

No. 1-08-1202

**IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT**

MATTHEW WILSON, *et al.*,

Plaintiffs-Appellants,

vs.

COUNTY OF COOK, *et al.*

Defendants-Appellees.

No. 07 CH 4848

In the Circuit Court
of Cook County, Illinois
County Department,
Chancery Division

Hon. Mary K. Rochford,
Judge Presiding

**CORRECTED SUPPLEMENTAL BRIEF OF
DEFENDANTS-APPELLEES**

**COUNTY OF COOK, TOM DART, SHERIFF OF COOK COUNTY,
TODD STROGER, PRESIDENT OF THE COOK COUNTY BOARD
OF COMMISSIONERS AND THE INDIVIDUAL COMMISSIONERS
OF THE COOK COUNTY BOARD OF COMMISSIONERS**

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INTRODUCTION

On September 30, 2010, the Illinois Supreme Court denied Plaintiff's petition for leave to appeal but also vacated this Court's August 19, 2009 opinion and remanded the matter for reconsideration in light of *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010). For the reasons set forth below, *McDonald* does not warrant any change in outcome from this Court's previous decision.

ARGUMENT

The primary significance of *McDonald* is that it applies the Second Amendment, as construed in *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008), to State and local governments through the Fourteenth Amendment. *McDonald* also recognized the limited nature of the holding in *Heller*, stating as follows:

It is important to keep in mind that *Heller*, while striking down a law that prohibited the possession of handguns in the home, recognized 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." (citation omitted) . . . We repeat those assurances here. Despite municipal respondents' doomsday proclamations, incorporation does not imperil every law regulating firearms.

McDonald, 130 S. Ct. at 3047. The Second Amendment, as construed in *Heller*, does not guarantee a right to the weapon of one's choice.

Consistent with *Heller*, *McDonald* held that "the Second Amendment protects the right to possess *a handgun in the home for purpose of self-defense*." *McDonald*, 130 S. Ct. at 3050 (emphasis added). Therefore, the Second

Amendment does not apply to Cook County's Blair Holt Assault Weapons Ban (the "Assault Weapons Ban" or the "County Ordinance"), as this ordinance regulates the sale, ownership, and possession of high-capacity, rapid-fire pistols, rifles and shotguns based upon specifically defined characteristics. It does not address the conventional handgun "in common use" for home protection contemplated in *Heller* and *McDonald*. See *Heller*, 128 S. Ct. at 2817 (citation omitted) (recognizing that the Second Amendment protects the right to keep handguns in the home as weapons "in common use" but does not confer a right to "weapons that are useful in military service—M-16s rifles and the like." *Id.*); see also *McDonald*, 130 S. Ct. at 3047 (noting that *Heller* struck down a prohibition on common handguns).

Neither *McDonald* nor *Heller* created a fundamental right to possess an assault weapon. Indeed, cases decided after *McDonald* and *Heller* confirm that some categorical bans on firearms remain permissible. Nothing in *McDonald* or *Heller* compels any change in result from this Court's August 19, 2009 opinion. Accordingly, and for the reasons set forth below, the Second Amendment right construed in *Heller* and extended to the States by *McDonald* is narrowly applied to the possession of common handguns and does not apply to the dangerous and unusual high-capacity, rapid-fire weapons prohibited by the Assault Weapons Ban.

I. *McDonald* Reiterated that the Second Amendment Right Recognized in *Heller* is Limited to Keeping Common Handguns in the Home.

The *Heller* Court explained that the right to bear arms has never been “a right to keep and carry any weapon whatsoever in any manner whatsoever for whatever purpose.” *Heller*, 128 S. Ct. at 2816. The Court also found that limiting the right to keep and bear arms to common handguns was “fairly supported by the historical tradition of prohibiting the carrying of ‘dangerous and unusual weapons.’” *Id.* at 2817 (internal citations omitted). Thus, the *Heller* Court emphasized that this Second Amendment right was anything but absolute, stating that “we do not read the Second Amendment to protect the right of citizens to carry arms for *any sort* of confrontation, just as we do not read the First Amendment to protect the right of citizens to speak for *any purpose*.” *Id.* at 2799 (emphasis in the original).

Heller held simply that the District of Columbia could not outright prohibit the ownership of common handguns within the home for self-defense. *See McDonald*, 130 S. Ct. at 3026, *citing Heller*, 128 S. Ct. at 2783 (stating that *Heller* “stressed that the right was also valued because the possession of firearms was thought to be essential for self-defense...the *central component* of the right itself” *McDonald*, 130 St. Ct. at 3048). Importantly, *Heller* did not hold that the Second Amendment limits the government’s ability to regulate the sale or possession of high-capacity, rapid-fire firearms, such as the assault weapons

banned by the County ordinance. *Accord People v. James*, 174 Cal. App. 4th 662, 676 (Cal. App. 3rd Dist. 2009) (holding that “*Heller* does not extend Second Amendment protection to assault weapons and .50-caliber BMG rifles”). Plaintiffs have no fundamental right under the Second Amendment to such “dangerous and unusual” weapons. *See Heller*, 128 S. Ct. at 2817.

This Court was correct in holding in its August 19, 2009 opinion that the broad language in the Assault Weapons Ban “serves the legitimate purpose of protecting the public.” *See Wilson v. Cook County*, 394 Ill. App. 3d 534, 545 (1st Dist. 2009), *appeal denied and opinion vacated*, ___ Ill. 2d ___, 935 N.E.2d 516, 2010 Ill. LEXIS 1420 (Ill., Sept. 30, 2010). The County’s longstanding Assault Weapons Ban, prohibiting certain rifles, shotguns, and semi-automatic pistols with specific “dangerous and unusual” characteristics, is a reasonable and constitutional regulation. *See Heller*, 128 S. Ct. at 2817.

A. The Second Amendment Right Recognized in *Heller* does not Extend to the Possession of the Weapons Prohibited by the Assault Weapons Ban.

The Assault Weapons Ban does not violate the Second Amendment but instead falls within the class of regulations that the *Heller* Court recognized as reasonable. *See Heller*, 128 S. Ct. at 2816, 2817. *Heller* recognized that “[l]ike most rights, the right secured by the Second Amendment is not unlimited.” *Heller*, 128 S. Ct. at 2816. *Heller* drew an analogy between the First and Second Amendment, noting that neither is absolute. *Id.* at 2799 (recognizing that the

right to bear arms under the Second Amendment “was not unlimited, just as the First Amendment’s right of free speech was not”). Speech does not automatically fall within the protections of the First Amendment simply because it is speech. *Id.* The same principle holds true here: just because *Heller* recognized an individual right in the Second Amendment to keep a handgun for self-defense in the home, that does not mean that the Second Amendment confers a fundamental right to own any and all weapons. It plainly does not.

Assault weapons (as defined in the County Ordinance) are precisely the “dangerous and unusual weapons” that *Heller* specifically identifies as subject to legitimate government prohibition, based on “historical tradition.” *Id.* at 2817. The County Assault Weapons Ban is such a prohibition, and thus does not conflict with *Heller* or *McDonald*. Indeed, the limitations that *Heller* places on its holding demonstrate that the Second Amendment does not confer a fundamental right to own rocket launchers, machine guns or semi-automatic pistols such as Uzis and TEC-DC9s, in light of the threat that such weapons might pose to society. *See, e.g., Heller*, 128 S.Ct. at 2817, *Bubalo v. Navegar, Inc.*, 1997 U.S. Dist. LEXIS 8551, *25 (N.D. Ill. June 11, 1997), *James*, 174 Cal. App.4th at 676. Moreover, the mere fact that the definition of “assault weapons” in the County’s Ordinance includes by make and model certain high-capacity, rapid-fire handguns and pistols does not change this analysis. What is essential to the *Heller* analysis of whether such weapons may be regulated lies in the specifications and characteristics of those weapons and not in their shape and

size alone.

High-capacity and rapid-fire weapons simply do not fall into the category of weapons to which the majority in *Heller* referred as those historically and commonly used to defend one's self and home. Rather, they are more accurately described as uncommon, unusual weapons that quickly discharge large numbers of bullets. For example, as the United States District Court noted in *Bubalo*, the TEC-DC9 pistol is an "extremely dangerous... paramilitary assault weapon" with a flash suppressor, a large-capacity ammunition magazine, and a barrel shroud that can accept a silencer. 1997 U.S. Dist. LEXIS 8551 at *25. Moreover, the *Bubalo* Court noted that the TEC-DC9 can be converted into a fully automatic weapon and is manufactured with a special finish which provides "lubricity which increases bullet velocity and provides exceptional resistance to fingerprints." *Id.* Notably, each and every one of these features is prohibited by the County Ordinance, as well. (App. at A.1). Courts have recognized that extremely dangerous and unusual weapons, such as the TEC-DC9 pistol, are simply not the same as common handguns typically kept in the home for personal protection.¹ *Heller*, therefore, is inapposite and has no application to the County's ban on assault weapons

It is important to note that the Assault Weapons Ban does not prohibit an

¹ See also *United States v. Outlaw*, 2000 U.S. App LEXIS 6437, *4 (7th Cir. 1999) (concluding that the district court's finding that an AR-15 semi-automatic rifle was a "dangerous weapon" was not plainly erroneous).

entire class of firearms (as was the case in *Heller* and *McDonald*) but instead prohibits only firearms exhibiting certain dangerous and unusual characteristics. Such prohibited characteristics include flash suppressors, collapsible stocks, and protruding grips for the non-trigger hand. (App. at A. 1). These characteristics, like the silencer and fully-automatic adaptations and fingerprint resistant finish of the TEC-DC9 addressed in *Bubalo*, are, arguably, designed to thwart law enforcement and make the weapons more deadly, stealthful, or difficult to trace. Certainly, such characteristics or adaptations could have no legitimate self-defense or home-defense purpose.

In sum, the Cook County Board of Commissioners has determined that the inherent risk of such high-capacity, rapid-fire firearms demands reasonable regulation to curtail the extent of gun violence and resulting deaths that have become rampant in society. (See preamble to the Assault Weapons Ban, R. C393–394). In light of the inherent threat that these dangerous and unusual firearms pose, the Second Amendment as interpreted in *Heller* and *McDonald* does not prohibit their regulation.

B. Decisions Post-*Heller* and Post-*McDonald* Demonstrate the Narrow Scope of the Second Amendment Right Recognized in *Heller*.

McDonald and *Heller* do not constitute a “sea change” in the law, marking the invalidation of *all* federal, state and local firearm regulation. To the contrary, numerous post-*Heller* cases have reinforced the right of federal, state and local government to regulate dangerous weapons and to enact legislation to

protect the public from such weapons. The following cases underscore the narrowness of the *Heller* and *McDonald* decisions and their inapplicability to many firearms regulations, including the Assault Weapons Ban.

In *People v. James*, 174 Cal. App. 4th 662 (Cal. App. 3rd Dist. 2009), a case which closely parallels the facts and issues presented in the instant case, the California Appellate Court considered whether Section 12280 of the California Penal Code (“Section 12280”), codifying the *Roberti-Roos Assault Weapons Control Act of 1989* (“California’s assault weapons law”), violated the Second Amendment as construed in *Heller*. Section 12280(b) makes it unlawful to own an assault weapon in California.² Section 12280(c) makes it unlawful to possess any .50 BMG rifle,³ except as provided for therein. A jury convicted the defendant of several firearms violations including unlawful possession of an assault weapon under Section 12280(b) and unlawful possession of a .50 caliber BMG rifle under Section 12280(c). (App. at A. 15) The defendant argued that both of these provisions violated the Second Amendment as construed in *Heller*. However, the California Appellate Court disagreed.

In *James*, the California Appellate Court noted that the protection of the Second Amendment does not extend to every type of weapon. *James*, 174 Cal. App. 4th at 674, 94 Cal. Rptr. 3d at 584. The *James* court found that the

² Sections 12276 and 12276.1 of the California Penal Code define the term “assault weapon.” (App. at A.6–11)

³ Section 12278 of the California Penal Code defines the term “.50 BMG rifle.” (App. at A.12–13)

legislative history of California's assault weapon law demonstrates the concern that regulation and restriction of assault weapons is necessary to protect public safety. In this regard, when former California Governor C. George Deukmejian, Jr. signed this ban into law, he stated "[i]t's well known that some drug dealers and violent gang members are using assault-type weapons. . . . In the face of such firepower, our state's courageous law enforcement officers need all the help that we can give them as they seek to preserve our public safety." *Id.*, 174 Cal. App. 4th at 672, citing *Kasler v. Lockyer*, 23 Cal. 4th 472, 486–487 (Cal. 2000). The court also recognized that the California Legislature was specifically concerned with the unusual and dangerous nature of assault weapons. See *James*, 174 Cal. App. 4th at 676 (App. at A.4–5).⁴

Based on the limited Second Amendment right announced in *Heller*, the *James* court concluded that "the Second Amendment right does not protect possession of a military M-16 rifle" and "[l]ikewise, it does not protect the right to possess assault weapons or .50-caliber BMG rifles." *Id.*, 174 Cal. App. 4th at 676. The County's Assault Weapons Ban bears marked parallels to Section 12276 and 12276.1 of California's assault weapons law ("Sections 12276 and

4 As this Court recognized in its August 19, 2009 opinion, the Cook County Board of Commissioners had the same concern when it enacted the Assault Weapons Ban. See, e.g., *Wilson*, 394 Ill. App. 3d at 535-536 (recognizing that in the prefatory clauses of the County Ordinance, "the Commissioners cited to the public health, safety, and welfare concerns caused by both assault weapons and guns in general" and further noting that "assault weapons are 20 times more likely to be used in the commission of a crime than other kinds of weapons" and

12276.1”). (App. at A.1–3, A.6–11). Accordingly, the sound reasoning articulated in *James* is equally compelling and applicable to the present case, even subsequent to *McDonald*.

Like California’s Section 12276 (one of the statutes at issue in *James*), Section 54-211 of the County’s Assault Weapons Ban (“Section 54-211”) defines the firearms that constitute the “assault weapons” prohibited under the County Ordinance. The County’s Section 54-211 and California’s Section 12276.1 both include a detailed list of the specifications of rifles, pistols, and shotguns which, alone or in combination, would identify such weapons as being in violation of each law. (App. at A.1, A.9–11). Despite the fact that Section 54-211 of the County Ordinance was written four years after California’s Sections 12276 and 12276.1 (and, thus, contained a more technically advanced list of specifications), the lists of specifications in both laws are very similar. (*Compare* definition of “assault weapons” in the County Ordinance to Cal. Pen. Code §§ 12276 and 12276.1(a) (2009) (App. at A.1–2 and A.6–11)). In addition, both Section 54-211 of the County Ordinance and California’s Section 12276 contain non-exhaustive laundry lists of specific firearms (existing at the time the respective provisions were enacted) that fall within the definition of the high-capacity, rapid-fire “assault weapons” prohibited under each respective law. (App. at A.1–2, A.6–8). *James*, therefore, is factually analogous and highly instructive to the present

that “there was no legitimate sporting purpose for the military-style assault weapons used on the streets”).

case, as it held that a similar legislative scheme banning the sale or possession of assault weapons did not violate the Second Amendment as interpreted by the *Heller* Court.

Federal courts have also held that the Second Amendment does not invalidate laws prohibiting the possession of weapons other than common handguns within the home. *See, e.g., United States v. Fincher*, 538 F.3d 868 (8th Cir. 2008). In *Fincher*, another analogous and highly persuasive case, the defendant, Fincher, was guilty of possessing a machine gun and a sawed-off shotgun in violation of federal law. 538 F.3d at 870. Fincher argued that the Second Amendment protected his possession of such weapons. *Id.* The Eighth Circuit affirmed the conviction and stated that “under *Heller*, Fincher's possession of the guns is not protected by the Second Amendment” because machine guns and sawed-off shot guns, unlike handguns, are not weapons “in common use.” *Id.* at 874. Rather the court found that they “fall within the category of dangerous and unusual weapons that the government can prohibit for individual use.” *Id.*

Fincher is squarely on point. Here, Plaintiffs’ possession of “dangerous and unusual” assault weapons (as defined by the County Ordinance) is no more protected by the Second Amendment than Fincher’s possession of machine guns and sawed-off shotguns.

The Seventh Circuit has followed suit and recently held that the Second

Amendment, as construed in *Heller*, does not invalidate any and all firearm regulation. See, e.g., *United States v. Skoien*, 614 F.3d 638, 642 (7th Cir. 2010) (*en banc*)(finding that 18 U.S.C. §922(g)(9), a prohibition against persons convicted of misdemeanor domestic violence receiving shipments of firearms or ammunition, did not violate the Second Amendment)⁵ *United States v. Williams*, 616 F.3d 685 (7th Cir. 2010)(finding that plaintiff's "claim that Section 922(g)(1) unconstitutionally infringes on his right to possess a firearm is without merit"); *United States v. Yancey*, 621 F.3d 681, 2010 U.S. App. LEXIS 18442, *16–17 (7th Cir. 2010)(holding that 18 U.S.C. § 922(g)(3), which prohibits an addict or any user of any controlled substance from receiving any firearms or ammunition, does not violate the Second Amendment).

Significantly, *Yancey* recognized that, under *Heller* and *McDonald*, "some categorical firearms bans are permissible; Congress is not limited to case-by-case exclusions." *Id.* at *4, citing *Skoien*, 614 F.3d at 641. Post-*Heller* and *McDonald*, courts have consistently rejected claims that the Second Amendment invalidates local regulations, like the County Ordinance, that restrict weapon other than common handguns for use in the home.

⁵ Accord, *United States v. White*, 593 F.3d 1199, 1206 (11th Cir. 2010) (stating that *Heller* does not cast doubt on the constitutionality of Section

II. Neither *Heller* Nor *McDonald* Mandate that This Court Apply Strict Scrutiny to Plaintiffs' Due Process, Equal Protection and Second Amendment Challenges to the Assault Weapons Ban.

In addition to their Second Amendment claims, Plaintiffs also advanced claims under the Due Process and Equal Protection Clauses of the Fourteenth Amendment. The Assault Weapons Ban does not regulate the ownership of common handguns within the home; rather, it regulates the manufacture, sale, ownership and possession of high-capacity, rapid-fire weapons. Thus, this Court should apply a rational basis test to Plaintiffs' due process and equal protection challenges to the County Ordinance.

In its opening brief to this Court, the County has already explained why rational basis remains proper the test for determining the constitutional validity of the Assault Weapons Ban. *See Corrected Brief and Appendix of Defendants-Appellees* at 25–26. Br. of Appellee at 25–26 and citations therein to *Mulligan v. Dunne*, 61 Ill.2d 544, 558 (1975) and *Triple A Services, Inc. v. Rice*, 131 Ill. 2d 217, 226 (1989). Nothing in *Heller* or *McDonald* changes this result.

The Assault Weapons Ban does not impinge on a fundamental personal right or draw upon an inherently suspect classification. Indeed, as *McDonald* and *Heller* demonstrate, the holdings in those cases are limited to laws regulating the possession of common handguns in the home and, thus, do not apply to laws such as the Assault Weapons Ban, which regulate other types of dangerous and unusual weapons not at issue in *Heller* or *McDonald*. *See James*,

174 Cal. App. 4th at 676 (holding that the Second Amendment does not protect the right to possess assault weapons).⁶

Even if *Heller* and *McDonald* require a different level of scrutiny with regard to laws regulating the possession of handguns within the home, the rational basis test still applies to due process and equal protection challenges to “dangerous and unusual weapons,” such as the assault weapons as defined in the County Ordinance. The limited holdings of *Heller* and *McDonald* simply do not call for a different level of scrutiny regarding Plaintiffs’ challenge to the Assault Weapons Ban.

It is true that, based upon its reading of *Heller*, the Seventh Circuit in *Skoien* assumed (but did not decide) that it would apply an intermediate level of scrutiny to a Second Amendment challenge to Section 922(g)(1). *Skoien*, 614 F.3d at 642 (finding that the goal of Section 922(g)(9), preventing armed mayhem, is an “important governmental objective” and holding that the government satisfied its burden of a strong showing that the law is substantially related to that function, but declining “to get more deeply into the ‘levels of

6 Plaintiffs have argued that *Heller* essentially overruled *Kalodimos v. Village of Morton Grove*, 103 Ill. 2d 483 (1984) and that the standard of review for any constitutional challenge to firearm is strict scrutiny. Plaintiffs’ argument misses the mark. First, the municipal ordinance in *Kalodimos* constituted a blanket ban on common handguns. The County Ordinance prohibits a wholly different group of weapons *based on their characteristics and specifications*—assault weapons. Thus, the impact of *Heller* and *McDonald* on the standard of review in constitutional challenges to ordinances banning common handguns is not relevant to the present case.

scrutiny' quagmire); *see also Williams*, 616 F.3d at 692–93l; *Yancey*, 2010 U.S. App. LEXIS 18442 *5–6. To date, the Seventh Circuit remains the only federal circuit court to have examined the issue.

More importantly, the statutory provisions at issue in *Skoien*, *Williams*, and *Yancey* placed prohibitions on the ownership of any firearms, including common handguns by some persons. Given this fact, the courts applied a standard of review akin to intermediate scrutiny based upon the fact that *Heller* specifically identified such laws as invoking the Second Amendment. The Assault Weapons Ban is, however, wholly distinguishable. It does not prohibit or place any restrictions on the ownership or possession of the common handguns that were at issue in *Heller*, *Skoien*, *Williams*, and *Yancey*. Rather, the County Ordinance bans the manufacture, sale, ownership and possession of high-capacity, rapid-fire assault weapons. No one has a fundamental right to own such dangerous and unusual weapons, and, under Illinois law, this Court properly applied the rational basis test when it considered Plaintiffs' due process and equal protection claims. *See Wilson*, 394 Ill. App. 3d at 545–546. Nothing in *Heller* or *McDonald* compels a different result.

Even if this Court were required to apply the intermediate level of scrutiny to Plaintiff's constitutional claims (a point that the County Defendants do not concede), the Assault Weapons Ban satisfies this level of scrutiny as well. In *Skoien*, the Seventh Circuit found that firearm regulation of common handguns within the home "is valid only if substantially related to an important

governmental objective” and that “preventing armed mayhem is an important governmental objective.” The precise goal of the Assault Weapons Ban is to prevent armed mayhem, bloodshed, and senseless death from the use of dangerous and unusual high-capacity, rapid-fire weapons within Cook County. (See, R. C393–394). Thus, the Assault Weapons Ban is substantially related to the goal of preventing mayhem and, accordingly, satisfies even the intermediate level of scrutiny applied in *Skoien*.

CONCLUSION

Heller and *McDonald* are inapposite because they interpreted the Second Amendment as conferring a right only to keep a handgun within the home for self-protection. *Heller* and *McDonald* do not breathe life into Plaintiffs’ Second Amendment claims and do not change or alter the rational basis test that Illinois courts apply to due process and equal protection challenges to legislation that does not regulate a fundamental right or impact a suspect class.

Accordingly, and for the foregoing reasons as well as all of the reasons set forth in the County Defendants’ opening brief, this Court should affirm the April 29, 2008 memorandum and order of the circuit court dismissing Plaintiffs’ amended complaint with prejudice.

Dated: December 8, 2010

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APPENDIX

Cook County, Illinois, Code of Ordinances >> PART I - GENERAL ORDINANCES >> Chapter 54 - LICENSES, PERMITS AND MISCELLANEOUS BUSINESS REGULATIONS >> ARTICLE III. - DEADLY WEAPONS DEALERS >> DIVISION 4. - BLAIR HOLT ASSAULT WEAPONS BAN >>

DIVISION 4. - BLAIR HOLT ASSAULT WEAPONS BAN

(11)

Sec. 54-211. - Definitions.

Sec. 54-212. - Assault weapons and large capacity magazines; sale prohibited; exceptions.

Sec. 54-213. - Destruction of weapons confiscated.

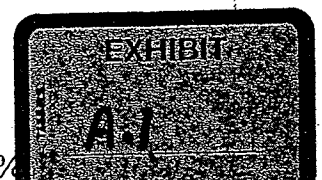
Secs. 54-214—54-240. - Reserved.

| Sec. 54-211. - Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Assault weapon means:

- (1) A semiautomatic rifle that has the capacity to accept a large capacity magazine detachable or otherwise and one or more of the following:
 - (A) Only a pistol grip without a stock attached;
 - (B) Any feature capable of functioning as a protruding grip that can be held by the non-trigger hand;
 - (C) A folding, telescoping or thumbhole stock;
 - (D) 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
 - (E) A muzzle brake or muzzle compensator;
- (2) A semiautomatic pistol or any semi-automatic rifle that has a fixed magazine, that has the capacity to accept more than ten rounds of ammunition;
- (3) A semiautomatic pistol that has the capacity to accept a detachable magazine and has one or more of the following:
 - (A) Any feature capable of functioning as a protruding grip that can be held by the non-trigger hand;
 - (B) A folding, telescoping or thumbhole stock;
 - (C) 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;
 - (D) A muzzle brake or muzzle compensator; or
 - (E) The capacity to accept a detachable magazine at some location outside of the pistol grip.
- (4) A semiautomatic shotgun that has one or more of the following:
 - (A) Only a pistol grip without a stock attached;
 - (B) Any feature capable of functioning as a protruding grip that can be held by the non-trigger hand;
 - (C) A folding, telescoping or thumbhole stock;
 - (D) A fixed magazine capacity in excess of five rounds; or
 - (E) An ability to accept a detachable magazine;
- (5) Any 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;
- (7) Shall include, but not be limited to, the assault weapons models identified as follows:
 - (A) The following rifles or copies or duplicates thereof:
 - (i)



AK, AKM, AKS, AK-47, AK-74, ARM, MAK90, Misr, NHM 90, NHM 91, SA 85, SA 93, VEPR;

- (ii) AR-10;
 - (iii) AR-15, Bushmaster XM15, Armalite M15, or Olympic Arms PCR;
 - (iv) AR70;
 - (v) Calico Liberty;
 - (vi) Dragunov SVD Sniper Rifle or Dragunov SVU;
 - (vii) Fabrique National FN/FAL, FN/LAR, or FNC;
 - (viii) Hi-Point Carbine;
 - (ix) HK-91, HK-93, HK-94, or HK-PSG-1;
 - (x) Kel-Tec Sub Rifle;
 - (xi) Saiga;
 - (xii) SAR-8, SAR-4800;
 - (xiii) SKS with detachable magazine;
 - (xiv) SLG 95;
 - (xv) SLR 95 or 96;
 - (xvi) Steyr AUG;
 - (xvii) Sturm, Ruger Mini-14;
 - (xviii) Tavor;
 - (xix) Thompson 1927, Thompson M1, or Thompson 1927 Commando; or
 - (xx) Uzi, Galil and Uzi Sporter, Galil Sporter, or Galil Sniper Rifle (Galatz).
- (B) The following pistols or copies or duplicates thereof:
- (i) Calico M-110;
 - (ii) MAC-10, MAC-11, or MPA3;
 - (iii) Olympic Arms OA;
 - (iv) TEC-9, TEC-DC9, TEC-22 Scorpion, or AB-10; or
 - (v) Uzi.
- (C) The following shotguns or copies or duplicates thereof:
- (i) Armscor 30 BG;
 - (ii) SPAS 12 or LAW 12;
 - (iii) Striker 12; or
 - (iv) Streetsweeper.

"Assault weapon" does not include any firearm that has been made permanently inoperable, or satisfies the definition of "antique firearm," stated in this section, or weapons designed for Olympic target shooting events.

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.

Large capacity magazine means any ammunition feeding device with the capacity to accept more than ten rounds, but shall not be construed to include the following:

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

Muzzle brake means a device attached to the muzzle of a weapon that utilizes escaping gas to reduce recoil.

Muzzle compensator means a device attached to the muzzle of a weapon that utilizes escaping gas to control muzzle movement.

(Ord. No. 93-O-37, § 6-1, 10-19-1993; Ord. No. 93-O-46, § 6-1, 11-16-1993; Ord. No. 94-O-33, 7-6-1994; Ord. No. 99-O-27, Pt. 3(6-1), 11-23-1999; Ord. No. 06-O-50, 11-14-2006.)

Sec. 54-212. - Assault weapons and large capacity magazines; sale prohibited; exceptions.

- (a) No person shall manufacture, sell, offer or display for sale, give, lend, transfer ownership of, acquire or possess any assault weapon or large capacity magazine. This subsection shall not apply to:



- (1) The sale or transfer to, or possession by any officer, agent, or employee of Cook County or any other municipality or state or of the United States, members of the armed forces of the United States; or the organized militia of this or any other state; or peace officers to the extent that any such person named in this subsection 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;
- (2) Transportation of assault weapons or large capacity magazine if such weapons are broken down and in a nonfunctioning state and are not immediately accessible to any person.
- (b) Any assault weapon or large capacity magazine possessed, sold or transferred in violation of Subsection (a) of this section is hereby declared to be contraband and shall be seized and disposed of in accordance with the provisions of Section 54-213.
- (c) Any person found in violation of this section shall be sentenced to not more than six months imprisonment or fined not less than \$500.00 and not more than \$1,000.00, or both.
- (d) Any person who, prior to the effective date of the ordinance codified in this section, was legally in possession of an assault weapon or large capacity magazine prohibited by this section shall have 90 days from the effective date of the ordinance to do any of the following without being subject to prosecution hereunder:
 - (1) To remove the assault weapon or large capacity magazine from within the limits of the County of Cook; or
 - (2) To modify the assault weapon or large capacity magazine either to render it permanently inoperable or to permanently make it a device no longer defined as an assault weapon or large capacity magazine; or
 - (3) To surrender the assault weapon or large capacity magazine to the Sheriff or his designee for disposal as provided below.

(Ord. No. 93-O-37, § 6-2, 10-19-1993; Ord. No. 93-O-46, § 6-2, 11-16-1993; Ord. No. 94-O-33, 7-6-1994; Ord. No. 99-O-27, Pl. 3(6-2), 11-23-1999; Ord. No. 06-O-50, 11-14-2006.)

| Sec. 54-213. - Destruction of weapons confiscated.

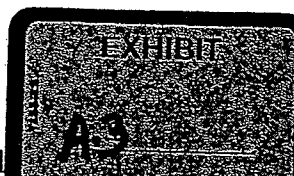
- (a) Whenever any firearm or large capacity magazine is surrendered or confiscated pursuant to the terms of this article, the Sheriff shall ascertain whether such firearm is needed as evidence in any matter.
- (b) If such firearm or large capacity magazine is not required for evidence it shall be destroyed at the direction of the Sheriff. A record of the date and method of destruction an inventory or the firearm or large capacity magazine so destroyed shall be maintained.

(Ord. No. 93-O-37, § 6-3, 10-19-1993; Ord. No. 94-O-33, 7-6-1994; Ord. No. 99-O-27, Pl. 3(6-3), 11-23-1999; Ord. No. 06-O-50, 11-14-2006.)

| Secs. 54-214—54-240. - Reserved.

FOOTNOTE(S):

⁽¹¹⁾ Editor's note— Ord. No. 07-O-36, adopted June 19, 2007, amended the title of Div. 4, Assault Weapons, to read as herein set out. (Back)



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Part 4. Prevention of Crimes and Apprehension of Criminals
Title 2. Control of Deadly Weapons
Chapter 2.3. Roberti-Roos Assault Weapons Control Act of 1989
Article 1. General Provisions

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY*Cal Pen Code § 12275.5 (2009)***Legislative Alert:**

2010 Cal. ALS 711; see section 4, effective 01/01/2011; operative 01/01/2012.

§ 12275.5. Legislative findings and declarations

(a) 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.

(b) The Legislature hereby finds and declares that the proliferation and use of .50 BMG



as defined in Section 12278, poses a clear and present terrorist threat to the health, safety, and security of all residents of, and visitors to, this state, based upon findings that those firearms have such a high capacity for long distance and highly destructive firepower that they pose an unacceptable risk to the death and serious injury of human beings, destruction or serious damage of vital public and private buildings, civilian, police and military vehicles, power generation and transmission facilities, petrochemical production and storage facilities, and transportation infrastructure. It is the intent of the Legislature in enacting this chapter to place restrictions on the use of these rifles and to establish a registration and permit procedure for their lawful sale and possession.

History:

Added Stats 1989 ch 19 § 3. Amended Stats 2004 ch 494 § 6 (AB 50).

Notes:

Amendments:

2004 Amendment:

(1) Designated the former section to be subd (a); and (2) added subd (b).

Law Review Articles:

Review of 1989 Legislation. 21 Pacific LJ 442.

Hierarchy Notes:

Pt. 4, Tit. 2 Note

Pt. 4, Tit. 2, Ch. 2.3 Note

Notes of Decisions:

1. Generally

1. Generally

Defendant's conviction under Pen C § 12280, subds. (b), (c), for possessing assault weapons and a .50 caliber BMG rifle, did not violate defendant's right to bear arms under the Second Amendment, U.S. Const., 2nd Amend., because the assault weapons proscribed by Pen C §§ 12276, 12276.1, are weapons of war and fall within the category of dangerous and unusual weapons that the government can prohibit for individual use in order to protect the public safety as indicated in Pen C § 12275.5. People v. James (2009, 3d Dist) 2009 Cal App LEXIS 871.

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Cal Pen Code § 12276

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Cal Pen Code § 12276 (2009)

Legislative Alert:

2010 Cal. ALS 711; see section 4, effective 01/01/2011;
operative 01/01/2012.

§ 12276. "Assault weapon"

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.

Practitioner's Toolbox

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Collateral References

- > Judicial Council of California Criminal Jury Instructions (LexisNexis Matthew Bender), CALCRIM No. 860, Assault on Firefighter or Peace Officer With Deadly Weapon or Force Likely to Produce Great Bodily Injury.
- > Judicial Council of California Criminal Jury Instructions (LexisNexis Matthew Bender), CALCRIM No. 2560, Possession, etc., of Assault Weapon or .50 BMG Rifle.
- > Judicial Council of California Criminal Jury Instructions (LexisNexis Matthew Bender), CALCRIM No. 2562, Possession, etc., of Assault Weapon or .50 BMG Rifle While Committing Other Offense: Pen C § 12280 Charged Only as Enhancement.

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EXHIBIT

A6

- (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.

History:

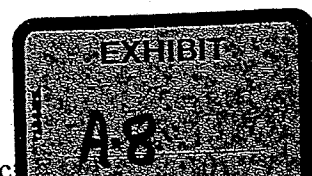
Added Stats 1989 ch 19 § 3. Amended Stats 1991 ch 954 § 2 (SB 263); Stats 1992 ch 427 § 134 (AB 3355); Stats 1993 ch 606 § 19 (AB 166), effective September 29, 1993.

Notes:

Amendments:

- ± 1991 Amendment
- ± 1992 Amendment
- ± 1993 Amendment

1991 Amendment:



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Cal Pen Code § 12276.1

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Cal Pen Code § 12276.1 (2009)

⚡ Legislative Alert:

2010 Cal. ALS 711; see section 4, effective 01/01/2011;
operative 01/01/2012.

§ 12276.1. Further definition of "assault weapon"

(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.

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> Judicial Council of California
Criminal Jury Instructions
(LexisNexis Matthew Bender),
CALCRIM No. 860, Assault on
Firefighter or Peace Officer With
Deadly Weapon or Force Likely to
Produce Great Bodily Injury.

> Judicial Council of California
Criminal Jury Instructions
(LexisNexis Matthew Bender),
CALCRIM No. 875, Assault With
Deadly Weapon or Force Likely to
Produce Great Bodily Injury.

> Judicial Council of California,
Criminal Jury Instructions
(LexisNexis Matthew Bender),
CALCRIM No. 2560, Possession,
etc., of Assault Weapon or .50 BMG
Rifle.

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(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): [Click here to view image.](#)

(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.

History:

Added Stats 1999 ch 129 § 7 (SB 23), operative January 1, 2000. Amended Stats 2000 ch 967 § 3 (AB 2351); Stats 2002 ch 911 § 3 (AB 2793).

Notes:

1. Amendments

2. Note

1. Amendments:

2000 Amendment

2002 Amendment

2000 Amendment:

(1) Added subd (b); (2) substituted subd (c) for former subd (b) which read: "(b) 'Assault weapon' does not include any antique firearm.

"(c) 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."; and (3) redesignated former subds (c) and (d) to be subds (d) and (e).

2002 Amendment:

Added subd (c)(3).

2.



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Citation: cal pen code sec 12278

Cal Pen Code § 12278

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Cal Pen Code § 12278 (2009)

⚡ Legislative Alert:

2010 Cal. ALS 711; see section 4, effective 01/01/2011; operative 01/01/2012.

§ 12278. ".50 BMG rifle"; ".50 BMG cartridge"; "Antique firearm"

(a) As used in this chapter, a ".50 BMG rifle" means a center fire rifle that can fire a .50 BMG cartridge and is not already an assault weapon pursuant to Section 12276, 12276.1, or 12276.5, or a machinegun, as defined in Section 12200.

(b) As used in this chapter, a ".50 BMG cartridge" means a cartridge that is designed and intended to be fired from a center fire rifle and that meets all of the following criteria:

(1) It has an overall length of 5.54 inches from the base to the tip of the bullet.

Practitioner's Toolbox

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⚡ Legislative Alert

⚡ Collateral References

- > Judicial Council of California Criminal Jury Instructions (LexisNexis Matthew Bender), CALCRIM No. 860, Assault on Firefighter or Peace Officer With Deadly Weapon or Force Likely to Produce Great Bodily Injury.
- > Judicial Council of California Criminal Jury Instructions (LexisNexis Matthew Bender), CALCRIM No. 875, Assault With Deadly Weapon or Force Likely to Produce Great Bodily Injury.
- > Judicial Council of California Criminal Jury Instructions (LexisNexis Matthew Bender), CALCRIM No. 2560, Possession, etc., of Assault Weapon or .50 BMG Rifle.

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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.

History:

Added Stats 1999 ch 129 § 7 (SB 23), operative January 1, 2000. Amended Stats 2000 ch 967 § 3 (AB 2351); Stats 2002 ch 911 § 3 (AB 2793).

Notes:

- 1. Amendments
- 2. Note

1. Amendments:

- 2000 Amendment
- 2002 Amendment

2000 Amendment:

(1) Added subd (b); (2) substituted subd (c) for former subd (b) which read: "(b) 'Assault weapon' does not include any antique firearm.

"(c) 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."; and (3) redesignated former subds (c) and (d) to be subds (d) and (e).

2002 Amendment:

Added subd (c)(3).

2.



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Cal Pen Code § 12280

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EXTRAORDINARY SESSIONS 1-5, ***
7, AND 8, AND URGENCY LEGISLATION THROUGH CH 713
OF THE 2010 REGULAR SESSION

PENAL CODE

Part 4. Prevention of Crimes and Apprehension of Criminals

Title 2. Control of Deadly Weapons

Chapter 2.3. Roberti-Roos Assault Weapons Control Act of 1989

Article 2. Unlawful Activities

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Cal Pen Code § 12280 (2009)

Legislative Alert:

2010 Cal. ALS 711; see section 4, effective 01/01/2011;
operative 01/01/2012.

§ 12280. Manufacture, distribution, sale, or possession of weapon; Distinct and separate offense for each weapon where multiple weapons are involved in specified prohibited activity; Enhancement of punishment for another crime; Exceptions

(a)

(1) Any person who, within this state, manufactures or causes to be manufactured,

Practitioner's Toolbox

History

Notes

Notes of Decisions

Resources & Practice Tools

Legislative Alert

Collateral References

> Judicial Council of California
Criminal Jury Instructions
(LexisNexis Matthew Bender),
CALCRIM No. 2441, Use of False
Compartment to Conceal Controlled
Substance.

> Judicial Council of California
Criminal Jury Instructions
(LexisNexis Matthew Bender),
CALCRIM No. 2560, Possession,
etc., of Assault Weapon or .50 BMG
Rifle.

> Judicial Council of California
Criminal Jury Instructions
(LexisNexis Matthew Bender),
CALCRIM No. 2561, Possession,
etc., of Assault Weapon or .50 BMG
Rifle While Committing Other
Offense: Pen C § 12280 Charged as
Separate Count and as
Enhancement.

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Law Review Articles

EXHIBIT

A-14

distributes, transports, or imports into the state, keeps for sale, or offers or exposes for sale, or who gives or lends any assault weapon or any .50 BMG rifle, 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 or any .50 BMG rifle to a minor in violation of paragraph (1) shall receive an enhancement of one year.

(3) Except in the case of a first violation involving not more than two firearms as provided in subdivisions (b) and (c), for purposes of this section, if more than one assault weapon or .50 BMG rifle is involved in any violation of this section, there shall be a distinct and separate offense for each.

(b) Any person who, within this state, possesses any assault weapon, except as provided in this chapter, shall be punished by imprisonment in a county jail for a period not exceeding one year, or by imprisonment in the state prison. However, a first violation of these provisions is punishable by a fine not exceeding five hundred dollars (\$500) if the person was found in possession of no more than two firearms in compliance with subdivision (c) of Section 12285 and the person meets all of the following conditions:

(1) The person proves that he or she lawfully possessed the assault weapon prior to the date it was defined as an assault weapon pursuant to Section 12276, 12276.1, or 12276.5.

(2) The person has not previously been convicted of a violation of this section.

(3) The person was found to be in possession of the assault weapon within one year following the end of the one-year registration period established pursuant to subdivision (a) of Section 12285.

(4) The person relinquished the firearm pursuant to Section 12288, in which case the assault weapon shall be destroyed pursuant to Section 12028.

(c) Any person who, within this state, possesses any .50 BMG rifle, except as provided in this chapter, shall be punished by a fine of one thousand dollars (\$1,000), imprisonment in a county jail for a period not to exceed one year, or by both that fine and imprisonment. However, a first violation of these provisions is punishable by a fine not exceeding five hundred dollars (\$500) if the person was found in possession of no more than two firearms in compliance with subdivision (a) of Section 12285 and the person meets the conditions set forth in paragraphs (1), (2), and (3):

(1) The person proves that he or she lawfully possessed the .50 BMG rifle prior to January 1, 2005.

(2) The person has not previously been convicted of a violation of this section.

(3) The person was found to be in possession of the .50 BMG rifle within one year following the end of the .50 BMG rifle registration period established pursuant to subdivision (a) of Section 12285.

(4) Firearms seized pursuant to this subdivision from persons who meet all of the conditions set forth in paragraphs (1), (2), and (3) shall be returned unless the court finds in the interest of public safety, after notice and hearing, that the .50 BMG rifle should be destroyed pursuant to Section 12028. Firearms seized from persons who do not meet the conditions set forth in paragraphs (1), (2), and (3) shall be destroyed pursuant to Section 12028.

(d) Notwithstanding Section 654 or any other provision of law, any person who commi



another crime while violating this section may receive an additional, consecutive punishment of one year for violating this section in addition and consecutive to the punishment, including enhancements, which is prescribed for the other crime.

(e) Subdivisions (a), (b), and (c) shall not apply to the sale to, purchase by, importation of, or possession of assault weapons or a .50 BMG rifle by the Department of Justice, police departments, sheriffs' offices, marshals' offices, the Department of Corrections and Rehabilitation, the Department of the California Highway Patrol, district attorneys' offices, Department of Fish and Game, Department of Parks and Recreation, or the military or naval forces of this state or of the United States, or any federal law enforcement agency for use in the discharge of their official duties.

(f)

(1) Subdivisions (b) and (c) shall not prohibit the possession or use of assault weapons or a .50 BMG rifle by sworn peace officer members of those agencies specified in subdivision (e) for law enforcement purposes, whether on or off duty.

(2) Subdivisions (a), (b), and (c) shall not prohibit the delivery, transfer, or sale of an assault weapon or a .50 BMG rifle to, or the possession of an assault weapon or a .50 BMG rifle by, a sworn peace officer member of an agency specified in subdivision (e) if the peace officer is authorized by his or her employer to possess or receive the assault weapon or the .50 BMG rifle. Required authorization is defined as verifiable written certification from the head of the agency, identifying the recipient or possessor of the assault weapon as a peace officer and authorizing him or her to receive or possess the specific assault weapon. For this exemption to apply, in the case of a peace officer who possesses or receives the assault weapon prior to January 1, 2002, the officer shall register the assault weapon pursuant to Section 12285 on or before April 1, 2002, and in the case of a peace officer who possesses or receives the assault weapon on or after January 1, 2002, the officer shall register the assault weapon pursuant to Section 12285 not later than 90 days after possession or receipt. In the case of a peace officer who possesses or receives a .50 BMG rifle on or before January 1, 2005, the officer shall register the .50 BMG rifle on or before April 30, 2006. In the case of a peace officer who possesses or receives a .50 BMG rifle after January 1, 2005, the officer shall register the .50 BMG rifle not later than one year after possession or receipt. The peace officer must include with the registration, a copy of the authorization required pursuant to this paragraph.

(3) Nothing in this section shall be construed to limit or prohibit the delivery, transfer, or sale of an assault weapon or a .50 BMG rifle to, or the possession of an assault weapon or a .50 BMG rifle by, a member of a federal law enforcement agency provided that person is authorized by the employing agency to possess the assault weapon or .50 BMG rifle.

(g) Subdivision (b) shall not apply to the possession of an assault weapon during the 90-day period immediately after the date it was specified as an assault weapon pursuant to Section 12276.5, or during the one-year period after the date it was defined as an assault weapon pursuant to Section 12276.1, if all of the following are applicable:

(1) The person is eligible under this chapter to register the particular assault weapon.

(2) The person lawfully possessed the particular assault weapon prior to the date it was specified as an assault weapon pursuant to Section 12276.5, or prior to the date it was defined as an assault weapon pursuant to Section 12276.1.

(3) The person is otherwise in compliance with this chapter.

(h) Subdivisions (a), (b), and (c) shall not apply to the manufacture by persons who are issued permits pursuant to Section 12287 of assault weapons or .50 BMG rifles for sale to the following:



- (1) Exempt entities listed in subdivision (e).
- (2) Entities and persons who have been issued permits pursuant to Section 12286 or 12287.
- (3) Entities outside the state who have, in effect, a federal firearms dealer's license solely for the purpose of distribution to an entity listed in paragraphs (4) to (6), inclusive.
- (4) Federal military and law enforcement agencies.
- (5) Law enforcement and military agencies of other states.
- (6) Foreign governments and agencies approved by the United States State Department.
- (i) Subdivision (a) shall not apply to a person who is the executor or administrator of an estate that includes an assault weapon or a .50 BMG rifle registered under Section 12285 or that was possessed pursuant to paragraph (1) of subdivision (f) that is disposed of as authorized by the probate court, if the disposition is otherwise permitted by this chapter.
- (j) Subdivisions (b) and (c) shall not apply to a person who is the executor or administrator of an estate that includes an assault weapon or a .50 BMG rifle registered under Section 12285 or that was possessed pursuant to paragraph (1) of subdivision (f) if the assault weapon or .50 BMG rifle is possessed at a place set forth in paragraph (1) of subdivision (c) of Section 12285 or as authorized by the probate court.
- (k) Subdivision (a) shall not apply to either of the following:
 - (1) A person who lawfully possesses and has registered an assault weapon or .50 BMG rifle pursuant to this chapter who lends that assault weapon or .50 BMG rifle to another if all the following apply:
 - (A) The person to whom the assault weapon or .50 BMG rifle is lent is 18 years of age or over and is not prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm.
 - (B) The person to whom the assault weapon or .50 BMG rifle is lent remains in the presence of the registered possessor of the assault weapon or .50 BMG rifle.
 - (C) The assault weapon or .50 BMG rifle is possessed at any of the following locations:
 - (i) While on a target range that holds a regulatory or business license for the purpose of practicing shooting at that target range.
 - (ii) While on the premises of a target range of a public or private club or organization organized for the purpose of practicing shooting at targets.
 - (iii) While attending any exhibition, display, or educational project that is about firearms and that is sponsored by, conducted under the auspices of, or approved by a law enforcement agency or a nationally or state recognized entity that fosters proficiency in, or promotes education about, firearms.
 - (2) The return of an assault weapon or .50 BMG rifle to the registered possessor, or the lawful possessor, which is lent by the same pursuant to paragraph (1).
- (l) Subdivisions (b) and (c) shall not apply to the possession of an assault weapon or .50 BMG rifle by a person to whom an assault weapon or .50 BMG rifle is lent pursuant to subdivision (k).



(m) Subdivisions (a), (b), and (c) shall not apply to the possession and importation of an assault weapon or a .50 BMG rifle into this state by a nonresident if all of the following conditions are met:

(1) The person is attending or going directly to or coming directly from an organized competitive match or league competition that involves the use of an assault weapon or a .50 BMG rifle.

(2) The competition or match is conducted on the premises of one of the following:

(A) A target range that holds a regulatory or business license for the purpose of practicing shooting at that target range.

(B) A target range of a public or private club or organization that is organized for the purpose of practicing shooting at targets.

(3) The match or competition is sponsored by, conducted under the auspices of, or approved by, a law enforcement agency or a nationally or state recognized entity that fosters proficiency in, or promotes education about, firearms.

(4) The assault weapon or .50 BMG rifle is transported in accordance with Section 12026.1 or 12026.2.

(5) The person is 18 years of age or over and is not in a class of persons prohibited from possessing firearms by virtue of Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(n) Subdivisions (b) and (c) shall not apply to any of the following persons:

(1) A person acting in accordance with Section 12286 or 12287.

(2) A person who has a permit to possess an assault weapon or a .50 BMG rifle issued pursuant to Section 12286 or 12287 when he or she is acting in accordance with Section 12285, 12286, or 12287.

(o) Subdivisions (a), (b), and (c) shall not apply to any of the following persons:

(1) A person acting in accordance with Section 12285.

(2) A person acting in accordance with Section 12286, 12287, or 12290.

(p) Subdivisions (b) and (c) shall not apply to the registered owner of an assault weapon or a .50 BMG rifle possessing that firearm in accordance with subdivision (c) of Section 12285.

(q) Subdivision (a) shall not apply to the importation into this state of an assault weapon or a .50 BMG rifle by the registered owner of that assault weapon or a .50 BMG rifle if it is in accordance with the provisions of subdivision (c) of Section 12285.

(r) Subdivision (a) shall not apply during the first 180 days of the 2005 calendar year to the importation into this state of a .50 BMG rifle by a person who lawfully possessed that .50 BMG rifle in this state prior to January 1, 2005.

(s) Subdivision (c) shall not apply to the possession of a .50 BMG rifle that is not defined or specified as an assault weapon pursuant to this chapter, by any person prior to May 1, 2006, if all of the following are applicable:



- (1) The person is eligible under this chapter to register that .50 BMG rifle.
- (2) The person lawfully possessed the .50 BMG rifle prior to January 1, 2005.
- (3) The person is otherwise in compliance with this chapter.
- (t) Subdivisions (a), (b), and (c) shall not apply to the sale of assault weapons or .50 BMG rifles by persons who are issued permits pursuant to Section 12287 to any of the following:
 - (1) Exempt entities listed in subdivision (e).
 - (2) Entities and persons who have been issued permits pursuant to Section 12286 or 12287.
 - (3) Federal military and law enforcement agencies.
 - (4) Law enforcement and military agencies of other states.
 - (5) Foreign governments and agencies approved by the United States State Department.
 - (6) Officers described in subdivision (f) who are authorized to possess assault weapons or .50 BMG rifles pursuant to subdivision (f).
- (u) As used in this chapter, the date a firearm is an assault weapon is the earliest of the following:
 - (1) The effective date of an amendment to Section 12276 that adds the designation of the specified firearm.
 - (2) The effective date of the list promulgated pursuant to Section 12276.5 that adds or changes the designation of the specified firearm.
 - (3) The operative date of Section 12276.1, as specified in subdivision (d) of that section.

History:

Added Stats 1989 ch 19 § 3. Amended Stats 1989 ch 959 § 1; Stats 1990 ch 177 § 5 (SB 830), effective June 26, 1990, ch 653 § 2, (SB 2480); Stats 1991 ch 952 § 4 (AB 1904), ch 954 § 4.5 (SB 263).; Stats 1992 ch 1326 § 13 (AB 3552). Supplemented by the Governor's Reorganization Plan No. 1 of 1995, effective July 12, 1995. Amended Stats 1996 ch 305 § 52 (AB 3103); Stats 1999 ch 129 § 8 (SB 23); Stats 2000 ch 287 § 24 (SB 1955); Stats 2001 ch 937 § 2 (SB 626); Stats 2002 ch 787 § 29 (SB 1798); Stats 2003 ch 499 § 7 (SB 238); Stats 2004 ch 494 § 8 (AB 50); Stats 2005 ch 690 § 1 (AB 88), effective January 1, 2006; Stats 2006 ch 538 § 527 (SB 1852), effective January 1, 2007; Stats 2008 ch 698 § 24 (AB 837), effective January 1, 2009.

Notes:

- ± 1. Amendments
- ± 2. Note

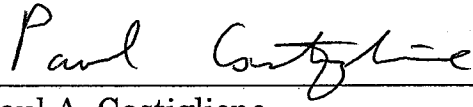
1. Amendments:

- ± 1990 Amendment (ch 177)
- ± 1990 Amendment (ch 653)
- ± 1991 Amendment



CERTIFICATION OF BRIEF

I, Paul A. Castiglione, Assistant State's Attorney, certify that the County Defendants' corrected supplemental brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service and the document in the Appendix, is 17 pages.



Paul A. Castiglione

