types, models and series of assault weapons prior to October 1, 1993, was required to register the weapon (i.e., obtain a certificate of possession) in order to legally retain possession. A person who has been issued a certificate of possession may possess his or her registered assault weapon in a limited number of places. Conn. Gen. Stat. § 53-202d.
- Assault weapons not included among the more than 67 named types, models and series may still be transferred and possessed without being registered if they were legally manufactured prior to the effective date of the federal assault weapon ban, September 13, 1994. Conn. Gen. Stat. § 53-202m.

Other Regulations:

- A person issued a certificate of possession may not sell or transfer the weapon to any person within the state except a licensed gun dealer or through bequest or intestate succession. When a person receives a weapon with a certificate of possession through bequest or intestate succession, that person must, within 90 days, render the weapon permanently inoperable, sell it to a licensed gun dealer, or remove it from the state. Conn. Gen. Stat. § 53-202d(b).
- Persons who lawfully possess assault weapons must report any theft of those weapons within 72 hours of when the person “discovered or should have discovered” the theft. Conn. Gen. Stat. § 53-202g.

Penalties:

- Any person who illegally distributes, transports or imports into the state, keeps for sale, or offers or exposes for sale, or who gives any assault weapon is subject to imprisonment for two to 10 years. Penalties are more significant when the offender transfers, sells or gives an assault weapon to a person under 18 years of age. Conn. Gen. Stat. §§ 53-202b and 53a-35(b).
- Except for certain first-time violators, any person who illegally possesses an assault weapon faces a term of imprisonment between one and five years. Conn. Gen. Stat. §§ 53-202c and 53a-35(b).

- Use or display of an assault weapon during the commission of certain felonies is punished by a mandatory eight-year sentence in addition to the term of imprisonment for the original felony. Conn. Gen. Stat. § 53-202j.

Sunset Provision: None.

Legal Challenges: The Connecticut assault weapon ban has withstood legal challenge.

In *Benjamin v. Bailey*, 662 A.2d 1226 (Conn. 1995), the Supreme Court of Connecticut rejected challenges to the state's assault weapon ban under Article I, § 15 of the Connecticut Constitution ("Every citizen has a right to bear arms in defense of himself..."), the Connecticut Constitution's bill of attainder clause (Article I, § 13, prohibiting legislative acts that apply either to named individuals or to easily identifiable members of a group in such a way as to inflict punishment on them without a judicial trial), and U.S. and Connecticut constitutional provisions guaranteeing due process and equal protection.

Hawaii Assault Weapon Ban

Haw. Rev. Stat § 134 *et seq.*

Effective Date: July 1, 1992

What is Banned: Manufacturing, possessing, selling, bartering, trading, gifting, transferring and acquiring an assault pistol or large capacity ammunition feeding device. Haw. Rev. Stat §§ 134-4(e) and 134-8.

Definition of “Assault Weapon:” Hawaii uses the term “assault pistol,” which means a semi-automatic pistol that accepts a detachable magazine and possesses at least two specified military features identical to the federal list for semi-automatic pistols under 18 U.S.C. § 921(a)(30)(C). An assault pistol does not include a firearm with a barrel 16 or more inches in length. Haw. Rev. Stat. § 134-1.

Definition of “Large Capacity Ammunition Feeding Device:” A detachable ammunition magazine with a capacity in excess of ten rounds which is designed for or capable for use with a pistol. Haw. Rev. Stat. § 134-8(c).

Key Exceptions: Grandfather Clause – Any person who lawfully owned and registered an assault pistol as of July 1, 1992, may continue to possess the weapon (but it can only be transferred to a licensed dealer or any county’s chief of police). Haw. Rev. Stat. § 134-4(e).

Other Regulations: A person who obtains title to an assault pistol through inheritance must, within 90 days, render the weapon permanently inoperable, transfer the weapon to a licensed dealer or the chief of police of any county, or remove the weapon from the state. *Id.*

Penalties:

- Any person who illegally engages in the manufacture, possession, sale, barter, trade, gift, transfer, or acquisition of an assault pistol is generally subject to a mandatory sentence of five years without probation. Haw. Rev. Stat. § 134-8.
- Any person who illegally engages in the manufacture, possession, sale, barter, trade, gift, transfer, or acquisition of detachable ammunition magazines with a capacity in excess of ten rounds and designed for or capable for use with a pistol is guilty of a misdemeanor. If the magazine is possessed while inserted into a pistol, the person is subject to a maximum sentence of five years in prison. Haw. Rev. Stat. §§ 134-8 and 706-660.

Sunset Provision: None.

Legal Challenges: The Hawaii assault weapon ban has not been challenged.

Maryland Assault Weapon Ban

Md. Crim. Law Code § 4-301 *et seq.* and Md. Public Safety Code § 5-101 *et seq.*

Effective Date: June 1, 1994

What is Banned:

- Possessing, selling, offering for sale, transferring, purchasing, receiving and transporting assault pistols into the state. Other assault weapons are regulated, but not banned. Md. Crim. Law Code § 4-303 and Public Safety Code § 5-101(p)(2).
- Manufacturing, selling, offering for sale, purchasing, receiving, and transferring large capacity ammunition feeding devices. Maryland does not prohibit the possession of large capacity ammunition feeding devices. Md. Crim. Law Code § 4-305.

Definition of “Assault Weapon:”

- Seventeen named types, models and series of firearms or their copies, regardless of the producer or manufacturer, are defined as assault pistols. Md. Crim. Law Code § 4-301.
- Sixty-six named types, models and series of firearms or their copies, regardless of which company produced and manufactured that firearm, are defined as assault weapons. Md. Public Safety Code § 5-101(p)(2).

Definition of “Large Capacity Ammunition Feeding Device:” A detachable magazine that has a capacity of more than 20 rounds of ammunition for a firearm. Md. Crim. Law Code § 4-305.

Key Exceptions: Grandfather Clause – Any person who lawfully possessed an assault pistol before June 1, 1994, may continue to possess it if he or she registered the weapon with the State Police before August 1, 1994. Md. Crim. Law Code § 4-303.

Other Regulations:

- A person who owns a registered assault pistol generally may not sell or transfer the weapon to any person, except through a licensed dealer or manufacturer, or through inheritance. Md. Crim. Law Code § 4-303.
- Because assault weapons qualify as state-defined “regulated firearms,” the purchasers of such guns are subject to enhanced background checks and a seven-day waiting period, and are limited to the purchase of one assault weapon in any 30-day period. Md. Public Safety Code §§ 5-118(b)(3), 5-123(a), 5-124(a)(1), 5-128(b) and 5-134(b).

Penalties: In general, any person who violates the provisions regulating assault pistols and detachable magazines is subject to imprisonment not exceeding three years or a fine not exceeding \$5,000 or both. The penalties increase significantly if the assault pistol or detachable magazine is used in a felony or a crime of violence, requiring a minimum five-year sentence for the first offense committed. Md. Crim. Law Code § 4-306.

Sunset Provision: None.

Legal Challenges: The Maryland assault weapon ban has not been challenged.

Massachusetts Assault Weapon Ban

Mass. Gen. Laws ch. 140, § 121 *et seq.*

Effective Date: October 22, 1998; amended in 2004.

What is Banned: Selling, offering for sale, transferring and possessing an assault weapon or large capacity feeding device. Mass. Gen. Laws ch. 140, § 131M.

Definition of “Assault Weapon:”

- Nineteen named types, models and series of firearms and copies or duplicates of those firearms in any caliber. This list is essentially the same as the firearms named in the federal ban at 18 U.S.C. § 921(a)(30)(A). Mass. Gen. Laws ch. 140, § 121.
- Semi-automatic handguns and rifles that have the ability to accept a detachable magazine and possess at least two specified military features, and semi-automatic shotguns that possess at least two specified military features.

Definition of “Large Capacity Ammunition Feeding Device:” Massachusetts uses the term “large capacity feeding device,” which means: a fixed or detachable magazine, box, drum, feed strip or similar device capable of accepting, or that can be readily converted to accept, more than ten rounds of ammunition or more than five shotgun shells; or a “large capacity ammunition feeding device” as defined under federal law, 18 U.S.C. § 921(a)(31). Mass. Gen. Laws ch. 140, § 121.

Key Exceptions: Grandfather Clause – Any person who lawfully possessed an assault weapon or large capacity feeding device on September 13, 1994, may continue to sell, transfer and/or possess the weapon or feeding device. Mass. Gen. Laws ch. 140, § 131M.

Other Regulations: In order to purchase, rent, lease, borrow, possess or carry a “large capacity weapon,” a person must obtain the appropriate permit or license. Massachusetts defines “large capacity weapon” to include: assault weapons; most semi-automatic firearms with a fixed large capacity feeding device or that are capable of accepting, or readily modifiable to accept, any detachable large capacity feeding device; and certain revolving cylinder firearms. Mass. Gen. Laws ch. 140, §§ 121, 123(Eighth) 131 and 131A.

Penalties: First time offenders face a fine of \$1,000 to \$10,000, between one and ten years of imprisonment, or both. Repeat offenders face a fine of \$5,000 to \$15,000, between five and fifteen years of imprisonment, or both. Mass. Gen. Laws ch. 140, § 131M.

Sunset Provision: None.

Legal Challenges: The Massachusetts assault weapon ban has withstood legal challenge.

In *Gun Owners’ Action League, Inc. v. Swift*, 284 F.3d 198 (1st Cir. 2002), the U.S. Court of Appeals for the First Circuit rejected challenges to Massachusetts’ regulation of large capacity weapons and feeding devices under the U.S. Constitution, including alleged violations of the First Amendment’s freedom of speech and association, and the Fourteenth Amendment’s Due Process and Equal Protection Clauses.

New Jersey Assault Weapon Ban

N.J. Rev. Stat. § 2C:39-1 *et seq.*

Effective Date: May 30, 1990

What is Banned:

- Manufacturing, causing to be manufactured, transporting, shipping, selling and disposing of an “assault firearm” unless the person is licensed to do so, and the weapon is properly registered. N.J. Rev. Stat. § 2C:39-9(g).
- Knowingly possessing an assault firearm unless the possessor is licensed and the weapon is registered, or the weapon is rendered inoperative. N.J. Rev. Stat. § 2C:39-5(f).
- Manufacturing, causing to be manufactured, transporting, shipping, selling and disposing of a large capacity ammunition magazine. N.J. Rev. Stat. § 2C:39-9(h).
- Possessing a large capacity ammunition magazine unless the person has registered an assault firearm and the magazine “is maintained and used in connection with participation in competitive shooting matches sanctioned by the Director of Civilian Marksmanship of the United States Department of the Army.” N.J. Rev. Stat. § 2C:39-3(j).

Definition of “Assault Weapon:”

- Sixty-three named types, models and series of firearms, or any other firearm manufactured under any designation which is substantially identical to any of the listed weapons, are defined as “assault firearms.” N.J. Rev. Stat. § 2C:39-1(w).
- Assault firearms also include semi-automatic rifles with fixed magazine capacities of more than 15 rounds and any semi-automatic shotgun with either a magazine capacity exceeding six rounds, a pistol grip, or a folding stock. N.J. Rev. Stat. § 2C:39-1(w).
- Additionally, any part or combination of parts designed or intended to convert a firearm into an assault firearm, or any combination of parts from which an assault firearm may be readily assembled if possessed by or under the control of a single individual, are also considered assault firearms. N.J. Rev. Stat. § 2C:39-1(w).

Definition of “Large Capacity Ammunition Feeding Device:” New Jersey uses the term “large capacity ammunition magazine,” which means: a box, drum, tube or other container which is capable of holding more than 15 rounds of ammunition to be fed continuously and directly into a semi-automatic firearm. N.J. Rev. Stat. § 2C:39-1(y).

Key Exceptions:

- Grandfather Clause – Any person who lawfully purchased an assault firearm on or before May 1, 1990 was permitted to retain possession if he or she registered the weapon by May 30, 1991, and if the weapon was on a list developed by the Attorney General identifying assault firearms used for legitimate target-shooting purposes. In order to register, the owner also was required to produce for inspection a valid firearms purchaser identification card, a valid permit to carry handguns, or a copy of the permit to purchase the assault firearm and submit proof that the owner was, within 210 days of the statute’s effective date, a member of a rifle or pistol club in existence prior to the effective date. N.J. Rev. Stat. § 2C:58-12.
- Any person who lawfully owned an assault firearm and was unable to, or chose not to, register the weapon, was required to do one of the following by May 30, 1991: transfer the weapon to someone lawfully entitled to own or possess it, render it inoperable, or voluntarily surrender it to law enforcement. N.J. Rev. Stat. § 2C:58-13.

Other Regulations:

- A person seeking to purchase, possess, or carry an assault firearm must obtain a license to do so. The superior court may issue a license after an investigation and recommendation by the county prosecutor. However, no license may be issued to any person who would not qualify for a permit to carry a handgun unless the court finds that public safety and welfare so require. N.J. Rev. Stat. § 2C:58-5.
- Within 90 days of the death of the registered owner, an assault firearm must either be transferred to someone lawfully entitled to own or possess it, rendered inoperable, or voluntarily surrendered to law enforcement. N.J. Rev. Stat. §§ 2C:58-12 and 2C:58-13.
- If a registered assault firearm or a license holder's assault firearm is used in the commission of a crime, the owner will be civilly liable for any damages resulting from that crime, unless the firearm was stolen from its owner and the owner reported the theft to law enforcement within 24 hours of his or her awareness of the theft. N.J. Rev. Stat. §§ 2C:58-5 and 2C:58-12(g).

Penalties:

- Any person who knowingly possesses a working assault firearm is guilty of a crime in the third degree, unless the weapon is registered and the person is properly licensed. A first-time offender will not be imprisoned unless it is determined to be necessary for the protection of the public. In general, the presumptive sentence for a third degree offense is a term of four years. N.J. Rev. Stat. §§ 2C:39-5(f), 2C:44-1(e) and 2C:44-1(f)(1)(d).
- Any person who unlawfully manufactures, causes to be manufactured, transports, ships, sells or disposes of an assault firearm is guilty of a crime of the third degree. N.J. Rev. Stat. § 2C:39-9(g).
- Any person who unlawfully manufactures, causes to be manufactured, transports, ships, sells or disposes of a large capacity ammunition magazine is guilty of a crime of the fourth degree. A first-time offender will not be imprisoned unless it is determined to be necessary for the protection of the public. In general, the presumptive sentence for a fourth degree offense is a term of nine months. N.J. Rev. Stat. §§ 2C:39-9(h), 2C:44-1(e) and 2C:44-1(f)(1)(e).

Sunset Provision: None.

Legal Challenges: The New Jersey assault weapon ban has withstood all legal challenges.

In *State v. Petrucci*, 779 A.2d 429 (N.J. Super. Ct. App. Div. 2001), the Superior Court of New Jersey, Appellate Division, rejected a vagueness challenge to N.J. Rev. Stat. § 2C:43-6g under the U.S. Constitution's Fifth and Fourteenth Amendment Due Process Clauses, and Article I, paragraph 1, of the New Jersey Constitution.

In *Coalition of N.J. Sportsmen v. Whitman*, 44 F. Supp. 2d 666 (D. N.J. 1999), *aff'd*, 263 F.3d 157 (3d Cir. 2001), the District Court of New Jersey rejected numerous challenges under the U.S. Constitution, including those based on alleged violations of the Fourteenth Amendment's Due Process and Equal Protection Clauses, the First Amendment's freedom of association and freedom of (commercial) speech, and the Bill of Attainder Clause (which prohibits laws specifically singling out individuals or businesses and imposing punishment on them without trial).

In *State v. Warriner*, 731 A.2d 86 (N.J. Super. Ct. App. Div. 1999), the Superior Court of New Jersey, Appellate Division, rejected a vagueness challenge to N.J. Rev. Stat. § 2C:39-1w(1) under the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution.

New York Assault Weapon Ban

N.Y. Penal Law § 265.00 *et seq.*

Effective Date: Nov. 1, 2000

What is Banned: Possessing, manufacturing, causing to be manufactured, transporting, shipping, disposing of, and willfully defacing an assault weapon or large capacity ammunition feeding device. N.Y. Penal Law §§ 265.02 and 265.10.

Definition of “Assault Weapon:”

- Nineteen named types, models and series of firearms, as well as any functioning frames or receivers, or copies or duplicates of these weapons. This list is essentially the same as the firearms named in the federal ban at 18 U.S.C. 921(a)(30)(A). N.Y. Penal Law § 265.00(22).
- Semi-automatic pistols and rifles that have the ability to accept a detachable magazine and possess at least two specified military features, and semi-automatic shotguns that possess at least two specified military features. This provision is identical to the federal standard at 18 U.S.C. § 921(a)(30). N.Y. Penal Law § 265.00(22).

Definition of “Large Capacity Ammunition Feeding Device:” A magazine, belt, drum, feed strip, or similar device, manufactured after September 13, 1994, that has a capacity of, or that can be readily restored or converted to accept, more than ten rounds of ammunition. N.Y. Penal Law § 265.00(23).

Key Exceptions:

- Grandfather Clause – Assault weapons lawfully possessed before September 14, 1994, and large capacity ammunition feeding devices manufactured before September 14, 1994, may continue to be lawfully transferred and possessed. N.Y. Penal Law §§ 265.00(22)(e)(v) and (23).
- Firearms specified in 18 U.S.C § 922, App. A (as they were manufactured on October 1, 1993), as well as their replicas or duplicates, are excluded from the definition of assault weapon. N.Y. Penal Law § 265.00(22)(e)(iv).

Penalties: Any violation of the above provisions is a Class D felony, which is punishable by a maximum of seven years imprisonment. N.Y. Penal Law § 70.00(d).

Sunset Provision: None.

Legal Challenges: The New York assault weapon ban has not been challenged.

Appendix D

Common Legal Challenges to Laws Banning Assault Weapons

This Appendix is part of the report, *Banning Assault Weapons – A Legal Primer for State and Local Action*, a publication of Legal Community Against Violence.

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Common Legal Challenges to Laws Banning Assault Weapons

The following analysis summarizes common legal challenges to laws banning assault weapons, and identifies cases in which these challenges were made, the provisions challenged, and the outcomes. In most of these cases, as noted below, the assault weapon bans were challenged on more than one legal theory.

Article I, § 8 of the U.S. Constitution, Commerce Clause – Congress shall have the power to “regulate Commerce...among the several states.”

The federal assault weapon ban has not been found to violate the Commerce Clause. The following cases have addressed this issue:

- *Olympic Arms v. Magaw*, 91 F. Supp. 2d 1061 (E.D. Mich. 2000), *aff’d*, 301 F.3d 384 (6th Cir. 2002) – rejecting a challenge to 18 U.S.C. § 922(v)(1) and (w)(1).
- *Navegar, Inc. v. United States*, 192 F.3d 1050 (D.C. Cir. 1999), *cert. denied*, 531 U.S. 816 (2000) – rejecting a challenge to 18 U.S.C. § 922(v)(1).

Article I, §§ 9 & 10 of the U.S. Constitution, Bill of Attainder – Congress and the states shall not pass any Bill of Attainder, that is, “a law that legislatively determines guilt and inflicts punishment upon an identifiable individual without...a judicial trial.” *Nixon v. Administrator of General Services*, 433 U.S. 425, 468 (1977).

No assault weapon ban has been found to constitute a Bill of Attainder under the U.S. Constitution or analogous state constitutional provisions. The following cases have addressed this issue:

- *Navegar, Inc. v. United States*, 192 F.3d 1050 (D.C. Cir. 1999), *cert. denied*, 531 U.S. 816 (2000) – rejecting a challenge to 18 U.S.C. §§ 921(a)(30)(A)(viii), (ix), and 922(v)(1).
- *Coalition of N.J. Sportsmen v. Whitman*, 44 F. Supp. 2d 666 (D. N.J. 1999), *aff’d*, 263 F.3d 157 (3d Cir. 2001) – rejecting a challenge to New Jersey Rev. Stat. §§ 2C:39-1w, 5f, and 9g.
- *Benjamin v. Bailey*, 662 A.2d 1226 (Conn. 1995) – rejecting a challenge to Connecticut Gen. Stat. § 53-202a *et seq.*
- *Fresno Rifle and Pistol Club, Inc. v. Van De Kamp*, 965 F.2d 723 (9th Cir. 1992) – rejecting a challenge to California Penal Code § 12275 *et seq.*

Articles I-III of the U.S. Constitution, Separation of Powers – Each of the three branches of government – legislative, executive, and judicial – has certain powers, and each of these powers is limited, or checked, by another branch. The courts have long insisted that “the integrity and maintenance of the system of government ordained by the Constitution” mandate that Congress generally cannot delegate its legislative power to another branch. *Mistretta v. United States* 488 U.S. 361, 371-72 (1989), citing *Field v. Clark*, 143 U.S. 649, 692 (1892).

No assault weapon ban has been found to violate the separation of powers doctrine under the U.S. Constitution or analogous state constitutional provisions. The following case has addressed this issue:

- *Kasler v. Lockyer*, 2 P.3d 581 (Cal. 2000) – rejecting a challenge to California Penal Code § 12276.5.

Article VI of the U.S. Constitution, Supremacy Clause – “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land....” The Supremacy Clause is the source of the doctrine of federal preemption.

No assault weapon ban has been found to violate the Supremacy Clause. The following cases have addressed this issue:

- *Richmond Boro Gun Club, Inc. v. City of New York*, 97 F.3d 681 (2d Cir. 1996) – rejecting a challenge to New York City Local Law 78 of 1991.
- *Citizens for a Safer Community v. City of Rochester*, 627 N.Y.S.2d 193 (N.Y. Gen. Term 1994) – rejecting a challenge to Rochester Ordinance No. 93-62.
- *Arnold v. City of Cleveland*, 616 N.E.2d 163 (Ohio 1993) – rejecting a challenge to Cleveland Ordinance No. 415-89.
- *Fresno Rifle and Pistol Club, Inc. v. Van De Kamp*, 965 F.2d 723 (9th Cir. 1992) – rejecting a challenge to California Penal Code § 12275 *et seq.*

First Amendment to the U.S. Constitution, Freedom of Speech – “Congress shall make no law...abridging the freedom of speech....”

No assault weapon ban has been found to violate the First Amendment right to free speech. The following cases have addressed this issue:

- *Olympic Arms v. Buckles*, 301 F.3d 384 (6th Cir. 2002) – rejecting a challenge to 18 U.S.C. § 921 *et seq.*
- *Gun Owners’ Action League, Inc. v. Swift*, 284 F.3d 198 (1st Cir. 2002) – rejecting a challenge to Massachusetts Gen. Laws ch. 140, § 131(a).
- *Coalition of N.J. Sportsmen v. Whitman*, 44 F. Supp. 2d 666 (D. N.J. 1999), *aff’d*, 263 F.3d 157 (3d Cir. 2001) – rejecting a challenge to New Jersey Rev. Stat. § 2C:39-1w(1).
- *Citizens for a Safer Community v. City of Rochester*, 627 N.Y.S.2d 193 (N.Y. Gen. Term 1994) – rejecting a challenge to Rochester Ordinance No. 93-62.

First Amendment to the U.S. Constitution, Freedom of Association – “Congress shall make no law...abridging...the right of the people peaceably to assemble....”

No assault weapon ban has been found to violate the First Amendment right to freedom of association. The following cases have addressed this issue:

- *Silveira v. Lockyer*, 312 F.3d 1052 (9th Cir. 2002), *cert. denied*, 124 S. Ct. 803 (December 1, 2003) – rejecting a challenge to California Penal Code § 12280(g)-(i).
- *Gun Owners’ Action League, Inc. v. Swift*, 284 F.3d 198 (1st Cir. 2002) – rejecting a challenge to Massachusetts Gen. Laws ch. 140, § 131(a).
- *Coalition of N.J. Sportsmen v. Whitman*, 44 F. Supp. 2d 666 (D. N.J. 1999), *aff’d*, 263 F.3d 157 (3d Cir. 2001) – rejecting a challenge to New Jersey Rev. Stat. §§ 2C:39-3j and 2C:58-12b.

Second Amendment to the U.S. Constitution, Right to “Keep and Bear Arms” – “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”

Second Amendment challenges to assault weapon bans have not been successful. The following cases have addressed this issue:

- *Silveira v. Lockyer*, 312 F.3d 1052 (9th Cir. 2002), *cert. denied*, 124 S. Ct. 803 (December 1, 2003) – rejecting a challenge to California Penal Code §§ 12276.1 and 12280(g)-(i).
- *Peoples Rights Organization v. City of Columbus*, 152 F.3d 522 (6th Cir. 1998) – rejecting a challenge to Columbus Code §§ 2323.11, 2323.31, and 2323.32.
- *Citizens for a Safer Community v. City of Rochester*, 627 N.Y.S.2d 193 (N.Y. Gen. Term 1994) – rejecting a challenge to Rochester Ordinance No. 93-62.
- *Fresno Rifle and Pistol Club, Inc. v. Van De Kamp*, 965 F.2d 723 (9th Cir. 1992) – rejecting a challenge to California Penal Code § 12275 *et seq.*

State Right to Bear Arms Provisions – Most states have a constitutional or legislative provision recognizing a right to bear arms.

No state or local ban on assault weapons has been struck down for violating a state right to bear arms provision.⁵³ The following cases have addressed this issue:

- *Benjamin v. Bailey*, 662 A.2d 1226 (Conn. 1995) – rejecting a challenge to Connecticut Gen. Stat. §§ 53-202a through 53-202k.

⁵³ In *Ortiz v. Commonwealth*, 681 A.2d 152, 156 (Pa. 1996), the Pennsylvania Supreme Court found that assault weapon bans in Philadelphia County and the City of Pittsburgh were preempted by 18 Pa. Cons. Stat. § 6120. Although the court referenced the state’s right to bear arms provision (Pa. Const. Art. 1, § 21), the reference was **only** for the purpose of upholding the preemption statute.

- *Citizens for a Safer Community v. City of Rochester*, 627 N.Y.S.2d 193 (N.Y. Gen. Term 1994) – rejecting a challenge to Rochester Ordinance No. 93-62.
- *Robertson v. City & County of Denver*, 874 P.2d 325 (Colo. 1994), *appeal after remand*, 978 P.2d 156 (Colo. Ct. App. 1999) – rejecting a challenge to Denver Muni. Code § 38-130.
- *City of Cincinnati v. Langan*, 640 N.E.2d 163 (Ohio Ct. App. 1994) – rejecting a challenge to Cincinnati Muni. Code § 708-37.
- *Beaver v. City of Dayton*, 1993 Ohio App. LEXIS 4303 (Ohio Ct. App. 1993) – rejecting a challenge to Dayton Ordinance No. 27920.
- *Oregon State Shooting Ass’n v. Multnomah County*, 858 P.2d 1315 (Or. Ct. App. 1993) – rejecting a challenge to Multnomah County Ordinance 646, § IV.
- *Arnold v. City of Cleveland*, 616 N.E.2d 163 (Ohio 1993) – rejecting a challenge to Cleveland Ordinance No. 415-89.

State Preemption – State preemption refers to a state’s removal of a local government’s power to regulate a specific subject matter. The existence and degree of state preemption of local firearms regulation varies widely.

While courts have found two local assault weapon bans to be preempted by state law, other courts have rejected state preemption challenges to local bans. The following cases have addressed this issue:

Challenges Rejected

- *People v. Stagnitto*, 691 N.Y.S.2d 223 (N.Y. App. Div. 1999) – rejecting a challenge to Rochester Ordinance No. 93-62.
- *Citizens for a Safer Community v. City of Rochester*, 627 N.Y.S.2d 193 (N.Y. Gen. Term 1994) – rejecting a challenge to Rochester Ordinance No. 93-62.

Challenges Upheld (or upheld in part)

- *Ortiz v. Commonwealth*, 681 A.2d 152, 156 (Pa. 1996) – upholding state preemption challenges to assault weapon bans in Philadelphia County (Bill No. 508) and Pittsburgh (Ordinance 30-1993).
- *Oregon State Shooting Ass’n v. Multnomah County*, 858 P.2d 1315 (Or. Ct. App. 1993) – upholding a state preemption challenge to Multnomah County Ordinance 646, § IV(A)(4) banning the sale of assault weapons at the Exposition Center, but rejecting a state preemption challenge to section IV(A)(1)-(3) regulating (and in some cases prohibiting) the possession of assault weapons in public places.

Fifth Amendment to the U.S. Constitution, Takings Clause – The Fifth Amendment to the U.S. Constitution provides that “private property [shall not] be taken for public use, without just compensation.” The Takings Clause is incorporated by the Fourteenth Amendment Due Process Clause as a constraint on state and local action. *Chicago, B. & Q. R. Co. v. Chicago*, 166 U.S. 226 (1897).

No assault weapon ban has been found to violate the Fifth Amendment Takings Clause or analogous state constitutional provisions. The following cases have addressed this issue:

- *Silveira v. Lockyer*, 312 F.3d 1052 (9th Cir. 2002), *cert. denied*, 124 S. Ct. 803 (December 1, 2003) – rejecting a challenge to California Penal Code §§ 12276.1 and 12280(g)-(i).
- *Citizens for a Safer Community v. City of Rochester*, 627 N.Y.S.2d 193 (N.Y. Gen. Term 1994) – rejecting a challenge to Rochester Ordinance No. 93-62.
- *Gun South, Inc. v. Brady*, 877 F.2d 858 (11th Cir. 1989) – rejecting a challenge to a temporary federal ban on the importation of “assault rifles.”

Fifth and Fourteenth Amendments to the U.S. Constitution, Due Process Clauses – No person shall be deprived of “life, liberty, or property, without due process of law...” A law failing to give a person of ordinary intelligence a reasonable opportunity to know what is prohibited, or that fails to provide explicit standards for those who apply the law, violates due process under the federal constitution. As the U.S. Supreme Court explained in *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972), “[i]t is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined.” Note, however, that clearly written laws also can violate due process when they are overbroad, impinging on constitutionally protected conduct. *Id.* at 114-15.

No federal or state assault weapon ban has been found to violate due process under the U.S. Constitution or analogous state constitutional provisions. Only one local jurisdiction has had its ban struck down on due process grounds. The following cases have addressed this issue:

Challenges Rejected

- *State v. Petrucci*, 779 A.2d 429 (N.J. Super. Ct. App. Div. 2001) – rejecting a challenge to New Jersey Rev. Stat. § 2C:43-6g.
- *Gun Owners’ Action League, Inc. v. Swift*, 284 F.3d 198 (1st Cir. 2002) – rejecting a challenge to Massachusetts Gen. Laws ch. 140, § 121 *et seq.*
- *Kasler v. Lockyer*, 2 P.3d 581 (Cal. 2000) – rejecting a challenge to California Penal Code § 12276.
- *Coalition of N.J. Sportsmen v. Whitman*, 44 F. Supp. 2d 666 (D. N.J. 1999), *aff’d*, 263 F.3d 157 (3d Cir. 2001) – rejecting a challenge to various parts of New Jersey Rev. Stat. § 2C:39-1 *et seq.*
- *State v. Warriner*, 731 A.2d 86 (N.J. Super. Ct. App. Div. 1999) – rejecting a challenge to New Jersey Rev. Stat. § 2C:39-1w(1).
- *Richmond Boro Gun Club, Inc. v. City of New York*, 97 F.3d 681 (2d Cir. 1996) – rejecting a challenge to New York City Local Law 78 of 1991.

- *Benjamin v. Bailey*, 234 662 A.2d 1226 (Conn. 1995) – rejecting a challenge to Connecticut Gen. Stat. § 53-202(a).
- *City of Cincinnati v. Langan*, 640 N.E.2d 163 (Ohio Ct. App. 1994) – rejecting a challenge to Cincinnati Muni. Code § 708-37.

Challenges Upheld (or upheld in part)

- *Peoples Rights Organization v. City of Columbus*, 152 F.3d 522 (6th Cir. 1998) – upholding a vagueness challenge to the definition of assault weapons in Columbus City Code §§ 2323.11(G)(1)-(5) and 2323.31(A). At least one subsequent case in another jurisdiction, *Coalition of N.J. Sportsmen v. Whitman*, 44 F. Supp. 2d 666 (D. N.J. 1999), *aff'd*, 263 F.3d 157 (3d Cir. 2001), has rejected the reasoning of the Sixth Circuit.
- *Springfield Armory v. City of Columbus*, 29 F.3d 250 (6th Cir. 1994) – upholding a vagueness challenge to the definition of assault weapons in Columbus City Code § 2323.01(I). Subsequent cases in other jurisdictions have not followed the *Springfield Armory* decision (*see Kasler v. Lockyer*, 2 P.3d 581 (Cal. 2000); *Benjamin v. Bailey*, 662 A.2d 1226 (Conn. 1995)).
- *Robertson v. City & County of Denver*, 874 P.2d 325 (Colo. 1994), *appeal after remand*, 978 P.2d 156 (Colo. Ct. App. 1999) – upholding a vagueness challenge to several minor parts of the definition of assault weapons in Denver Muni. Code § 38-130(b)(1)(c), portions of (h)(1), and (h)(5).

Fifth and Fourteenth Amendments to the U.S. Constitution, Equal Protection – The Fourteenth Amendment provides that no state shall “deny to any person within its jurisdiction, the equal protection of the laws.” The federal government is similarly limited by the Fifth Amendment. However, when a law makes a classification neither “involving fundamental rights nor proceeding along suspect lines,” the law will withstand constitutional scrutiny so long as it bears a rational relationship to a legitimate governmental interest.⁵⁴

Most courts have rejected equal protection challenges to assault weapon bans under the U.S. Constitution or analogous state constitutional provisions. Where equal protection challenges have been upheld, they have generally concerned only specific provisions, not the entire law. The following cases have addressed this issue:

Challenges Rejected

- *Olympic Arms v. Buckles*, 301 F.3d 384 (6th Cir. 2002) – rejecting a challenge to 18 U.S.C. § 921(a)(30)(A)-(D).
- *Gun Owners’ Action League, Inc. v. Swift*, 284 F.3d 198 (1st Cir. 2002) – rejecting a challenge to Massachusetts Gen. Laws ch. 140, § 131(a).
- *Kasler v. Lockyer*, 2 P.3d 581 (Cal. 2000) – rejecting a challenge to California Penal Code § 12276.

⁵⁴ *Heller v. Doe*, 509 U.S. 312, 320 (1993), *see also Schweiker v. Wilson*, 450 U.S. 221, 230 (1981). Classifications along “suspect lines” can include a suspect class (e.g., race) or quasi-suspect class (e.g., gender), *see, e.g., Lavia v. Pennsylvania*, 224 F.3d 190, 200 (3d Cir. 2000).

- *Coalition of N.J. Sportsmen v. Whitman*, 44 F. Supp. 2d 666 (D. N.J. 1999), *aff'd*, 263 F.3d 157 (3d Cir. 2001) – rejecting a challenge to various parts of New Jersey Rev. Stat. § 2C:39-1 *et seq.*
- *Benjamin v. Bailey*, 662 A.2d 1226 (Conn. 1995) – rejecting a challenge to Connecticut Gen. Stat. §§ 53-202a through 53-202d.
- *City of Cincinnati v. Langan*, 640 N.E.2d 163 (Ohio Ct. App. 1994) – rejecting a challenge to Cincinnati Muni. Code § 708-37.

Challenges Upheld (or upheld in part)

- *Silveira v. Lockyer*, 312 F.3d 1052 (9th Cir. 2002), *cert. denied*, 124 S. Ct. 803 (December 1, 2003) – upholding a challenge to California Penal Code § 12280(h)-(i), which excluded retired law enforcement officers from the ban, while rejecting a challenge to section 12280(g).
- *Peoples Rights Organization v. City of Columbus*, 152 F.3d 522 (6th Cir. 1998) – upholding a challenge to Columbus City Code § 2323.31(B)(3), and upholding in part, and rejecting in part, a challenge to section 2323.32(B)(2). The provisions grandfathered assault weapons (and large capacity magazines belonging to or part of those weapons) that were registered under a former ordinance.
- *Citizens for a Safer Community v. City of Rochester*, 627 N.Y.S.2d 193 (N.Y. Gen. Term 1994) – upholding a challenge to part of Rochester Ordinance No. 93-62, which banned specific assault weapon models, but did not prohibit copies or duplicates of the listed models. The court rejected a challenge to the portion of the ordinance banning assault weapons based on a definition of generic features.

Fourteenth Amendment to the U.S. Constitution, Right to Privacy – Founded in the Fourteenth Amendment's concept of personal liberty, privacy rights involve at least two different kinds of interests, “the individual interest in avoiding disclosure of personal matters, and...the interest in independence in making certain kinds of important decisions.” *Whalen v. Roe*, 429 U.S. 589, 598-600 (1977).

No assault weapon ban has been found to violate the right to privacy under the U.S. Constitution or analogous state constitutional provisions. The following case has addressed this issue:

- *Silveira v. Lockyer*, 312 F.3d 1052 (9th Cir. 2002), *cert. denied*, 124 S. Ct. 803 (December 1, 2003) – rejecting a challenge to the amended registration provisions outlined in California Penal Code §§ 12280 through 12290.
- *Fresno Rifle and Pistol Club, Inc. v. Van De Kamp*, 746 F. Supp. 1415 (E.D. Cal. 1990), *aff'd*, 965 F.2d 723 (9th Cir. 1992) – rejecting a challenge to California Penal Code §§ 12275 through 12290.

Appendix E

Excerpts of the Federal Assault Weapon Ban

This Appendix is part of the report, *Banning Assault Weapons – A Legal Primer for State and Local Action*, a publication of Legal Community Against Violence.

Excerpts of the Federal Assault Weapon Ban

18 U.S.C. § 921(a)(30), (31)

(a) As used in this chapter...

(30) The term "semiautomatic assault weapon" means –

- (A) any of the firearms, or copies or duplicates of the firearms in any caliber, known as –
 - (i) Norinco, Mitchell, and Poly Technologies Avtomat Kalashnikovs (all models);
 - (ii) Action Arms Israeli Military Industries UZI and Galil;
 - (iii) Beretta Ar70 (SC-70);
 - (iv) Colt AR-15;
 - (v) Fabrique National FN/FAL, FN/LAR, and FNC;
 - (vi) SWD M-10, M-11, M-11/9, and M-12;
 - (vii) Steyr AUG;
 - (viii) INTRATEC TEC-9, TEC-DC9 and TEC-22; and
 - (ix) revolving cylinder shotguns, such as (or similar to) the Street Sweeper and Striker 12;
- (B) a semiautomatic rifle that has an ability to accept a detachable magazine and has at least 2 of –
 - (i) a folding or telescoping stock;
 - (ii) a pistol grip that protrudes conspicuously beneath the action of the weapon;
 - (iii) a bayonet mount;
 - (iv) a flash suppressor or threaded barrel designed to accommodate a flash suppressor; and
 - (v) a grenade launcher;
- (C) a semiautomatic pistol that has an ability to accept a detachable magazine and has at least 2 of –
 - (i) an ammunition magazine that attaches to the pistol outside of the pistol grip;
 - (ii) a threaded barrel capable of accepting a barrel extender, flash suppressor, forward handgrip, or silencer;
 - (iii) a shroud that is attached to, or partially or completely encircles, the barrel and that permits the shooter to hold the firearm with the nontrigger hand without being burned;
 - (iv) a manufactured weight of 50 ounces or more when the pistol is unloaded; and
 - (v) a semiautomatic version of an automatic firearm; and
- (D) a semiautomatic shotgun that has at least 2 of –
 - (i) a folding or telescoping stock;
 - (ii) a pistol grip that protrudes conspicuously beneath the action of the weapon;
 - (iii) a fixed magazine capacity in excess of 5 rounds; and
 - (iv) an ability to accept a detachable magazine.

(31) The term "large capacity ammunition feeding device" –

- (A) means a magazine, belt, drum, feed strip, or similar device manufactured after the date of enactment of the Violent Crime Control and Law Enforcement Act of 1994 that has a capacity of, or that can be readily restored or converted to accept, more than 10 rounds of ammunition; but
- (B) does not include an attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition.

18 U.S.C. § 922(v)(1), (w)(1)

(v)(1) It shall be unlawful for a person to manufacture, transfer, or possess a semiautomatic assault weapon.

(2) Paragraph (1) shall not apply to the possession or transfer of any semiautomatic assault weapon otherwise lawfully possessed under Federal law on the date of the enactment of this subsection.

(3) Paragraph (1) shall not apply to –

(A) any of the firearms, or replicas or duplicates of the firearms, specified in Appendix A to this section, as such firearms were manufactured on October 1, 1993;

(B) any firearm that –

- (i) is manually operated by bolt, pump, lever, or slide action;
- (ii) has been rendered permanently inoperable; or
- (iii) is an antique firearm;

(C) any semiautomatic rifle that cannot accept a detachable magazine that holds more than 5 rounds of ammunition; or

(D) any semiautomatic shotgun that cannot hold more than 5 rounds of ammunition in a fixed or detachable magazine. The fact that a firearm is not listed in Appendix A shall not be construed to mean that paragraph (1) applies to such firearm. No firearm exempted by this subsection may be deleted from Appendix A so long as this subsection is in effect.

(4) Paragraph (1) shall not apply to –

(A) the manufacture for, transfer to, or possession by the United States or a department or agency of the United States or a State or a department, agency, or political subdivision of a State, or a transfer to or possession by a law enforcement officer employed by such an entity for purposes of law enforcement (whether on or off duty);

(B) the transfer to a licensee under title I of the Atomic Energy Act of 1954 for purposes of establishing and maintaining an on-site physical protection system and security organization required by Federal law, or possession by an employee or contractor of such licensee on-site for such purposes or off-site for purposes of licensee-authorized training or transportation of nuclear materials;

(C) the possession, by an individual who is retired from service with a law enforcement agency and is not otherwise prohibited from receiving a firearm, of a semiautomatic assault weapon transferred to the individual by the agency upon such retirement; or

(D) the manufacture, transfer, or possession of a semiautomatic assault weapon by a licensed manufacturer or licensed importer for the purposes of testing or experimentation authorized by the Attorney General.

(w)(1) Except as provided in paragraph (2), it shall be unlawful for a person to transfer or possess a large capacity ammunition feeding device.

(2) Paragraph (1) shall not apply to the possession or transfer of any large capacity ammunition feeding device otherwise lawfully possessed on or before the date of the enactment of this subsection.

(3) This subsection shall not apply to –

(A) the manufacture for, transfer to, or possession by the United States or a department or agency of the United States or a State or a department, agency, or political subdivision of a State, or a transfer to or possession by a law enforcement officer employed by such an entity for purposes of law enforcement (whether on or off duty);

(B) the transfer to a licensee under title I of the Atomic Energy Act of 1954 for purposes of establishing and maintaining an on-site physical protection system and security organization required by Federal law, or possession by an employee or contractor of such licensee on-site for such purposes or off-site for purposes of licensee-authorized training or transportation of nuclear materials;

(C) the possession, by an individual who is retired from service with a law enforcement agency and is not otherwise prohibited from receiving ammunition, of a large capacity ammunition feeding device transferred to the individual by the agency upon such retirement; or

(D) the manufacture, transfer, or possession of any large capacity ammunition feeding device by a licensed manufacturer or licensed importer for the purposes of testing or experimentation authorized by the Attorney General.

(4) If a person charged with violating paragraph (1) asserts that paragraph (1) does not apply to such person because of paragraph (2) or (3), the Government shall have the burden of proof to show that such paragraph (1) applies to such person. The lack of a serial number as described in section 923(i) of this title shall be a presumption that the large capacity ammunition feeding device is not subject to the prohibition of possession in paragraph (1).

Appendix F

Excerpts of the California Assault Weapon Ban

This Appendix is part of the report, *Banning Assault Weapons – A Legal Primer for State and Local Action*, a publication of Legal Community Against Violence.

Excerpts of the California Assault Weapon Ban

Cal. Penal Code § 12275.5

The Legislature hereby finds and declares that the proliferation and use of assault weapons poses a threat to the health, safety, and security of all citizens of this state. The Legislature has restricted the assault weapons specified in Section 12276 based upon finding that each firearm has such a high rate of fire and capacity for firepower that its function as a legitimate sports or recreational firearm is substantially outweighed by the danger that it can be used to kill and injure human beings. It is the intent of the Legislature in enacting this chapter to place restrictions on the use of assault weapons and to establish a registration and permit procedure for their lawful sale and possession. It is not, however, the intent of the Legislature by this chapter to place restrictions on the use of those weapons which are primarily designed and intended for hunting, target practice, or other legitimate sports or recreational activities.

Cal. Penal Code § 12276

As used in this chapter, "assault weapon" shall mean the following designated semiautomatic firearms:

(a) All of the following specified rifles:

- (1) All AK series including, but not limited to, the models identified as follows:
 - (A) Made in China AK, AKM, AKS, AK47, AK47S, 56, 56S, 84S, and 86S.
 - (B) Norinco 56, 56S, 84S, and 86S.
 - (C) Poly Technologies AKS and AK47.
 - (D) MAADI AK47 and ARM.
- (2) UZI and Galil.
- (3) Beretta AR-70.
- (4) CETME Sporter.
- (5) Colt AR-15 series.
- (6) Daewoo K-1, K-2, Max 1, Max 2, AR 100, and AR 110C.
- (7) Fabrique Nationale FAL, LAR, FNC, 308 Match, and Sporter.
- (8) MAS 223.
- (9) HK-91, HK-93, HK-94, and HK-PSG-1.
- (10) The following MAC types:
 - (A) RPB Industries Inc. sM10 and sM11.
 - (B) SWD Incorporated M11.
- (11) SKS with detachable magazine.
- (12) SIG AMT, PE-57, SG 550, and SG 551.
- (13) Springfield Armory BM59 and SAR-48.
- (14) Sterling MK-6.
- (15) Steyer AUG.
- (16) Valmet M62S, M71S, and M78S.
- (17) Armalite AR-180.
- (18) Bushmaster Assault Rifle.
- (19) Calico M-900.
- (20) J&R ENG M-68.
- (21) Weaver Arms Nighthawk.

(b) All of the following specified pistols:

- (1) UZI.
- (2) Encom MP-9 and MP-45.
- (3) The following MAC types:
 - (A) RPB Industries Inc. sM10 and sM11.
 - (B) SWD Incorporated M-11.
 - (C) Advance Armament Inc. M-11.
 - (D) Military Armament Corp. Ingram M-11.
- (4) Intratec TEC-9.
- (5) Sites Spectre.
- (6) Sterling MK-7.
- (7) Calico M-950.
- (8) Bushmaster Pistol.

(c) All of the following specified shotguns:

- (1) Franchi SPAS 12 and LAW 12.
- (2) Striker 12.
- (3) The Streetsweeper type S/S Inc. SS/12.

(d) Any firearm declared by the court pursuant to Section 12276.5 to be an assault weapon that is specified as an assault weapon in a list promulgated pursuant to Section 12276.5.

(e) The term "series" includes all other models that are only variations, with minor differences, of those models listed in subdivision (a), regardless of the manufacturer.

(f) This section is declaratory of existing law, as amended, and a clarification of the law and the Legislature's intent which bans the weapons enumerated in this section, the weapons included in the list promulgated by the Attorney General pursuant to Section 12276.5, and any other models which are only variations of those weapons with minor differences, regardless of the manufacturer. The Legislature has defined assault weapons as the types, series, and models listed in this section because it was the most effective way to identify and restrict a specific class of semiautomatic weapons.

Cal. Penal Code § 12276.1

(a) Notwithstanding Section 12276, "assault weapon" shall also mean any of the following:

- (1) A semiautomatic, centerfire rifle that has the capacity to accept a detachable magazine and any one of the following:
 - (A) A pistol grip that protrudes conspicuously beneath the action of the weapon.
 - (B) A thumbhole stock.
 - (C) A folding or telescoping stock.
 - (D) A grenade launcher or flare launcher.
 - (E) A flash suppressor.
 - (F) A forward pistol grip.
- (2) A semiautomatic, centerfire rifle that has a fixed magazine with the capacity to accept more than 10 rounds.

- (3) A semiautomatic, centerfire rifle that has an overall length of less than 30 inches.
- (4) A semiautomatic pistol that has the capacity to accept a detachable magazine and any one of the following:
 - (A) A threaded barrel, capable of accepting a flash suppressor, forward handgrip, or silencer.
 - (B) A second handgrip.
 - (C) A shroud that is attached to, or partially or completely encircles, the barrel that allows the bearer to fire the weapon without burning his or her hand, except a slide that encloses the barrel.
 - (D) The capacity to accept a detachable magazine at some location outside of the pistol grip.
- (5) A semiautomatic pistol with a fixed magazine that has the capacity to accept more than 10 rounds.
- (6) A semiautomatic shotgun that has both of the following:
 - (A) A folding or telescoping stock.
 - (B) A pistol grip that protrudes conspicuously beneath the action of the weapon, thumbhole stock, or vertical handgrip.
- (7) A semiautomatic shotgun that has the ability to accept a detachable magazine.
- (8) Any shotgun with a revolving cylinder.

(b) The Legislature finds a significant public purpose in exempting pistols that are designed expressly for use in Olympic target shooting events. Therefore, those pistols that are sanctioned by the International Olympic Committee and by USA Shooting, the national governing body for international shooting competition in the United States, and that are used for Olympic target shooting purposes at the time the act adding this subdivision is enacted, and that would otherwise fall within the definition of "assault weapon" pursuant to this section are exempt, as provided in subdivision (c).

(c) "Assault weapon" does not include either of the following:

- (1) Any antique firearm.
- (2) Any of the following pistols, because they are consistent with the significant public purpose expressed in subdivision (b):

MANUFACTURER	MODEL	CALIBER
BENELLI	MP90	.22LR
BENELLI	MP90	.32 S&W LONG
BENELLI	MP95	.22LR
BENELLI	MP95	.32 S&W LONG
HAMMERLI	280	.22LR
HAMMERLI	280	.32 S&W LONG
HAMMERLI	SP20	.22LR
HAMMERLI	SP20	.32 S&W
LONG PARDINI	GPO	.22 SHORT
PARDINI	GP-SCHUMANN	.22 SHORT
PARDINI	HP	.32 S&W LONG
PARDINI	MP	.32 S&W LONG
PARDINI	SP	.22LR
PARDINI	SPE	.22LR
WALTHER	GSP	.22LR

WALTHER	GSP	.32 S&W LONG
WALTHER	OSP	.22 SHORT
WALTHER	OSP-2000	.22 SHORT

(3) The Department of Justice shall create a program that is consistent with the purposes stated in subdivision (b) to exempt new models of competitive pistols that would otherwise fall within the definition of "assault weapon" pursuant to this section from being classified as an assault weapon. The exempt competitive pistols may be based on recommendations by USA Shooting consistent with the regulations contained in the USA Shooting Official Rules or may be based on the recommendation or rules of any other organization that the department deems relevant.

(d) The following definitions shall apply under this section:

(1) "Magazine" shall mean any ammunition feeding device.

(2) "Capacity to accept more than 10 rounds" shall mean capable of accommodating more than 10 rounds, but shall not be construed to include a feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds.

(3) "Antique firearm" means any firearm manufactured prior to January 1, 1899.

(e) This section shall become operative January 1, 2000.

Cal. Penal Code § 12280

(a) (1) Any person who, within this state, manufactures or causes to be manufactured, distributes, transports, or imports into the state, keeps for sale, or offers or exposes for sale, or who gives or lends any assault weapon, except as provided by this chapter, is guilty of a felony, and upon conviction shall be punished by imprisonment in the state prison for four, six, or eight years.

(2) In addition and consecutive to the punishment imposed under paragraph (1), any person who transfers, lends, sells, or gives any assault weapon to a minor in violation of paragraph (1) shall receive an enhancement of one year.

(b) Except as provided in Section 12288, and in subdivisions (c) and (d), any person who, within this state, possesses any assault weapon, except as provided in this chapter, is guilty of a public offense and upon conviction shall be punished by imprisonment in the state prison, or in a county jail, not exceeding one year....

[Exceptions and mitigating circumstances (detailed under Cal. Penal Code §§ 12280(b)-(d), 12285, 12288, and elsewhere) have been omitted.]

Appendix G

LCAV Model Law to Ban Assault Weapons

This Appendix is part of the report, *Banning Assault Weapons – A Legal Primer for State and Local Action*, a publication of Legal Community Against Violence.

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LCAV Model Law to Ban Assault Weapons

Legal Community Against Violence (LCAV) has developed a model assault weapon law that combines the best elements of assault weapon bans across the country, bringing together the strongest and most effective provisions into a single document. Based on our review of existing laws, judicial decisions, policy research, studies, and other gun violence prevention data, LCAV has created a comprehensive model to improve upon, and avoid the loopholes present in, many existing assault weapon laws.

Model laws provide a starting point – a framework from which state or local legislation can be drafted, reviewed, debated, and ultimately adopted. Every jurisdiction seeking to ban assault weapons – whether at the state or local level – must determine which provisions are politically viable and appropriate for its constituents.

LCAV’s model has benefited tremendously from the complementary work of the Educational Fund to Stop Gun Violence (Ed Fund) and the Violence Policy Center – particularly with regard to the military origins and lethal nature of assault weapons. LCAV’s model incorporates the important work of the Ed Fund to define assault weapons based on the key features that make these weapons particularly dangerous.⁵⁵ The principal elements of the LCAV model include:

- Definition of assault weapons. Based on a “single military feature test,” the definition eliminates one of the weaknesses of the federal ban, and emphasizes high capacity and enhanced control during firing, consistent with the Ed Fund’s analysis.
- Ban on assault weapons. The manufacture, importation, possession, purchase and transfer of assault weapons are prohibited.
- Ban on large capacity ammunition magazines. Also separately prohibited are the manufacture, importation, possession, purchase and transfer of large capacity ammunition magazines – feeding devices whose capacity greatly enhances the lethality of assault weapons and other firearms.
- Treatment of assault weapons already in circulation. Two options are included: (1) assault weapons already in circulation are banned and must be removed from the jurisdiction, rendered permanently inoperable, or surrendered for disposal to the appropriate law enforcement authority, an approach adopted by several local communities; or (2) “pre-ban” assault weapons must be registered with the appropriate law enforcement authority, a process included in a number of the state and local bans, but not in the federal ban.

Please note that not all local governments have the authority to regulate firearms, and that even when they do, such ordinances must be carefully tailored to ensure conformity with state law. For more information and assistance in drafting a ban, please contact LCAV at (415) 433-2062, or via e-mail at stateandlocalbans@lcav.org.

⁵⁵ LCAV would like to acknowledge the work of the Educational Fund to Prevent Gun Violence in developing a model assault weapon ban as a supplement to its report, *Killing Machines – The Case for Banning Assault Weapons*, September 2003. Both documents can be found at: <http://www.csgv.org/issues/assaultweapons/index.cfm>.

TEXT OF MODEL LAW TO BAN ASSAULT WEAPONS

Findings

[Findings in support of a law are most effective when they are specific and localized. When possible, incorporating state and/or local data from law enforcement, the public health community, and the media is advised. General findings are included below.]

Whereas assault weapons are semi-automatic firearms designed with military features to allow rapid and accurate spray firing for the quick and efficient killing of humans;

Whereas assault weapons have been the weapon of choice in many mass shootings of innocent civilians;

Whereas assault weapon shootings are responsible for a significant percentage of the deaths of law enforcement officers killed in the line of duty;⁵⁶

Whereas approximately 2 million assault weapons are already in circulation in the United States;⁵⁷

Whereas the wide availability of assault weapons is a serious risk to public health and safety;

Whereas most citizens – including most gun owners – support assault weapon bans and believe that assault weapons should not be available for civilian use;⁵⁸

Therefore, the State legislature/County or City governing body hereby adopts the following:

2. Definitions

(a) “Assault weapon” means any:

- (1) Semi-automatic or pump-action rifle that has the capacity to accept a detachable magazine and has one or more of the following:
 - (i) A pistol grip;
 - (ii) Any feature capable of functioning as a protruding grip that can be held by the non-trigger hand;
 - (iii) A folding, telescoping or thumbhole stock;
 - (iv) A shroud attached to the barrel, or that partially or completely encircles the barrel, allowing the bearer to hold the firearm with the non-trigger hand without being burned, but excluding a slide that encloses the barrel; or
 - (v) A muzzle brake or muzzle compensator.

⁵⁶ Violence Policy Center, *Officer Down—Assault Weapons and the War on Law Enforcement*, May 2003.

⁵⁷ U.S. Department of Justice, Bureau of Justice Statistics, *Guns Used in Crime*, 6, July 1995.

⁵⁸ *See, e.g.*, Americans for Gun Safety, *Taking Back the Second Amendment: A Seven-Step Blueprint for Democrats to Promote Responsibility and Win the Gun Vote*, 7 (Oct. 2003) (citing a national poll of 802 likely 2004 presidential election voters conducted by Penn Schoen & Berland from October 1-6, 2003); Consumer Federation of America, *Consumers Strongly Support Renewing and Strengthening the Federal Assault Weapons Ban*, Feb. 2004 (citing a national survey of more than 1,000 adult Americans conducted by Opinion Research Corporation International from February 18-22, 2004, with a +/-3% margin of error); and *The 2003 National Hunting Survey*, Field & Stream, July 2003 (citing an informal survey of 2,897 readers).

(2) Semi-automatic pistol, or any semi-automatic, centerfire rifle with a fixed magazine, that has the capacity to accept more than 10 rounds of ammunition;

(3) Semi-automatic pistol that has the capacity to accept a detachable magazine and has one or more of the following:

- (i) Any feature capable of functioning as a protruding grip that can be held by the non-trigger hand;
- (ii) A folding, telescoping or thumbhole stock;
- (iii) A shroud attached to the barrel, or that partially or completely encircles the barrel, allowing the bearer to hold the firearm with the non-trigger hand without being burned, but excluding a slide that encloses the barrel;
- (iv) A muzzle brake or muzzle compensator; or
- (v) The capacity to accept a detachable magazine at any location outside of the pistol grip;

(4) Semi-automatic shotgun that has one or more of the following:

- (i) A pistol grip;
- (ii) Any feature capable of functioning as a protruding grip that can be held by the non-trigger hand;
- (iii) A folding, telescoping or thumbhole stock;
- (iv) A fixed magazine capacity in excess of 5 rounds; or
- (v) An ability to accept a detachable magazine;

(5) Shotgun with a revolving cylinder;

(6) Conversion kit, part, or combination of parts, from which an assault weapon can be assembled if those parts are in the possession or under the control of the same person.

(b) “Assault weapon” does not include any firearm that has been made permanently inoperable.

[Note: Some jurisdictions exclude from the definition of “assault weapon” antique firearms (generally meaning firearms manufactured before 1899, although sometimes including replica firearms) and weapons designed for Olympic target shooting events. However, these exceptions are not required. Such categories of assault weapons also can be subject to registration rather than an outright ban.]

(c) “Detachable magazine” means any ammunition feeding device, the function of which is to deliver one or more ammunition cartridges into the firing chamber, which can be removed from the firearm without the use of any tool, including a bullet or ammunition cartridge.

(d) “Large capacity magazine” means any ammunition feeding device with the capacity to accept more than 10 rounds, but shall not be construed to include any of the following:

- (1) A feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds.
- (2) A 22 caliber tube ammunition feeding device.
- (3) A tubular magazine that is contained in a lever-action firearm.

(e) “Muzzle brake” means a device attached to the muzzle of a weapon that utilizes escaping gas to reduce recoil.

(f) “Muzzle compensator” means a device attached to the muzzle of a weapon that utilizes escaping gas to control muzzle movement.

3. Prohibitions

(a) No person, corporation or other entity in the State/County/City may manufacture, import, possess, purchase, sell or transfer any assault weapon or large capacity magazine.

(b) Section (a) shall not apply to:

(1) Any government officer, agent, or employee, member of the armed forces of the United States, or peace officer, to the extent that such person is otherwise authorized to acquire or possess an assault weapon and/or large capacity magazine, and does so while acting within the scope of his or her duties; or

(2) The manufacture, sale or transfer of an assault weapon or large capacity ammunition feeding device by a firearms manufacturer or dealer that is properly licensed under federal, state and local laws to any branch of the armed forces of the United States, or to a law enforcement agency in this State/County/City for use by that agency or its employees for law enforcement purposes.

[Option 1 – Banning assault weapons already in circulation: Section (3)(c)]

(c) Any person who, prior to the effective date of this law, was legally in possession of an assault weapon or large capacity magazine shall have 90 days from such effective date to do any of the following without being subject to prosecution:

(1) Remove the assault weapon or large capacity magazine from the State/County/City;

(2) Render the assault weapon permanently inoperable; or

(3) Surrender the assault weapon or large capacity magazine to the appropriate law enforcement agency for destruction [subject to specific agency regulations].

[Option 2 – Registration of assault weapons already in circulation: Section (3)(c) through (g)]

(c) Any person who, prior to the effective date of this law, was legally in possession of an assault weapon or large capacity magazine shall have 90 days from such effective date to do any of the following without being subject to prosecution:

(1) Remove the assault weapon or large capacity magazine from the State/County/City;

(2) Render the assault weapon permanently inoperable;

(3) Surrender the assault weapon or large capacity magazine to the appropriate law enforcement agency for destruction [subject to specific agency regulations]; or

(4) If eligible, register the assault weapon as provided in subsection (d).

(d) Any person seeking to register an assault weapon that he or she legally possessed prior to the effective date of this law must comply with the following requirements:

- (1) Submit to a background check conducted by the appropriate law enforcement agency to confirm that he or she is not a prohibited purchaser under 18 U.S.C. § 922 [add the appropriate state and local citations];
- (2) Unless the person is currently prohibited by law from possessing a firearm, immediately register the assault weapon with the appropriate law enforcement agency;
- (3) Safely and securely store the assault weapon pursuant to the regulations adopted by the appropriate law enforcement agency. Law enforcement is authorized to inspect the storage of assault weapons to ensure compliance with this subsection;
- (4) Annually renew the registration, subject to the completion of a new background check.
- (5) Possess the assault weapon only on property owned or immediately controlled by the person, or while on the premises of a licensed gunsmith for the purpose of lawful repair, or while engaged in the legal use of the assault weapon at a duly licensed firing range, or while traveling to or from these locations, provided that the assault weapon is stored unloaded in a locked container during transport. The term “locked container” does not include the utility compartment, glove compartment, or trunk of a motor vehicle.
- (6) Report the loss or theft of a registered assault weapon to the appropriate law enforcement agency within 48 hours of the time the discovery was made or should have been made.

(e) If a registered assault weapon is used in the commission of a crime, the registered owner shall be civilly liable for any damages resulting from that crime. The liability imposed by this subsection shall not apply if the assault weapon was stolen and the registered owner reported the theft of the firearm to law enforcement within 48 hours of the time the discovery was made or should have been made.

(f) Registered assault weapons may not be purchased, sold or transferred, except for transfer to a licensed gunsmith for the purpose of lawful repair, or transfer to the appropriate law enforcement agency for the purpose of surrendering the assault weapon for destruction. Persons acquiring an assault weapon by inheritance, bequest, or succession shall, within 90 days of acquiring title, do one of the following:

- (1) Modify the assault weapon to render it permanently inoperable; or
- (2) Surrender the assault weapon to the appropriate law enforcement agency for destruction [subject to specific agency regulations].

(g) Law enforcement may charge a fee for each registration and registration renewal pursuant to Section (c).

4. Penalties

[Penalties vary significantly based on the standards of each state and local government. States almost always make assault weapon violations a felony. Maximum penalties range from three to 15 years in prison (but may be lower for first-time offenders), and a fine of several thousand dollars is sometimes an

additional penalty, depending on the circumstances. Local penalties are usually limited to one year in jail and/or a \$1,000 fine, although these penalties may be lower in some cases/jurisdictions. In almost all cases, the weapons are subject to seizure and destruction.]

5. Severability

If any provision or term of this Chapter is for any reason declared unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or the effectiveness of the remaining portions of this Chapter or any part thereof. The State/County/City hereby declares that it would have adopted this Chapter notwithstanding the unconstitutionality, invalidity or ineffectiveness of any one or more of its articles, sections, subsections, sentences or clauses.