

## **Model Law to Ban Assault Weapons and Large Capacity Ammunition Magazines**

December 2012

The Law Center to Prevent Gun Violence 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. The model law is based on our review of existing laws, judicial decisions, policy research, studies, and other gun violence prevention data.

Part I of this report provides a summary of the provisions of the model law. Part II provides an image of an assault weapon with labels and descriptions of the features that make assault weapons inappropriate for civilian use. The model law itself is presented in Part III. Part IV of this report discusses opposition arguments to laws banning assault weapons and large capacity ammunition magazines. For more information on [assault weapons](#) and [large capacity ammunition magazines](#) generally, see the Law Center's policy discussions on these topics.

Model laws provide a starting point – a framework from which legislation may be drafted, reviewed, debated, and ultimately adopted. A jurisdiction seeking to enact this model law must integrate the model language with existing laws, and any jurisdiction considering firearms legislation should seek the advice of legal counsel. The Law Center is available to provide assistance to any jurisdiction seeking to tailor a model law to its particular needs. This model law is not intended as legal advice to any person or entity, and should not be regarded as such. For more information and assistance in drafting a law, please contact the Law Center at (415) 433-2062, or via e-mail at [requestassistance@smartgunlaws.org](mailto:requestassistance@smartgunlaws.org).

This report contains our nonpartisan analysis, study, and research on gun violence prevention case law and policies, and is intended for broad distribution to the public. Our presentation of this report is based upon our independent and objective analysis of the relevant law and pertinent facts and should enable public readers to form their own opinions and conclusions about the merits of this sample legislation.

### **Part I            Summary of Provisions**

The principal elements of the Law Center model include:

- Definition of assault weapons. Based on a “single military feature test,” the definition eliminates one of the weaknesses of the expired federal ban, which included a two feature test, and emphasizes high capacity and enhanced control during firing.
- 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. Under Option 1, assault weapons already in circulation are banned and must be removed from the jurisdiction, sold to a licensed firearms dealer, rendered permanently inoperable, or surrendered for disposal to the appropriate law enforcement authority. This option has been adopted by the District of Columbia. Under Option 2, “pre-ban” assault weapons are grandfathered and must be registered with the

appropriate law enforcement authority, a process included in a number of state and local bans, but not in the federal ban. The federal law did not require registration and allowed the continued transfer and possession of pre-ban assault weapons.

- Treatment of large capacity ammunition magazines already in circulation. As with assault weapons, two options are included. The first option provides that large capacity ammunition magazines already in circulation are banned and must be removed from the jurisdiction, sold to a licensed firearms dealer, or surrendered for disposal to the appropriate law enforcement authority. This option has been adopted in Hawaii and New Jersey. The second option allows an individual who lawfully possesses a pre-ban large capacity ammunition magazine to register his or her possession of the magazine with the appropriate law enforcement authority. A person may register their possession of no more than three large capacity magazines and must dispose of any additional large capacity ammunition magazines in his or her possession.

## Part II Assault Weapon Features

Assault weapons are distinguishable from other semi-automatic firearms based on the combat-style features that allow a shooter to control the weapon while rapidly spraying large amounts of fire. The image below is of a Bushmaster Carbon 15 M4 Rifle which includes all of these features. (This M4 Rifle has a telescoping stock. The folding and thumbhole stock are pictured separately.) It can be purchased by civilians in most states. Assault weapon features are discussed in greater detail in the findings on pages four and five.



**ACT BANNING ASSAULT WEAPONS AND LARGE CAPACITY AMMUNITION MAGAZINES**

**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 spray firing for the quick and efficient killing of humans.

*Whereas*, large capacity ammunition magazines (generally defined as magazines capable of holding more than 10 rounds) are feeding devices that and may hold as many as 100 rounds of ammunition.

*Whereas*, assault weapons and/or large capacity ammunition magazines have been the tools of choice in many mass shootings of innocent civilians, including those described below:

- Newtown, Connecticut, December 14, 2012: Adam Lanza killed 26 and wounded 2 at Sandy Hook Elementary School. Twenty of the dead were young children. Lanza was armed with a Bushmaster AR-15 assault rifle, two regular handguns, multiple 33-round magazines, and hundreds of rounds of ammunition;
- Oak Creek, Wisconsin, August 5, 2012: Wade Michael Page killed 6 and wounded 4 armed with a regular handgun and 19-round ammunition magazines;
- Aurora, Colorado, July 20, 2012: James Holmes killed 12 and wounded 58 armed with a Smith & Wesson M&P15 assault rifle and 100-round ammunition magazines;
- Tuscon, Arizona, January 8, 2011: Jared Loughner killed 6 and wounded 13 armed with a regular handgun and 33-round ammunition magazines;
- Carson City, Nevada, September 6, 2011: Eduardo Sencion killed 4 and wounded 7 armed with a Norinco Mak 90, that had been altered from a semi-automatic assault weapon to a fully-automatic machine gun;
- Blacksburg, Virginia, April, 2007: Seung-Hui Cho killed 32 and wounded 17 at Virginia Tech armed with a regular handgun and 15-round ammunition magazines;
- Washington D.C. area, October 2002: John Allen Muhammad and Lee Boyd Malvo killed 10 and wounded 3 during a 3-week rampage armed with a Bushmaster XM-15 E2S assault rifle;
- Columbine, Colorado, April 20, 1999: Eric Harris and Dylan Klebold killed 12 and wounded 21 at Columbine High School. Klebold was armed with a TEC-9 assault pistol and several large capacity ammunition magazines;
- San Francisco, California, July 1, 1993: Gian Luigi Ferri killed 9 and wounded 6 armed with TEC-9 assault pistols and 40- and 50-round ammunition magazines.

Whereas, assault weapon shootings are responsible for a significant percentage of the deaths of law enforcement officers killed in the line of duty.<sup>1</sup> Anecdotal evidence from law enforcement leaders suggests that military-style assault weapons are increasingly being used against law enforcement by drug dealers and gang members.<sup>2</sup> In response, law enforcement agencies are upgrading their arsenals to include more assault weapons.<sup>3</sup>

Whereas, the International Association of Chiefs of Police recommends enactment of effective bans on military-style assault weapons in order to curb the ability of criminals to “outgun” law enforcement officers.<sup>4</sup>

Whereas, in 1994, a federal ban on the manufacture, transfer, and possession of semi-automatic assault weapons and the transfer and possession of large capacity ammunition magazines was enacted.<sup>5</sup> The law included a ten-year sunset provision. In 2004, Congress allowed the law to expire. Seven states and the District of Columbia currently ban assault weapons and (with the exception of Connecticut) large capacity ammunition magazines at the state level.<sup>6</sup> The District of Columbia ban does not grandfather pre-ban assault weapons and the laws in Hawaii and New Jersey do not grandfather pre-ban large capacity ammunition magazines.<sup>7</sup> Two additional states regulate, but do not ban, assault weapons.<sup>8</sup>

Whereas, studies show that the federal assault weapon ban resulted in a marked decrease in the use of assault weapons and large capacity ammunition magazines in crime. One study found that in several major cities, the share of recovered crime guns that were assault weapons declined by at least 32% after the federal ban was adopted.<sup>9</sup> Another study analyzed data kept by the Virginia State Police and found a clear decline in the percentage of crime guns that were equipped with large capacity ammunition magazines after the federal ban was enacted. The percentage reached a low of 10% in 2004 and then steadily climbed after Congress allowed the ban to expire; by 2010, the percentage was close to 22%.<sup>10</sup>

---

<sup>1</sup> Violence Policy Center, *Officer Down—Assault Weapons and the War on Law Enforcement*, May 2003.

<sup>2</sup> International Association of Chiefs of Police (IACP), *Taking a Stand: Reducing Gun Violence in Our Communities* 26-7 (Sept. 2007).

<sup>3</sup> See, e.g., Susan Candiotti, *Cops Find Themselves in Arms Race with Criminals*, Cable News Network, Nov. 6, 2007, available at <http://www.cnn.com/2007/US/11/05/cops.guns/index.html> (last visited Aug. 21, 2012); Kevin Johnson, *Police Needing Heavier Weapons*, USA Today, Feb. 20, 2007, at 1A.

<sup>4</sup> *Taking a Stand*, *supra* note 2.

<sup>5</sup> 18 U.S.C. § 922(v)(1). All references to sections of the Violent Crime Control and Law Enforcement Act of 1994, codified at 18 U.S.C. § 921 *et seq.*, are to the sections as they appeared on September 12, 2004.

<sup>6</sup> The states that ban assault weapons are: California (Cal. Penal Code §§ 16350, 16790, 16890, 30500-31115); Connecticut (Conn. Gen. Stat. §§ 53-202a – 53-202o); Hawaii (assault pistols only) (Haw. Rev. Stat. Ann. §§ 134-1, 134-4, 134-8); Maryland (assault pistols only) (Md. Code Ann., Crim. Law §§ 4-301 – 4-306); Massachusetts (Mass. Gen. Laws ch. 140, §§ 121, 122, 123, 131, 131M); New Jersey (N.J. Stat. Ann. §§ 2C:39-1w, 2C:39-5, 2C:58-5, 2C:58-12, 2C:58-13); and New York (N.Y. Penal Law §§ 265.00(22), 265.02(7), 265.10). The District of Columbia’s ban is codified at D.C. Code Ann. §§ 7-2501.01(3A), 7-2502.02(a)(6), 7-2505.01, 7-2505.02(a), (c).

<sup>7</sup> D.C. Code Ann. §§ 7-2501.01(3A), 7-2502.02(a)(6), 7-2505.01, 7-2505.02(a), (c); Haw. Rev. Stat. Ann. §§ 134-1, 134-4, 134-8; N.J. Stat. Ann. §§ 2C:39-1w, 2C:39-5, 2C:58-5, 2C:58-12, 2C:58-13.

<sup>8</sup> The states that regulate but do not ban assault weapons are Minnesota (Minn. Stat. §§ 624.712 – 624.7141) and Virginia (Va. Code Ann. §§ 18.2-287.4, 18.2-308.2:01, 18.2-308.2:2, 18.2-308.7, 18.2-308.8). In addition to its ban on assault pistols, Maryland also regulates the sale of other assault weapons. Md. Code Ann., Pub. Safety § 5-101(p).

<sup>9</sup> Christopher S. Koper, [\*An 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) 49.

<sup>10</sup> *About the Project: The Hidden Life of Guns*, Wash. Post, Jan. 22, 2011; David S. Fallis & James V. Grimaldi, *Virginia data show drop in criminal firepower during assault gun ban*, Wash. Post, Jan. 23, 2011.

Whereas, the expired federal assault weapon ban would have been even more effective had it not contained major loopholes that allowed manufacturers to easily evade the ban;

Whereas, assault weapons are inappropriate for civilian use due to their unique combinations of features. An assault weapon allows a shooter to fire a large number of rounds rapidly while maintaining control of the firearm. Specific features that allow an assault weapon to perform this way are:

- Detachable magazine: A firearm that can accept a detachable magazine allows a shooter to attach magazines of any size available for the firearm. In some cases, magazines can hold as many as 100 rounds. Even smaller detachable magazines greatly increase firepower since the firearm can be reloaded with pre-filled magazines in seconds;
- Pistol grip: To counteract the movement that occurs when a semi-automatic weapon is fired rapidly, assault weapons are typically equipped with features that allow the shooter to steady the weapon. A pistol grip, not typically found on a sporting rifle or shotgun (which would be fired from the shoulder), allows the shooter to control the firearm by shooting from the hip during rapid fire;
- Thumbhole stock: As with a pistol grip, a thumbhole stock allows the shooter to control the firearm by shooting from the hip during rapid fire;
- Folding or telescoping stock: A folding or telescoping stock folds or collapses to make the weapon easier to conceal and transport.
- Barrel shroud: As with a pistol grip and thumbhole stock, a barrel shroud allows the shooter to steady the firearm during rapid fire. The shroud encircles the barrel of the firearm and allows the shooter to hold it without getting burned.

Whereas, our nation's lax gun laws adversely impact other nations, especially Mexico. A joint report by scholars in Mexico and the United States found that semi-automatic assault rifles are the most sought after and widely used weapons by Mexican drug trafficking organizations.<sup>11</sup> According to the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF"), over two-thirds of firearms seized by Mexican authorities and traced over fiscal years 2007-2011 originated in the U.S.<sup>12</sup> The actual percentage is likely much higher due to the large number of trace requests that lacked sufficient data to determine the source country of the firearm.<sup>13</sup>

Whereas, mass murderer Anders Behring Breivik, who gunned down 77 people at a summer camp in Norway in 2011, stated in his written manifesto that he purchased 30-round ammunition magazines via mail order from a dealer in the United States.<sup>14</sup>

---

<sup>11</sup> Colby Goodman & Michel Marizco, *U.S. Firearms Trafficking to Mexico: New Data and Insights Illuminate Key Trends and Challenges*, in SHARED RESPONSIBILITY: U.S.-MEXICO POLICY OPTIONS FOR CONFRONTING ORGANIZED CRIME 185 (Eric L. Olson, David A. Shirk & Andrew Selee eds., 2010).

<sup>12</sup> U.S. Department of Justice, Bureau of Alcohol, Tobacco and Firearms and Explosives, Office of Strategic Intelligence and Information, International Firearms Trace Data, *Mexico 2007-2011* (March 2012), available at: <http://www.atf.gov/statistics/download/trace-data/international/2007-2011-Mexico-trace-data.pdf>.

<sup>13</sup> *Id.*

<sup>14</sup> CBSNews.com, *Norway Massacre Spurs Calls for New U.S. Gun Laws* (Jul. 28, 2011), available at [http://www.cbsnews.com/8301-503544\\_162-20085056-503544.html](http://www.cbsnews.com/8301-503544_162-20085056-503544.html).

Whereas, laws banning assault weapons are consistent with the Supreme Court’s interpretation of the Second Amendment. In the 2008 ruling in *District of Columbia v. Heller*, the United States Supreme Court stated for the first time that the Second Amendment protects a law-abiding citizen’s right to possess an operable handgun in the home for self-defense.<sup>15</sup> The Court noted, however, that the right is limited. Among other limitations, the Court recognized that the Second Amendment would not preclude banning “dangerous and unusual weapons” such as M-16 rifles.<sup>16</sup>

Whereas, after the *Heller* decision, the District of Columbia adopted a set of strong new gun laws, including a measure prohibiting the possession of assault weapons and large capacity ammunition magazines. In 2011, the D.C. Circuit Court of Appeals upheld these laws against a Second Amendment challenge.<sup>17</sup>

Whereas, a majority of Americans support banning military-style firearms and large capacity ammunition magazines. A CNN poll conducted in December 2012, found that 62% of the public supports a ban on semi-automatic assault guns and high-capacity ammunition magazines.<sup>18</sup> A Field & Stream poll revealed that sixty-seven percent of its readers did not consider assault weapons to be legitimate sporting guns.<sup>19</sup>

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

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

## 2. Definitions

(a) “Assault weapon” means any:

- (1) Semi-automatic rifle that has the capacity to accept a detachable magazine and has one or more of the following:
  - (i) A pistol grip or thumbhole stock;
  - (ii) Any feature capable of functioning as a protruding grip that can be held by the non-trigger hand;
  - (iii) A folding or telescoping 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;
- (2) Semi-automatic pistol, or any semi-automatic, centerfire or rimfire 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:

---

<sup>15</sup> *District of Columbia v. Heller*, 554 U.S. 570 (2008).

<sup>16</sup> *Id.* at 626-28.

<sup>17</sup> *Heller v. District of Columbia*, 670 F.3d 1244 (D.C. Cir. 2011). For other decisions and additional analysis, see the Opposition Arguments section of this document.

<sup>18</sup> CNN Poll: *Bare majority now support major gun restrictions* (Dec. 19, 2012)(citing a national poll conducted by ORC International from December 17-18, 2012), available at <http://politicalticker.blogs.cnn.com/2012/12/19/cnn-poll-bare-majority-now-support-major-gun-restrictions/>.

<sup>19</sup> Field & Stream, *The 2003 National Hunting Survey* (July 2003).

- (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; or
  - (iv) 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 or thumbhole stock;
  - (ii) Any feature capable of functioning as a protruding grip that can be held by the non-trigger hand;
  - (iii) A folding or telescoping 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 an ammunition feeding device that can be loaded or unloaded while detached from a firearm and readily inserted into a firearm.

(d) “Fixed Magazine” means an ammunition feeding device contained in, or permanently attached to, a firearm in such a manner that the device cannot be removed without disassembly of the firearm action.

(e) “Large capacity magazine” means any ammunition feeding device with the capacity to accept more than 10 rounds, or any conversion kit, part, or combination of parts, from which such a device can be assembled if those parts are in the possession or under the control of the same person, 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.

### 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 of an assault weapon or large capacity ammunition magazine by a firearms manufacturer for the purpose of sale 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, provided the manufacturer is properly licensed under federal, state and local laws.

(3) The sale or transfer of an assault weapon or large capacity ammunition magazine by a 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.

(4) An individual who lawfully possesses a large capacity ammunition magazine if he or she is the lawful owner of a firearm for which no magazine that holds 10 or less rounds of ammunition is compatible, if both the magazine and the firearm were obtained prior to the effective date of this law. Such a magazine may be possessed solely for use with the firearm and no individual may possess more than three large capacity ammunition magazines. Possession must be properly registered pursuant to subsection (e). [Note that subsection (e) is part of Option 2, below.]

#### **[Option 1 – Banning assault weapons and large capacity ammunition magazines 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 ammunition magazine shall have 120 days from such effective date to do any of the following without being subject to prosecution:

(1) Remove the assault weapon or large capacity ammunition magazine from the state/county/city;

(2) Sell the assault weapon or large capacity ammunition magazine to a licensed firearms dealer;

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

(4) Render the assault weapon permanently inoperable and dispose of the large capacity ammunition magazine pursuant to section (1), (2), or (3);

**[Option 2 – Registration of assault weapons and possession of large capacity ammunition magazines already in circulation: Section (3)(c) through (i)]**

(c) Any person who, prior to the effective date of this law, was legally in possession of an assault weapon or large capacity ammunition magazine shall have 120 days from such effective date to do any of the following without being subject to prosecution:

- (1) Remove the assault weapon or large capacity ammunition magazine from the state/county/city;
- (2) Sell the assault weapon or large capacity ammunition magazine to a licensed firearms dealer;
- (3) Surrender the assault weapon or large capacity ammunition magazine to the appropriate law enforcement agency for destruction [subject to specific agency regulations];
- (4) Render the assault weapon permanently inoperable and dispose of the large capacity ammunition magazine pursuant to section (1), (2), or (3); or
- (5) If eligible, register the assault weapon as provided in subsection (d) and/or if eligible, register possession of the large capacity ammunition magazine pursuant to subsection (e).

(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;

(e) Any person seeking to register possession of a large capacity ammunition magazine 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 ammunition, immediately register his or her possession of no more than three large capacity ammunition magazines with the appropriate law enforcement agency and dispose of any remaining large capacity ammunition magazines in his or her possession pursuant to section (c)(1), (c)(2), or (c)(3);

(f) A registered owner of an assault weapon or large capacity ammunition magazine must comply with all of the following:

- (1) Safely and securely store the assault weapon and/or large capacity ammunition magazines pursuant to the regulations adopted by the appropriate law enforcement agency. Law enforcement is authorized to inspect the storage of assault weapons and large capacity ammunition magazines to ensure compliance with this subsection;
- (2) Annually renew the registration, subject to the completion of a new background check;

- (3) Possess the assault weapon and/or large capacity ammunition magazines only on property owned or immediately controlled by the person, or while on the premises of a licensed firearms dealer or of a licensed gunsmith for the purpose of lawful repair, or while engaged in the legal use of the assault weapon and/or large capacity ammunition magazine at a duly licensed firing range, or while transporting the weapon or magazine in compliance with 18 U.S.C. § 926a; and
  - (4) Report the loss or theft of a registered assault weapon and/or large capacity ammunition magazine to the appropriate law enforcement agency within 48 hours of the time the discovery of the loss or theft was made or should have been made.
- (g) Registered assault weapons or large capacity ammunition magazines may not be purchased, sold or transferred, except for transfer to a firearms dealer who is properly licensed under federal, state and local laws, 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 or large capacity ammunition magazine for destruction.
- (h) The registered owner of an assault weapon and/or large capacity ammunition magazine may not purchase additional assault weapons or large capacity ammunition magazines.
- (i) Law enforcement may charge a fee for each registration and registration renewal pursuant to Section (c).
- (j) Persons acquiring an assault weapon or large capacity ammunition magazine by inheritance, bequest, or succession shall, within 120 days of acquiring title, do one of the following:
- (1) Surrender the assault weapon and/or large capacity ammunition magazine to the appropriate law enforcement agency for destruction [subject to specific agency regulations];
  - (2) Transfer the assault weapon and/or large capacity ammunition magazine to a firearms dealer who is properly licensed under federal, state and local laws; or
  - (3) Modify the assault weapon to render it permanently inoperable and dispose of the large capacity ammunition magazine pursuant to section (1) or (2).

#### **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.

### Part III Opposition Arguments to Laws Banning Assault Weapons and Large Capacity Ammunition Magazines

#### Policy Arguments

Opponents of laws banning assault weapons and large capacity ammunition magazines often argue that the term “assault weapon” is meaningless and that all semi-automatic firearms are appropriate for sporting purposes. This argument is easily disposed of, given the clearly identifiable features that make certain semi-automatic firearms more appropriate for killing humans than for hunting or other recreational activities. Civilian assault weapons are essentially copies of military assault weapons.

The images below, from the Violence Policy publication [Understanding the Smith & Wesson M&P15 Semiautomatic Assault Rifle Used in the Aurora, Colorado Mass Murder](#), illustrate the similarity between fully automatic, military assault weapons and their semi-automatic, civilian copies. The first image below is an STG 44 military assault weapon developed for combat in Germany and used in World War II. The second image is the Smith & Wesson MP 15 that is available to civilians in most states today and is similar to the firearm James Holmes used to kill 12 people and injure 58 more in Aurora, Colorado.



Both of the firearms can accept a large capacity ammunition magazine and both have pistol grips. A shooter using either weapon could spray a large volume of fire rapidly while maintaining control of the weapon.

Opponents argue that even if civilian assault weapons are equipped with many of the same features found on military firearms, they are not capable of fully automatic firing and therefore they are “sporting” firearms that need not be regulated. “Fully automatic” fire means that the weapon continues to fire as long as the trigger is held down (or the ammunition is expended). “Semi-automatic” means that one round of

ammunition is fired each time the trigger is pulled. However, semi-automatic assault weapons are capable of firing many rounds per second, limited only by the speed of the shooter's trigger finger.

Opponents of laws banning assault weapons and large capacity ammunition magazines also sometimes assert that the federal assault weapon ban was ineffective and, therefore, all such laws would be ineffective. However, as discussed on page four of the findings, studies show that the federal assault weapon ban resulted in a marked decrease in the use of assault weapons and large capacity ammunition magazines in crime. One study found that in several major cities, the share of recovered crime guns that were assault weapons declined by at least 32% after the federal ban was adopted.<sup>20</sup> Another study analyzed data kept by the Virginia State Police and found a clear decline in the percentage of crime guns that were equipped with large capacity ammunition magazines after the federal ban was enacted. The percentage reached a low of 10% in 2004 and then steadily climbed after Congress allowed the ban to expire; by 2010, the percentage was close to 22%.<sup>21</sup>

Furthermore, while the federal assault weapon ban was effective, enormous loopholes in the law diminished the law's ability to make a greater impact. The federal ban was a phenomenal achievement when it was passed in 1994, but it also was a victim of numerous compromises and, ultimately, exploitation by the gun industry. Specifically:

- 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.<sup>22</sup> Unfortunately, the phrase “copies or duplicates” was not defined in the statute, and ATF did not enforce the provision. As a result, despite numerous cases of manufacturers exploiting this loophole by simply renaming the weapons, no firearms were banned for being a copy or duplicate.<sup>23</sup>
- The generic definition of “assault weapon” required 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<sup>24</sup> as does this model law and the laws of California, New Jersey and the District of Columbia.<sup>25</sup>
- The federal law only banned the transfer and possession of assault weapons and large capacity ammunition magazines 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 had

---

<sup>20</sup> Koper, *supra* note 9 .

<sup>21</sup> Fallis & Grimaldi, *supra* note 10.

<sup>22</sup> 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.

<sup>23</sup> 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.

<sup>24</sup> 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, Bureau of Alcohol, Tobacco and Firearms, *Department of the Treasury Study on the Sporting Suitability of Modified Semiautomatic Assault Rifles*, 2-3, Apr. 1998.

<sup>25</sup> Cal. Penal Code §§ 16350, 16790, 16890, 30500-31115; N.J. Stat. Ann. §§ 2C:39-1w, 2C:39-5, 2C:58-5, 2C:58-12, 2C:58-13; D.C. Code Ann. §§ 7-2501.01(3A), 7-2502.02(a)(6), 7-2505.01, 7-2505.02(a), (c).

no such requirement, leaving millions of unregulated assault weapons and large capacity ammunition magazines on the civilian market. The District of Columbia ban does not grandfather pre-ban weapons and the laws in Hawaii and New Jersey do not grandfather pre-ban large capacity ammunition magazines.<sup>26</sup>

- Many firearms manufacturers wasted little time redesigning their assault weapons to skirt the ban – a tactic the gun industry called “sporterization” – either by removing a military feature without compromising the gun’s ability to spray large amounts of ammunition rapidly, 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.<sup>27</sup>

### Legal Argument

Opponents of laws banning assault weapons and large capacity magazines frequently posit the inaccurate claim that the Second Amendment is a bar to such laws. In June 2008, in *District of Columbia v. Heller*,<sup>28</sup> the U.S. Supreme Court held for the first time that the Second Amendment to the U.S. Constitution protects the right of responsible, law-abiding individuals to possess a handgun in the home for purposes of self-defense. In a 5-4 ruling, the Court struck down Washington, D.C.’s decades-old ban on handgun possession, and the District’s requirement that firearms in the home be stored unloaded and disassembled and bound by a locking device (a requirement which had no exception for self-defense).

The Supreme Court explicitly found, however, that the right conferred by the Second Amendment is not unlimited, and should not be understood as “a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.”<sup>29</sup> Among other limitations, the Court recognized that the Second Amendment would not preclude banning “dangerous and unusual weapons” such as M-16 rifles.<sup>30</sup>

After the *Heller* decision, the District of Columbia adopted a set of strong new gun laws, including a measure prohibiting the possession of assault weapons and large capacity ammunition magazines. In 2011, the D.C. Circuit Court of Appeals upheld these laws against a Second Amendment challenge.<sup>31</sup> The court cited Justice Scalia’s language quoted above regarding “dangerous and unusual weapons” such as “M-16 rifles and the like.”<sup>32</sup> The D.C. court noted that the M-16 is a fully automatic machine gun that can fire continuously with one pull of the trigger while a semi-automatic assault weapon can fire only one round of ammunition per trigger pull. However, the court cited facts presented by an expert that a 30-round magazine could be emptied in fully automatic mode in slightly less than two seconds while the same magazine could be emptied in semi-automatic mode in five seconds. The court upheld the ban on semi-automatic assault weapons stating that, “it is difficult to draw meaningful distinctions between the AR-15 [a semi-automatic assault weapon] and the M-16 [a fully automatic machine gun].”<sup>33</sup> After reviewing the evidence, the court also upheld the large capacity ammunition magazine ban reasoning that:

---

<sup>26</sup> D.C. Code Ann. §§ 7-2501.01(3A), 7-2502.02(a)(6), 7-2505.01, 7-2505.02(a), (c); Haw. Rev. Stat. Ann. §§ 134-1, 134-4, 134-8; N.J. Stat. Ann. §§ 2C:39-1w, 2C:39-5, 2C:58-5, 2C:58-12, 2C:58-13.

<sup>27</sup> Thumbhole stocks are already a specified military feature under the California and Connecticut bans.

<sup>28</sup> *District of Columbia v. Heller*, 554 U.S. 570, 128 S. Ct. 2783 (2008).

<sup>29</sup> *Id.* at 2816.

<sup>30</sup> *Id.* at 626-28.

<sup>31</sup> *Heller v. District of Columbia*, 670 F.3d 1244 (D.C. Cir. 2011).

<sup>32</sup> *Id.* at 1263.

<sup>33</sup> *Id.*

Overall the evidence demonstrates that large-capacity magazines tend to pose a danger to innocent people and particularly to police officers, which supports the District's claim that a ban on such magazines is likely to promote its important governmental interests.<sup>34</sup>

In June 2010, the U.S. Supreme Court announced its decision in *McDonald v. City of Chicago*, holding in a 5-4 ruling that the Second Amendment applies to state and local governments in addition to the federal government. In doing so, the Court reversed a Seventh Circuit decision that had affirmed the dismissal of Second Amendment challenges to handgun bans in Chicago and Oak Park, Illinois.<sup>35</sup>

The Supreme Court in *McDonald* reiterated that the Second Amendment protects the right to possess a handgun in the home for purposes of self-defense, and that a wide variety of gun laws are constitutionally permissible. The Court repeated that “the right to keep and bear arms is not ‘a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose,’” and listed again the presumptively lawful measures identified in *Heller*.<sup>36</sup>

In 2009 a defendant challenged his conviction for unlawful possession of an assault weapon claiming that California’s assault weapon ban violated the Second Amendment.<sup>37</sup> The Court of Appeal of California upheld California’s assault weapon ban, concluding that the Second Amendment does not protect the possession of assault weapons and other military-style weapons. In support of its decision, the court relied on findings of the California Legislature, which enacted the law based on its belief that assault weapons are dangerous and unusual weapons. The court explained that, per *Heller*, military style weapons that are not in common use by law-abiding citizens are not protected by the Second Amendment.<sup>38</sup>

For additional discussion of the arguments frequently raised in opposition to laws banning firearms regulation in general, see the Law Center’s [\*Model Laws for a Safer America: Seven Regulations to Promote Responsible Gun Ownership and Sales\*](#).

---

<sup>34</sup> *Id.* at 1263-64.

<sup>35</sup> *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010).

<sup>36</sup> *Id.* at 3047.

<sup>37</sup> *People v. James*, 174 Cal. App. 4th 662 (Cal. App. 3rd Dist. 2009).

<sup>38</sup> *Id.*