

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.