

## Assault Weapons

### Background

Assault weapons are a class of 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. Features such as pistol grips and the ability to accept a detachable magazine clearly distinguish assault weapons from standard sporting firearms by enabling assault weapons to spray large amounts of fire quickly and accurately.

Assault weapons have been used in many high-profile shooting incidents, including the 1999 Columbine High School massacre in Colorado, the 1993 office shooting at the 101 California Street building in San Francisco, and the December 2007 shopping mall killings in Omaha, Nebraska. Some assault rifles are also accurate enough for use as sniper rifles, as illustrated by the Washington, D.C.-area sniper shootings in October 2002.

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.<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>

There is widespread public support for banning assault weapons. For example, 77% of likely 2004 presidential election voters supported renewal of the federal assault weapon ban, while only 21% opposed renewal.<sup>4</sup> Sixty-five percent of Americans favored *strengthening* the federal assault weapon ban, including 51% of gun owners.<sup>5</sup> Sixty-seven percent of *Field & Stream* readers did not consider assault weapons to be legitimate sporting guns.<sup>6</sup>

### Summary of Federal Law

On September 13, 1994, Congress adopted the Violent Crime Control and Law Enforcement Act of 1994. That Act amended the Gun Control Act of 1968, making it "unlawful for a person to manufacture, transfer, or possess a semiautomatic assault weapon."<sup>7</sup>

---

<sup>1</sup> Violence Policy Center, "Officer Down" — *Assault Weapons and the War on Law Enforcement, Section One: Assault Weapons, the Gun Industry, and Law Enforcement* (May 2003), at <http://www.vpc.org/studies/officene.htm>.

<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 Nov. 26, 2007); Kevin Johnson, *Police Needing Heavier Weapons*, USA Today, Feb. 20, 2007, at 1A.

<sup>4</sup> Third Way, *Taking Back the Second Amendment: Seven Steps Progressives Must Take to Close the Gun Gap* 5 (Jan. 2006), at [http://third-way.com/data/product/file/21/taking\\_back\\_2nd\\_amendment.pdf](http://third-way.com/data/product/file/21/taking_back_2nd_amendment.pdf).

<sup>5</sup> Consumer Federation of America, *Consumers Strongly Support Renewing and Strengthening the Federal Assault Weapons Ban* 3 (Feb. 2004).

<sup>6</sup> Field & Stream, *The 2003 National Hunting Survey* (July 2003).

<sup>7</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.

The term "semiautomatic assault weapon" was defined to include 19 named firearms and copies of those firearms, as well as certain semi-automatic rifles, pistols and shotguns with at least two specified characteristics from a list of features.<sup>8</sup> The two-feature test and the inclusion in the list of features that were purely cosmetic in nature created a loophole that allowed manufacturers to successfully circumvent the law by making minor modifications to the weapons they already produced.

The 1994 Act also banned the transfer and possession of any "large capacity ammunition feeding device," defined to include magazines manufactured after the enactment of the Act that are capable of holding more than 10 rounds of ammunition.<sup>9</sup>

The 1994 Act did not, however, prohibit the continued transfer or possession of assault weapons or large capacity ammunition magazines manufactured before the law's effective date. Manufacturers took advantage of this loophole by boosting production of assault weapons and large capacity magazines in the months leading up to the ban, creating a legal stockpile of these items. As a result, assault weapons and large capacity magazines continued to be readily available – and legal – nationwide, except where specifically banned by state or local law.

In addition, the assault weapon ban was enacted with a sunset clause, providing for its expiration after ten years. Despite overwhelming public support for its renewal, Congress and the President allowed the assault weapon ban to expire on September 13, 2004. Thus, semi-automatic, military style weapons that were formerly banned under the federal law are now legal unless banned by state or local law.<sup>10</sup>

## **SUMMARY OF STATE ASSAULT WEAPON LAWS**

Seven states have enacted laws banning assault weapons: California, Connecticut, Hawaii, Maryland, Massachusetts, New Jersey and New York. In addition, Maryland, Minnesota and Virginia regulate assault weapons. The District of Columbia bans certain assault weapons indirectly, through laws banning other classes of weapons.

Assault weapon bans can be categorized according to: (1) the definition(s) of "assault weapon;" (2) the activities that are prohibited; (3) whether pre-ban weapons are grandfathered; (4) whether grandfathered weapons must be registered; and (5) how transfer and possession of grandfathered weapons are treated.

---

<sup>8</sup> 18 U.S.C. § 921(a)(30).

<sup>9</sup> 18 U.S.C. §§ 921(a)(31), 922(w)(1). Additional information about large capacity ammunition magazines is contained in the section entitled [Large Capacity Ammunition Magazines](#).

<sup>10</sup> The 2007 report by the International Association of Chiefs of Police recommended that Congress enact an effective ban on military-style assault weapons. See *Taking a Stand: Reducing Gun Violence in Our Communities*, *supra* note 2, at 26-7.

## **State Bans**

[California](#)

Cal. Penal Code §§ 12275 – 12290

[Connecticut](#)

Conn. Gen. Stat. §§ 53-202a – 53-202o

[Hawaii \(assault pistols\)](#)

Haw. Rev. Stat. Ann. §§ 134-1, 134-4, 134-8

[Maryland \(assault pistols\)](#)

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

[New York](#)

N.Y. Penal Law §§ 265.00(22), 265.02(7), 265.10

## **State Regulations**

[Maryland](#)

Md. Code Ann., Pub. Safety § 5-101(p)

[Minnesota](#)

Minn. Stat. §§ 624.712 – 624.7141

[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

## **Other Laws**

[District of Columbia](#)

D.C. Code Ann. §§ 7-2501.01(10), (12), 7-2502.01, 7-2502.02, 7-2551.01, 7-2551.02

### States that include a list of assault weapons banned by name

California

Connecticut

Maryland (assault pistols)

Massachusetts

New Jersey

New York

### States that provide a generic feature definition of assault weapon (asterisks indicate states that use a one-feature test)

California\*

Connecticut

Hawaii (assault pistols only)

Massachusetts

New Jersey\*

New York

### States that require registration of grandfathered weapons

California

Connecticut

Hawaii

Maryland

New Jersey

### States that generally prohibit the transfer of grandfathered weapons

California

Connecticut

Hawaii

Maryland

States that limit the places a grandfathered weapon may be possessed or require a license for possession

California

Connecticut

Massachusetts (license)

New Jersey (license)

Description of State Laws Banning Assault Weapons

1. *Definition:* Most state assault weapon bans prohibit specific weapons by listing them by name. Some bans also list features that, when present, make a gun an assault weapon. These are known as generic feature tests. Generic feature tests, emphasizing high capacity and enhanced control during firing, are intended to identify assault weapons based on the military features that enhance a weapon's lethality. Generic feature tests that require a weapon to have only one of a list of features are more comprehensive than those that require two. A one-feature test captures more assault weapons and makes it harder for the gun industry to evade the law by modifying the weapon.

California and New Jersey have the most comprehensive approaches to defining assault weapons. California law also bans roughly 75 assault weapon types, models and series by name and provides a one-feature generic test for rifles and pistols. New Jersey bans roughly 65 assault weapon types, models and series and uses a one-feature generic test for shotguns.<sup>11</sup> New Jersey also bans parts that may be readily assembled into an assault weapon. The generic feature tests in most other bans, including the expired federal ban, are two-feature tests.<sup>12</sup>

Connecticut, Hawaii (assault pistols only), Massachusetts and New York use the definition of "assault weapon" from the expired federal law. Connecticut and Hawaii use the generic feature definition from the federal law. Massachusetts and New York use both the federal law's generic feature definition and its list of named weapons.

2. *Prohibited Activities:* Assault weapon bans vary as to which activities are prohibited. California and Connecticut prohibit the broadest range of activities. Both prohibit possession, distribution, importation, transportation, and keeping or offering for sale of assault weapons.<sup>13</sup> In addition, California prohibits the manufacture and transfer of assault weapons, while Connecticut also prohibits giving an assault weapon to another person. New Jersey's law is also comprehensive, prohibiting the manufacture, transportation, sale, shipping, transfer, disposing and possession of assault weapons.

---

<sup>11</sup> California's definition of assault weapon also includes a semi-automatic, centerfire rifle or pistol with a fixed magazine capacity exceeding 10 rounds; a semi-automatic, centerfire rifle less than 30 inches in length; and a semi-automatic shotgun with two listed features, or the ability to accept a detachable magazine, or a revolving cylinder. New Jersey also bans semi-automatic rifles with a fixed magazine capacity exceeding 15 rounds.

<sup>12</sup> Like the expired federal assault weapon ban, many of the state bans also include in their generic feature definitions some features that are purely cosmetic, such as bayonet mounts and grenade launchers. Defining a firearm as an assault weapon based on such cosmetic features creates a loophole, making it possible for manufacturers to evade the ban by making cosmetic modifications to their weapons. Columbus, Ohio's assault weapon ban (*see infra* p. 25) is the best example of a ban that does not include cosmetic features in its definition of assault weapon.

<sup>13</sup> In 2006 California amended its law to make possession of an assault weapon a public nuisance. Cal. Penal Code § 12282.

3. *Grandfathering*: Assault weapon bans differ in their treatment of pre-ban weapons. Each state grandfathers pre-ban weapons. However, California, Connecticut, Hawaii, Maryland and New Jersey also require registration of such weapons.<sup>14</sup> New Jersey's law is particularly strong because only assault weapons with a legitimate target-shooting purpose may be registered (effectively requiring over 60 models, types and series of assault weapons to be transferred out of state, rendered inoperable, or surrendered to law enforcement). California, Connecticut, Hawaii, and Maryland prohibit transfer of all or most grandfathered weapons. Only California and Connecticut limit the places where a grandfathered weapon may be possessed.<sup>15</sup> In Massachusetts and New Jersey, grandfathered weapons may only be sold and possessed if the owner has a license.

### Description of State Regulations Governing Assault Weapons

1. *Maryland*: In addition to its ban on assault pistols, Maryland also regulates the sale of other assault weapons, defined to include a list of specified firearms or their copies. Assault weapons are defined as "regulated firearms" under state law, and transfers are subject to various regulations, including: requiring enhanced background checks on purchasers; requiring dealers to obtain a state license; and requiring private transfers to be processed through licensed dealers or a law enforcement agency. Additionally, purchasers: (1) must be age 21 or older; (2) are subject to a seven-day waiting period; and (3) are limited to one assault weapon in any 30-day period.<sup>16</sup>

2. *Minnesota*: Minnesota prohibits the possession of "semiautomatic military-style assault weapons" by persons under 18 years of age, as well as other prohibited persons, and imposes additional restrictions on transfers through firearms dealers.

3. *Virginia*: Virginia limits the knowing and intentional possession and transportation of certain semi-automatic "assault firearms" to citizens and permanent residents age 18 and older. These weapons may not be carried, loaded, in public places in certain cities and counties. 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."

---

<sup>14</sup> Registration is critical to any law that exempts pre-ban weapons. Without such a provision, it would be nearly impossible to enforce a possession ban because there would be no way to determine the date an individual acquired possession of a banned weapon.

<sup>15</sup> California and Connecticut allow possession of a grandfathered assault weapon only at, or when being transported among: the possessor's property or workplace; the property of an expressly-consenting owner; a licensed gun dealer (for service or repair); certain target ranges; licensed shooting clubs; or an exhibition, display or education project about firearms approved by law enforcement or a recognized firearm-education entity. Cal. Penal Code § 12285(c); Conn. Gen. Stat. § 53-202d(d). California also allows possession of a grandfathered assault weapon on publicly owned land, provided it is specifically permitted by the managing authority. Cal. Penal Code § 12285(c)(6).

<sup>16</sup> See Md. Code Ann., Pub. Safety §§ 5-101 – 5-143.

## District of Columbia Regulations Governing Assault Weapons<sup>17</sup>

Although the District of Columbia does not have a specific ban on 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.” Under a separate law, the District 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).<sup>18</sup>

---

<sup>17</sup> In 2007 the U.S. Court of Appeals for the District of Columbia Circuit struck down the District of Columbia’s strict laws banning most handgun possession in the District, and requiring lawfully owned firearms to be kept unloaded and disassembled or bound by a trigger lock or similar device. *Parker v. District of Columbia*, 478 F.3d 370 (D.C. Cir. 2007). The court held that the laws violate the Second Amendment, interpreting the Amendment to protect an individual right to keep and bear firearms unrelated to service in the militia. The U.S. Supreme Court granted *certiorari* on the following question: Whether the challenged provisions violate the Second Amendment rights of individuals who are not affiliated with any state-regulated militia, but who wish to keep handguns and other firearms for private use in their homes? *District of Columbia v. Heller*, 128 S. Ct. 645, 169 L. Ed. 2d 417 (2007). The Supreme Court is expected to issue its ruling in the case by June 2008.

<sup>18</sup> D.C. Code Ann. §§ 7-2551.01 – 7-2551.03. In 2005, Congress passed and the President signed into law the Protection of Lawful Commerce in Arms Act (PLCAA). The PLCAA grants firearms dealers and others immunity from some civil lawsuits. 15 U.S.C. §§ 7901 - 7903. The Act includes, *inter alia*, the following exceptions:

- (ii) an action brought against a seller for negligent entrustment or negligence per se;
- (iii) an action in which a manufacturer or seller of a [firearm] knowingly violated a State or Federal statute applicable to the sale or marketing of the [firearm], and the violation was a proximate cause of the harm for which relief is sought, including —
  - (I) any case in which the manufacturer or seller knowingly made any false entry in, or failed to make appropriate entry in, any record required to be kept under Federal or State law with respect to the [firearm], or aided, abetted, or conspired with any person in making any false or fictitious oral or written statement with respect to any fact material to the lawfulness of the sale or other disposition of a [firearm]; or
  - (II) any case in which the manufacturer or seller aided, abetted, or conspired with any other person to sell or otherwise dispose of a [firearm], knowing, or having reasonable cause to believe, that the actual buyer of the [firearm] was prohibited from possessing or receiving a firearm or ammunition under subsection (g) or (n) of section 922 of title 18, United States Code[.]

15 U.S.C. § 7903(5)(A)(ii),(iii).

The scope of the PLCAA and its exceptions is being tested in the courts in several pending cases. In *District of Columbia v. Beretta U.S.A. Corp.*, 2008 D.C. App. LEXIS 4 (D.C. Cir. 2008), the court affirmed a judgment on the pleadings in favor of defendants (various manufacturers, importers and distributors of firearms), concluding that the District’s claims under the Assault Weapon Manufacturing Strict Liability Act were barred by the PLCAA. See also *Ileto v. Glock, Inc.*, 421 F. Supp.2d 1274 (C.D. Cal. 2006) (granting defendants’ motion for judgment on the pleadings under PLCAA). By contrast, in 2005 a federal district court denied a motion to dismiss a suit brought by the City of New York against gun manufacturers and distributors alleging a public nuisance, finding that the case was not precluded by the PLCAA. *City of New York v. Beretta U.S.A. Corp.*, 401 F. Supp.2d 244, 298 (E.D.N.Y. 2005), *appeal pending*.

## SUMMARY OF SELECTED LOCAL LAWS<sup>19</sup> BANNING ASSAULT WEAPONS

### Local Laws Banning Assault Weapons<sup>20</sup>

<b>Boston</b>	<b>1989 Mass. Acts 596, §§ 1-7</b>
<b>Chicago</b>	<b>Chicago, Ill., Code §§ 8-24-025, 8-20-030(h)</b>
<b>Cleveland</b>	<b>Cleveland, Ohio, Code §§ 628.01 – 628.99</b>
<b>Columbus</b>	<b>Columbus, Ohio, Code §§ 2323.11(L), (M), 2323.31, 545.04(a)</b>
<b>New York City</b>	<b>New York, N.Y., Admin. Code §§ 10-301(16), 10- 303.1; New York, N.Y., Rules tit. 38, § 17-01</b>

*Boston:* With some exceptions, Boston prohibits possession, transfer, purchase and display of assault weapons, large capacity magazines and ammunition belts. “Assault weapons” are defined as semi-automatic rifles with a fixed magazine with a capacity exceeding ten rounds, shotguns with a fixed magazine with a capacity exceeding six rounds, and shotguns with a revolving cylinder. The definition also includes a list of named weapons and any rifle or shotgun determined to be an assault weapon by an assault weapon roster board. In addition, any rifle or shotgun that is substantially identical to a weapon included in the definition is deemed an assault weapon. Finally, any modified semi-automatic firearm with the same make, caliber and action as a weapon included in the definition is considered an assault weapon.

Within 90 days of the date the law took effect, any individual in lawful possession of an assault weapon and a firearm identification card for the weapon was permitted to apply for a license to possess it in his or her residence. Any person denied such a license was required to dispose of the weapon within 90 days of the denial. Any person lawfully in possession of an assault weapon obtained by bequest or intestate succession or recently added to the assault weapon roster has 90 days to apply for a license or dispose of the weapon.

*Chicago:* Chicago prohibits persons from selling, offering or displaying for sale, giving, lending, transferring, possessing or acquiring an assault weapon or “assault ammunition.”<sup>21</sup> “Assault weapon” is defined to include a list of named weapons, and also includes any weapon that the Superintendent of Police defines as such by regulation. Chicago does not grandfather pre-ban assault weapons.

*Cleveland:* Cleveland prohibits any person from selling, offering or displaying for sale, giving, lending or transferring ownership of, acquiring or possessing any assault weapon. “Assault

---

<sup>19</sup> This section is based on research and analysis of existing firearms laws in: Boston, Massachusetts; Chicago, Illinois; Hartford, Connecticut; Los Angeles, California; Newark, New Jersey; New York, New York; Omaha, Nebraska; and San Francisco, California. LCAV selected these cities because they are located in states that grant local jurisdictions broad authority to regulate firearms. It also includes existing laws in Cleveland and Columbus, Ohio. Note, however, that in 2006, the Ohio Legislature passed House Bill 347 (overriding the Governor’s veto), which created Ohio Rev. Code Ann. § 9.68(A), a provision that purports to preempt all local authority to regulate firearms with few, limited exceptions. Legal challenges to the law are pending. Additional information about state laws governing local authority to regulate firearms is contained in the section of this report titled [“The Legal Background.”](#)

<sup>20</sup> Los Angeles passed the country’s first ban on assault weapons in February 1989. That law prohibited the transfer and possession of assault weapons within the city. San Francisco also banned the possession, sale and transfer of assault weapons. Later that year, California became the first state to ban assault weapons and both Los Angeles and San Francisco subsequently repealed their laws.

<sup>21</sup> Chicago defines “assault ammunition” as any ammunition magazine with a capacity of more than 12 rounds of ammunition.

weapons” are defined as semiautomatic rifles and handguns that accept a detachable magazine with a capacity of 20 rounds or more, and semiautomatic shotguns with a magazine capacity of more than six rounds. Cleveland does not grandfather pre-ban weapons.

*Columbus:* In 2005, Columbus, Ohio became the first major U.S. city to ban assault weapons after the expiration of the federal ban. Columbus prohibits any person from knowingly selling, offering or displaying for sale, giving, lending or transferring ownership of, or acquiring or possessing any assault weapon. “Assault weapons” are defined using a one-feature test for semi-automatic rifles and pistols, and a two-feature test for semi-automatic shotguns.<sup>22</sup> In addition, the city defines as “assault weapons” semi-automatic pistols with fixed magazines, and centerfire rifles with fixed magazines, that have the capacity to accept more than 10 rounds of ammunition, and revolving cylinder shotguns. Columbus grandfathers pre-ban assault weapons provided they are registered. The owner of a registered assault weapon may not sell, give, lend or transfer ownership of that weapon.

*New York City:* New York City prohibits possession or transfer of any assault weapon. “Assault weapon” is defined to include any semiautomatic centerfire or rimfire rifle or semiautomatic shotgun with one or more of a list of specified features. The definition also includes features and/or models of firearms that are “particularly suitable for military and not sporting purposes” as determined by the police commissioner. The city’s rules contain a list of named weapons that also are included in the definition of assault weapon. New York City does not grandfather pre-ban weapons.<sup>23</sup>

## **FEATURES OF COMPREHENSIVE LAW BANNING ASSAULT WEAPONS**

The features listed below are intended to provide a framework from which policy options may be considered and debated. LCAV has not attempted to include every provision or every creative approach identified in the analysis above, nor have we addressed appropriate exceptions so that the regulation does not produce unintended consequences. A jurisdiction considering modifying existing, or developing new legislation in this area should consult with counsel to ensure its legal sufficiency and compatibility with existing codes and statutes, as appropriate.

- Definition of assault weapon is based on the generic features that characterize assault weapons (*California, New Jersey and Columbus have the most comprehensive definitions*)
- Definition of assault weapon is based on a one-feature test (*New Jersey uses a one-feature test for shotguns; California and Columbus use a one-feature test for rifles and pistols; New York City uses a one-feature test for rifles and shotguns*)
- Although a generic feature test is the most comprehensive approach, if the law also includes a list of banned weapons by name, it provides a mechanism authorizing an

---

<sup>22</sup> Columbus’ definition of assault weapons is derived in large part from LCAV’s model law banning assault weapons, which is contained in LCAV’s April 2004 report (reprinted August 2005), *Banning Assault Weapons – A Legal Primer for State and Local Action*, available at [http://www.lcav.org/library/reports\\_analyses/assaultweaponreport.asp](http://www.lcav.org/library/reports_analyses/assaultweaponreport.asp). LCAV’s model law uses a one-feature test for shotguns as well as rifles and pistols.

<sup>23</sup> In addition to criminal penalties, any person who violates the city’s ban on assault weapons is subject to a civil penalty of up to \$25,000 for each assault weapon possessed or transferred. Such penalty is recoverable in a civil action by the city’s corporation counsel. New York, N.Y., Admin. Code § 10-303.1(c).

- appropriate governmental official or agency to add new and/or modified models to the list (*Chicago, New York City*)
- Prohibited activities include possession, sale, purchase, transfer, loan, pledge, transportation, distribution, importation, and manufacture of assault weapons (*California, Connecticut and New Jersey have the broadest prohibitions*)
  - Pre-ban weapons are not grandfathered and instead are to be rendered inoperable or removed from the jurisdiction (*Chicago, Cleveland, New York City*)
  - Alternatively, if pre-ban weapons are grandfathered, there is a registration mechanism for grandfathered weapons, with strict limits on their transferability, use and storage<sup>24</sup> (*California, Connecticut, Hawaii, Maryland, New Jersey, Boston, Columbus*)

---

<sup>24</sup> See section on [Registration of Firearms](#) for features of comprehensive registration laws. The most comprehensive system of regulating the purchase, possession and ownership of firearms combines registration of firearms with licensing of gun owners. Additional information on licensing of firearm owners is contained in the section on [Licensing of Gun Owners or Purchasers](#).