

“ASSAULT WEAPON,” “.50 BMG,” AND WHAT TO DO IF YOU ARE IN POSSESSION OF AN “ASSAULT WEAPON”

“ASSAULT WEAPON” DEFINED

Historically, “[t]he term ‘assault weapon’ was originally coined by the Nazi military machine in Germany to describe a sub - or mid-caliber selective fire (fully automatic) light rifle or carbine. It first appeared in the designation of the Sturmgewehr 44, a lighter, rapid-fire military small arm which fired a projectile smaller (and logistically lighter and cheaper) than that of the standard battle rifle.”¹

Under California law, an “assault weapon” is generally considered to belong to one of three categories.

A “Category 1 assault weapon” is a firearm specifically listed by make and model in Cal. Pen. Code Section § 12276 of the. A “Category 2 assault weapon” is a firearm that has been specifically designated by the California Department of Justice (“DOJ”) to be an “assault weapon” pursuant to Cal. Pen. Code Section § 12276.5. Finally, a “Category 3 assault weapon” is a firearm possessing one of several specific combinations of certain characteristics like a “flash suppressor” or a “thumbhole stock” as listed in P.C. § 12276.1.

In order to properly understand the reasoning as to why there are these three separate categories of “assault weapons,” the California “assault weapon” law must be thoroughly examined.

I. Roberti-Roos Assault Weapons Control Act of 1989

A. Category One Type “Assault Weapons”

In 1989, the first legislation passed in California regarding “assault weapons.” It was entitled the Roberti-Roos Assault Weapons Control Act of 1989,² hereinafter referred to as the

¹ JOSEPH P. TARTARO, THE GREAT ASSAULT WEAPON HOAX 3 (The Second Amendment Foundation, 1993).

² See Roberti-Roos Assault Weapons Control Act of 1989 (Stats. 1989, ch. 19, § 3, p. 64). This legislation mandates that the Firearms Program maintains a registry of persons who

AWCA. In the AWCA, the Legislature imposed restrictions on a class of over 55 semiautomatic firearms it characterized as “assault weapons.”³ (See Attached for the list of “assault weapons”). However, the Legislature did not intend to place restrictions on weapons “primarily designed and intended for hunting, target practice, or other legitimate sports or recreational activities.”⁴

Under the 1989 AWCA, semi-automatic firearms were designated as “assault weapons” by (1) being listed by type, series, and model in P.C. § 12276, or (2) by being declared an “assault weapon” under a regulatory add-on procedure set forth in former P.C. § 12276.5.⁵ “Under the latter procedure, which is commonly referred to as an add-on provision, certain superior courts, upon petition by the Attorney General, may be called upon to declare a firearm an assault weapon because of its essential similarity to a listed assault weapon.”⁶ California citizens who lawfully possessed an “assault weapon” prior to June 1, 1989 were given until January 1, 1991 to register their firearm(s) with the state.⁷

Because of the public ignorance and confusion about the law’s requirements, in 1991 the Legislature passed P.C. § 12289 which allowed for “public education and notification program[s] regarding the registration of assault weapons and the definition of the weapons set forth in

identify themselves to the department and law enforcement agencies as lawfully possessing “assault weapons.” Currently there are over 38,000 persons possessing 62,000 “assault weapons.”

³ See P.C. § 12275 *et seq.*; *Kasler v. Lockyer*, 23 Cal.4th 472, 477 (2000), *reh’g denied*, 2000 Cal. LEXIS 6567 (Cal. August 16, 2000), *cert. denied*, 69 U.S.L.W. 3549 (U.S. Feb. 5, 2001).

⁴ P.C. § 12275.5(a); *see also Kasler v. Lockyer*, 23 Cal.4th 472, 477 (2000), *reh’g denied*, 2000 Cal. LEXIS 6567 (Cal. August 16, 2000), *cert. denied*, 69 U.S.L.W. 3549 (U.S. Feb. 5, 2001).

⁵ See attached list; *see also Kasler v. Lockyer*, 23 Cal.4th 472, 477 (2000), *reh’g denied*, 2000 Cal. LEXIS 6567 (Cal. August 16, 2000), *cert. denied*, 69 U.S.L.W. 3549 (U.S. Feb. 5, 2001); *Harrott v. County of Kings*, 25 Cal.4th 1138, 1142 (2001).

⁶ *Kasler v. Lockyer*, 23 Cal.4th 472, 478 (2000), *reh’g denied*, 2000 Cal. LEXIS 6567 (Cal. August 16, 2000), *cert. denied*, 69 U.S.L.W. 3549 (U.S. Feb. 5, 2001).

⁷ See P.C. § 12285.

Section 12276.”⁸ Subsequently, the time for registering an “assault weapon” was extended by the Legislature until March 31, 1992.⁹

Further adding to the confusion, the California Department of Justice (DOJ) allowed late registration of firearms after the March 31, 1992 cutoff date. In the case of *HCI v. Lungren*, which was settled before going to trial, the DOJ agreed to invalidate the registration of “assault weapons” issued after March 31, 1992. This agreement invalidated 16,000 registered firearms making them illegal “assault weapons” overnight.

The firearms which were required to be registered under the 1989 law are now commonly known as Category One “assault weapons.” They are the weapons that are “specifically named by make and model in Penal Code § 12276 (and echoed in California Code of Regulation § 979.10).)”¹⁰

B. Category Two Type “Assault Weapons”

Category Two “assault weapons” are essentially “assault weapons” which “consist of the AR15 and AK ‘series’ of firearms. While AR and AK series were named in the original Robert-Ross laws, due to various key court decisions about series membership, it’s useful to refer to them as their own category [sic] [and] these guns really have just fallen back into the Robert-Ross list once listed by the DOJ.”

For example, in June of 2000, the Supreme Court of California reviewed a challenge to the constitutionality of the 1989 AWCA in a taxpayer’s suit to enjoin its enforcement.¹¹ On June 29, 2000, the California Supreme Court held that the “AWCA does not violate the equal protection or separation of powers doctrines and that the due process claims fails as a facial challenge to the AWCA.”¹² Thus, the AWCA was held to be constitutionally valid. The court stated, “what *Kasler* really did was to declare all AK- style receivers and AR-style lower

⁸ P.C. § 12289.

⁹ See P.C. § 12285(f).

¹⁰ See California AR/AK “Series” Assault Weapon FAQ available at http://www.calguns.net/a_california_arak.htm (last visited February 22, 2010).

¹¹ *Kasler v. Lockyer*, 23 Cal.4th 472 (2000), *reh’g denied*, 2000 Cal. LEXIS 6567 (Cal. August 16, 2000), *cert. denied*, 69 U.S.L.W. 3549 (U.S. Feb. 5, 2001).

¹² *Kasler v. Lockyer*, 23 Cal.4th 472 (2000), *reh’g denied*, 2000 Cal. LEXIS 6567 (Cal. August 16, 2000), *cert. denied*, 69 U.S.L.W. 3549 (U.S. Feb. 5, 2001).

receivers as ‘named’ assault weapons-regardless of presence of any attached characteristic features (pistol grips, folding stocks, etc.).”¹³

Thereafter, on August 16, 2000, the list of prohibited firearms was supplemented by the DOJ regulation to include certain additional firearms identified by make and model, mostly ones based on the same design as the Colt AR-15 and the AK-47.

There was almost no “public education” or “notification program” associated with these additions to the original 1989 make and model list. Citizens who found out about the new regulations had less than 6 months to register these firearms – until January 23, 2001. These firearm have been classified as Category Two “assault weapons.”

1. Unlisted Firearms

Each of the firearms identified as Category 1 or 2 “assault weapons” are listed in the Assault Weapons Identification Guide (AWIG)¹⁴ published by the DOJ. In *Harrott v. County of Kings*, the California Supreme Court held that an AR or AK “series” firearm *must* be listed by make and model via regulations in order to be an “assault weapon.”¹⁵

Although we hold the Attorney General has the authority to determine that certain semiautomatic firearms are assault weapons by simply identifying them as such in the list published by the Attorney General in the California Code of Regulations, that authority applies only to the two types of firearms defined in the Roberti-Roos

¹³ See California AR/AK “Series” Assault Weapon FAQ *available at* http://www.calguns.net/a_california_arak.htm (last visited February 22, 2010).

¹⁴ The DOJ has, for the purposes of determining whether a firearm is an “assault weapon,” created an “Assault Weapon Identification Guide” which classifies “assault weapons” into three categories. These are:

Category 1 – Penal Code section 12276 subdivisions (a), (b), (c) (original make and model list);

Category 2 – Penal Code section 12276 subdivisions (e) and (f) (regulatory make and model additions to the original make and model list) (partially repealed 2006); and

Category 3 – Penal Code section 12276.1 (SB23 - generic characteristics / features based “assault weapons”).

¹⁵ See *Harrott v. County of Kings*, 25 Cal.4th 1138 (2001).

Assault Weapons Control Act (AWCA) by the use of the term series. [] In order to have any other semiautomatic firearms declared assault weapons within the meaning of section 12276, the Attorney General must utilize the add-on procedure set forth in section 12276.5.

Harrott v. County of Kings, 25 Cal.4th 1138, 1155 (2001).

In other words, the Legislature required the DOJ to make ordinary citizens aware of each make and model that is prohibited under the Roberti-Roos Assault Weapon Control Act:

As we have interpreted the statute, to determine whether the differences between the firearms of concern to them and the series assault weapons listed in section 12276 are considered by the Attorney General to be only ‘minor’ for the purposes of section 12276, subdivision (e), *ordinary citizens need only consult the California Code of Regulations. Moreover, the Attorney General’s Identification Guide is also available to them.*

Id. at 1153 (emphasis added).

Thus, to determine whether any firearms are within the Roberti-Roos Assault Weapon Act (Category One or Two) type “assault weapons,” an ordinary citizen is supposed to only be required to consult the list of “assault weapons” identified in the Attorney General’s Assault Weapon Identification Guide.

C. Senate Bill 23 of 2000 - Category Three “Assault Weapons”

“With its 1999 amendments to the AWCA, the Legislature took a third approach [effective January 1, 2000] to[wards] designating assault weapons – defining them in section 12276.1, subdivision (a) in terms of generic characteristics, for example, a ‘semiautomatic, centerfire rifle that has the capacity to accept a detachable magazine’ and also has a ‘pistol grip that protrudes conspicuously beneath the action of the weapon.’”¹⁶ In the 1999 amendments, “[n]either the list method of designating assault weapons in section 12276 nor the add-on provision of section 12276.5 was abandoned or textually modified[.]”¹⁷ Thus, those amendments created a new category of “assault weapons” (i.e., “Category 3”), defined by specific

¹⁶ *Kasler v. Lockyer*, 23 Cal.4th 472, 478 (2000), *reh’g denied*, 2000 Cal. LEXIS 6567 (Cal. August 16, 2000), *cert. denied*, 69 U.S.L.W. 3549 (U.S. Feb. 5, 2001) (referencing Pen. Code § 12276.1(a)(1)(A), Stats. 1999, chp 129, § 7)).

¹⁷ *Kasler v. Lockyer*, 23 Cal.4th 472, 478 (2000), *reh’g denied*, 2000 Cal. LEXIS 6567 (Cal. August 16, 2000), *cert. denied*, 69 U.S.L.W. 3549 (U.S. Feb. 5, 2001).

configurations of certain characteristics featured on the firearm, which are listed in Pen. Code § 12276.1. (See attached).

Pen. Code § 12276.1 lists characteristics for rifles, shotguns, and handguns, which, if present in certain combinations on the respective type of firearm, will convert any of the three into a Category 3 “assault weapon.”¹⁸

Upon adoption of the 1999 amendments, California citizens were only given one year to register firearms possessing these features with the DOJ.¹⁹ (Refer to attached documents).

1. Category Three “Assault Weapon” – Rifles

A *rifle* is a “Category 3 assault weapon” if it is:

- semi-automatic; and
- centerfire; and
- has the capacity to accept a detachable magazine; and
- has any one of the following:
 - a pistol grip that protrudes conspicuously beneath the action of the weapon; or
 - a thumbhole stock; or
 - a folding or telescoping stock; or
 - a grenade launcher or flare launcher; or
 - a flash suppressor; or
 - a forward pistol grip.
- semiautomatic, centerfire and a *fixed* magazine with the capacity to accept more than 10 rounds
- semiautomatic, centerfire with an overall length of less than 30 inches. ²⁰

2. Category Three “Assault Weapon” – Pistols

Unlisted semi-automatic pistols with the capacity to accept a detachable magazine are “assault weapons” under P.C. § 12276.1(a)(4) if the firearm has any one of the following:

- A threaded barrel, capable of accepting a flash suppressor, forward handgrip, or

¹⁸ See P.C. § 12276.1; *see also* attached document.

¹⁹ See P.C. § 12285(a).

²⁰ See P.C. § 12276.1(a)(1)-(3).

- silencer.
- A second handgrip.
- 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.
- The capacity to accept a detachable magazine at some location outside of the pistol grip.

In addition, a semiautomatic pistol with a *fixed* magazine that has the capacity to accept more than 10 rounds is considered an “assault weapon” under 12276.1(a)(5).

3. Category Three “Assault Weapon” – Shotguns

Finally a shotgun can be considered an “assault weapon” under 12276.1(a)(6) if the shotgun is semiautomatic and has both of the following:

- A folding or telescoping stock; and
- A pistol grip that protrudes conspicuously beneath the action of the weapon, thumbhole stock, or vertical handgrip.

Additionally a shotgun can classify as an “assault weapon” if it is semiautomatic and has the ability to accept a detachable magazine²¹ or it’s a shotgun with a revolving cylinder.²²

4. Definitions of Category 3 “Assault Weapon” Characteristics

The following are the definitions of the various characteristics listed above that must be featured on a firearm in certain configurations in order to constitute a Category 3 “assault weapon.”

a. “Detachable” Defined

The California Code of Regulations (C.C.R.), promulgated by the DOJ, defines “detachable magazine” as “an ammunition feeding device that can be removed readily from the firearm with neither disassembly of the firearm action nor use of a tool being required. A bullet or ammunition cartridge is considered a tool. Ammunition feeding device includes any belted or linked ammunition, but does not include clips, en bloc clips, or stripper clips that load cartridges

²¹ See P.C. § 12276.1(a)(7).

²² See P.C. § 12276.1(a)(8).

into the magazine.”²³

b. Pistol Grip

A “pistol grip that protrudes conspicuously beneath the action of the weapon” “means a grip that allows for a pistol style grasp in which the web of the trigger hand (between the thumb and index finger) can be placed below the top of the exposed portion of the trigger while firing.”²⁴

c. Thumbhole Stock

"Thumbhole stock" “means a stock with a hole that allows the thumb of the trigger hand to penetrate into or through the stock while firing.”²⁵

d. Flash Suppressor

“Flash suppressor” “means any device designed, intended, or that functions to perceptibly reduce or redirect muzzle flash from the shooter's field of vision.”²⁶

e. Forward Pistol Grip

“Forward pistol grip” “means a grip that allows for a pistol style grasp forward of the trigger.”²⁷

f. Fixed Magazine

A fixed magazine is a “magazine which remains affixed to the firearm during loading. Frequently a fixed magazine is charged (loaded) from a clip (en bloc or stripper) of cartridges inserted through the open breech into the magazine.”²⁸

²³ 11 C.C.R. § 5469(a).

²⁴ 11 C.C.R. § 5469(d).

²⁵ 11 C.C.R. § 5469(e).

²⁶ 11 C.C.R. § 5469(b).

²⁷ 11 C.C.R. § 5469(c).

²⁸ CALIFORNIA ASSAULT WEAPON IDENTIFICATION GUIDE 80 (3d ed., 2001).

5. Bringing Category Three “Assault Weapons” in Compliance with California Law

Some shooters are attempting to comply with California law by removing one of the three prerequisite attributes from their firearm so that it is no longer legally considered to be an “assault weapon.” A few owners convert their semi-automatic firearms to single action. Some convert their centerfire firearms to rimfire. A larger group of individuals are attempting to remove their firearm from the above definition of an “assault weapon” by rendering a detachable magazine legally “non-detachable” so the firearm would no longer be “capable of accepting a detachable magazine.”

In order to eliminate this “detachable magazine” attribute, individuals have typically retrofitted their rifles with an aftermarket product commonly called a “bullet button.” The “bullet button” replaces the firearm’s original magazine release button. The original magazine release can typically be operated with the push of a finger, so a “tool” is not required to release the magazine.

The “bullet button” replaces the standard one-piece magazine release button with a two-piece assembly which cannot be operated with just a finger. The new, two piece magazine release is typically comprised of an inner and an outer button. The outer button directly replaces the standard magazine release button in shape and size; however, it will no longer actuate the spring to allow magazine removal. The much smaller inner button sits recessed within the outer button and becomes the true magazine removal device. Due to the fact that the inner button sits recessed within the outer button and is too small and recessed to be pushed by a finger, a tool is required to depress the inner button to actuate the spring for magazine removal. The most common “tool” used to depress the bullet button and remove the magazine is a bullet tip, hence the term “bullet button.”

Attaching a "bullet button" to a firearm renders the magazine "non-detachable," thereby removing one of the three required prerequisite features that a firearm must have to be legally considered a Category Three “assault weapon” mentioned above. Consequently, if a “bullet button” is attached to a "non-listed" (meaning the firearm is not already considered an “assault weapon” because it is listed by make and model) semiautomatic, centerfire, rifle, with a 10 round

(or less) magazine,²⁹ with any of the listed features in P.C. § 12276.1(a)(1)(A-F),³⁰ the firearm should not be classified as "assault weapon," and the possessor of such a firearm should not be considered in violation of P.C. § 12280(b) for possession of an unregistered "assault weapon."

The Sacramento Police Department and Orange County Sheriff's have published an advisory letter for its officers consistent with this analysis.³¹ Although there is still confusion among police, hundreds of "bullet buttons" are being used and manufactured without legal repercussion from law enforcement in California.

D. "Constructive" Possession of "Assault Weapons"

Under the Penal Code and its interpreting case law, if a person is merely in possession of parts that, if assembled, make a "machine gun," that person can be prosecuted for possession of a "machine gun." (P.C. §§ 12200 and 12220). This is also the case for "short-barreled shotguns" or "short-barreled rifles." (P.C. § 12020(c)(1) and (2), and (a)).

Unlike possession of a "machine gun," "short-barreled shotgun" or "short-barreled rifle," possession of unassembled parts, which, if assembled would make a firearm an "assault weapon," is not a crime. The Penal Code defines "assault weapon" as "rifles," "pistols," or "shotguns" listed by make and model (P.C. § 12276) or "rifles," "pistols," or "shotguns" that have certain features (P.C. § 12276.1), not mere parts of a firearm. And, there is no provision in the Penal Code prohibiting the possession of mere constituent parts of an "assault weapon" (even

²⁹ A semiautomatic, centerfire rifle that has a fixed magazine with the capacity to accept more than 10 rounds is an "assault weapon" according to P.C. § 12276.1(a)(2). There is an argument to be made that the attaching a "bullet button" to a firearm renders the magazine "fixed."

³⁰ (A) A pistol grip that protrudes conspicuously beneath the action of the weapon; (B) A thumbhole stock; (C) A folding or telescoping stock; (D) A grenade launcher or flare launcher; (E) A flash suppressor; (F) A forward pistol grip.

³¹ See Investigations Division Training Bulletin from the Sacramento Police Department available at <http://www.allsafedefense.com/Articles/AWPolice%20Bulletin2008-11-18.pdf> and Training Bulletin for Orange County Sheriff's Department <http://www.hoffmang.com/firearms/Orange-County-AW-Training-Bulletin-2010-01-12.pdf> (last visited December 28, 2010).

if the parts can be assembled into a complete “assault weapon”). In other words, a firearm³² in its actual configuration, is either an “assault weapon” or it is not.

E. Official Recognition of the Confusion and Legislative Response

As described above, Penal Code section 12280 bans the possession of certain firearms legally designated as “assault weapons” unless those firearms are registered with the State. The term “assault weapon” has no meaning in technical firearms parlance. It is a legal term defined by statute and administrative regulations. As a result, there is a tremendous amount of confusion about what constitutes an “assault weapon” and when and how a gun has to be registered under California law. Private citizens are not alone in their confusion over what is prohibited by the state “assault weapon” control laws. Police, prosecutors, and judges are equally confused.

For instance, on September 18, 2001, Fresno District Attorney Edward Hunt and the Law Enforcement Alliance of America (LEAA) (a national association of law enforcement officers and civilians) filed an unprecedented lawsuit in Fresno County Superior Court challenging the state’s assault weapon law for vagueness. The lawsuit alleged that the DOJ regulations for implementing the law, which were supposed to clarify the terms used in the original statute, failed to clarify anything. The suit further alleged that the laws do not provide gun owners, dealers, police or prosecutors with sufficient guidance in order that they be able to determine what features are prohibited, and to enforce the law fairly and unilaterally, or for the civilian to determine how to comply with the law. Mendocino County District Attorney Norman Vroman joined in the suit, saying “not only are the regulations themselves ambiguous, but unfortunately the Attorney General, who is the chief law officer in the State under the California Constitution, is sending mixed signals to front line law enforcement, prosecutors and civilians working under him. In fact, DOJ is enacting policies that conflict with its own regulations.” Michael Bradbury, former Ventura County District Attorney, agrees that “deciphering these regulations is a near impossible task, If the Legislature wants to condemn a subclass of firearms, they have to identify those firearms clearly. If gun experts can’t figure out what [the assault weapons law] covers, how is the average law abiding gun owner supposed to know?”

³² For purposes of California law “firearm” means any device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of any explosion of other form of combustion.” (P.C. § 12001(b)). A “frames” or “receivers” are not considered firearms for purposes of the AWCA. (See P.C. § 12001(c)); “frames” and “receivers” *are* considered “firearms” for purposes of laws relating to transfers of firearms and prohibit persons). Both rifles and handguns are clearly “firearms;” however, the AWCA sections does not indicate that mere parts are to be considered a “firearm.” The express mention of “frames” and “receivers” in relation to other sections other than the AWCA supports the position that possession of non-listed frames or receivers or “assault weapon” parts is a violation of California law.

Both former Attorney General Dan Lundgren and current Governor of California acknowledge the confusion generated by the California gun laws in general. Lundgren compared the complexity of California firearm laws to the state's byzantine tax laws. "Of course, civilian gun owners do not have corporate compliance counsel standing by to advise them on how to comply with California gun laws."

In commenting on a proposed anti-gun bill in October of 2004, Governor Schwarzenegger acknowledged that

"...[s]uch ambiguity in the law invites arbitrary enforcement and judicial review... Before a government exercises its power to take away one's liberty, it should be clear to every person what actions will cause them forfeit their freedom. Instead of adding to the lengthy and complex area of firearm laws, a reorganization of the current laws should be undertaken to ensure that statutes that impose criminal penalties are easily understandable."

Judges are equally confused. Perhaps California Appeals Court Justice Bedsworth, writing about another firearm law, said it best: "At first blush, the statutes seem impenetrable. Reading them is hard, writing about them arduous, reading about them probably downright painful. The [complexity] makes for tough sledding. As Alfred North Whitehead wrote of rationalism, the effort is, itself, "an adventure in the clarification of thought." *Rash v. Lungren*, 59 Cal. App. 4th 1233, 1235 ; 69 Cal. Rptr. 2d 700, 701 (1997).

1. Legislative Response

a. Step Down to Infraction

Initially, individuals who legally purchased a firearm before it was deemed an "assault weapon" by California law and neglected to register the firearm at the appropriate time could only be prosecuted for an infraction. (Pen. Code § 12280(b)(1-4)³³. However, this provision

³³ California Penal Code section 12280(b) states: 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.

only lasted for one year following the registration cut off. Once the year had passed from the registration cut off, individuals could only be prosecuted for a felony or misdemeanor for the possession of the same “assault weapon.” (Pen. Code § 12280(b)).

b. Penal Code Section 12282

In 2006, California legislature (sponsored by the Attorney General’s Office and with no opposition) enacted California Penal Code section 12282 in order to allow district attorneys to settle illegal “assault weapon” cases with a civil compromise in place of criminal charges. The Legislature’s intent in drafting this section was to allow those who otherwise have no history of criminal activity a way to comply with California law without suffering the consequences of a criminal conviction.

The 12282 civil compromise specifically allows the Attorney General, any district attorney, or any city attorney, *in lieu of criminal prosecution*, to bring a civil action or reach a civil compromise in any superior court to enjoin the possession of the “assault weapon” that is a public nuisance.³⁴

(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.

³⁴ California Penal Code Section 12282 states:

(a) Except as provided in Section 12280, possession of any assault weapon, as defined in Section 12276, 12276.1, or 12276.5, or of any .50 BMG rifle, as defined in Section 12278, in violation of this chapter is a public nuisance, solely for purposes of this section and subdivision (d) of Section 12028. The Attorney General, any district attorney, or any city attorney, may, in lieu of criminal prosecution, bring a civil action or reach a civil compromise in any superior court to enjoin the possession of the assault weapon or .50 BMG rifle that is a public nuisance.

(b) Upon motion of the Attorney General, district attorney, or city attorney, a superior court may impose a civil fine not to exceed three hundred dollars (\$300) for the first assault weapon or .50 BMG rifle deemed a public nuisance pursuant to subdivision (a) and up to one hundred dollars (\$100) for each additional assault weapon or .50 BMG rifle deemed a public nuisance pursuant to subdivision (a).

(c) Any assault weapon or .50 BMG rifle deemed a public nuisance under subdivision (a) shall be destroyed in a manner so that it may no longer be used, except upon a finding by

F. In Conclusion on “Assault Weapons”

Beyond the listed guns or characteristics within the Penal Code, the term “assault weapon” is essentially a meaningless description. In reality, “assault rifle” is a term used by the military to describe a military rifle that allows the operator to choose either semi-automatic or fully-automatic fire like a machine gun. Subject to federal registration since 1934, current California law and regulations also prevent lawful possession of machine guns without a permit used by the state DOJ in addition to any federal registration requirements. Thus, the firearms defined in California law as “assault weapons” are all military-looking civilian semi-automatics. They are not capable of fully-automatic fire and thus are not machine guns. They were defined as “assault weapons” for political reasons, not because they are any different from any other civilian semi-automatics, regardless of whether they have a similar or sporting-like appearance. There is no logical reason why some military-looking civilian semi-automatics are defined as “assault weapons” while others are not. They are all very similar in function.

II. .50 BMG RIFLES

A. .50 BMG Caliber

The .50 Browning Machine Gun cartridge (.50 BMG) was inspired by the effectiveness of German anti-tank rifles of WWI. John Browning subsequently developed the fully automatic heavy machine gun and ammunition, adopted in the military in 1923. The cartridge remains in use today not only by the U.S., but all over the world.

B. Assembly Bill 50 - Regulation of .50 BMG Rifles History

The California Assembly Bill 50 is the only legislation which was created specifically to regulate .50 BMG rifles similar to “assault weapons.” Even though it was the first legislation to succeed, it was not the first bill drafted which sought to regulate .50 BMG rifles.

a court, or a declaration from the Department of Justice, district attorney, or city attorney stating that the preservation of the assault weapon or .50 BMG rifle is in the interest of justice.

(d) Upon conviction of any misdemeanor or felony involving the illegal possession or use of an assault weapon, the assault weapon shall be deemed a public nuisance and disposed of pursuant to subdivision (d) of Section 12028.

On February 20, 2002, Assembly Bill 2222 was introduced to regulate .50 BMG rifles in the same manner as machineguns, but it failed to have sufficient support behind it so it was amended on April 10, 2002 to treat .50 BMG rifles in the same manner as “assault weapons.”³⁵ The amended Assembly Bill 2222 was not successful and in 2003, two complementary Assembly Bills were introduced: Assembly Bill 601 and Assembly Bill 50.³⁶ Assembly Bill 601 was a non-substantive amendment which affected “assault weapons” but even though it was later amended to regulate .50 caliber handguns, it eventually failed.³⁷

Assembly Bill 50 was introduced by Assembly member, Paul Kortez, and it was carried for the Trauma Center, the Brady Campaign to Prevent Gun Violence, and the City of Los Angeles.³⁸

When Assembly Bill 50 was assigned the Assembly Committee on Public Safety, the Committee considered commentary provided by Assembly member Kortez as justification for the proposals within Assembly Bill 50.³⁹ For example, Kortez stated,

“The fifty-caliber sniper rifle is one of the United States military’s most highest-powered rifles, capable of ripping through armored limousines. It is said to be able to punch holes through military personnel carriers at a distance of 2,000 yards, the length of 20 football fields. It is deadly accurate at up to one mile and effect at more than four miles.

“Yet current law classifies .50 caliber guns as ‘rifles’ subject to the least government regulation for any firearm. Sawed-off shotguns and handguns are more highly regulated than this military sniper rifle. I think that the public would be shocked to

³⁵ See Fifty Caliber Institute California Assembly Bill 50 (2004- Kortez) available at <http://www.fiftycal.org/resourcesAB50.php> (last visited March 2, 2010).

³⁶ See Fifty Caliber Institute California Assembly Bill 50 (2004- Kortez) available at <http://www.fiftycal.org/resourcesAB50.php> (last visited March 2, 2010).

³⁷ See Fifty Caliber Institute California Assembly Bill 50 (2004- Kortez) available at <http://www.fiftycal.org/resourcesAB50.php> (last visited March 2, 2010).

³⁸ See Fifty Caliber Institute California Assembly Bill 50 (2004- Kortez) available at <http://www.fiftycal.org/resourcesAB50.php> (last visited March 2, 2010).

³⁹ See Fifty Caliber Institute California Assembly Bill 50 (2004- Kortez) available at <http://www.fiftycal.org/resourcesAB50.php> (last visited March 2, 2010).

know that any 18-year-old high school student with a valid driver's license could purchase this deadly weapon.

“Given the destruction this weapon can cause, I doubt most Californians would be comfortable knowing this gun is easier to buy than a small handgun. This bill ensures that terrorists and criminals do not gain access to this deadly weapon. Placing some reasonable restrictions on those who can possess this weapon is just good public policy.”⁴⁰

After other policy issues were raised and considered, six amendments were made to AB 50 and it was signed by Governor Arnold Schwarzenegger on September 13, 2004 and recorded by the Secretary of State on the same day as Chapter 494 of the Statutes of 2004.⁴¹

AB 50 became effective on January 1, 2005 under the .50 Caliber BMG Registration Act of 2004 (AB 50) and it regulates .50 BMG rifles in essentially the same manner as “assault weapons.”⁴²

C. Assembly Bill 50

1. .50 BMG Rifle and Cartridge Defined

Penal Code § 12278 defines a “.50 BMG rifle” as 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 12267.5, or a machinegun, as defined in Section 12200.”⁴³ Additionally, a “.50 BMG rifle” does

⁴⁰ See Fifty Caliber Institute California Assembly Bill 50 (2004- KorteZ) available at <http://www.fiftycal.org/resourcesAB50.php> (last visited March 2, 2010) (referring to the Author's Statement in the Assembly Committee on Public Safety AB 50 Analysis available at <http://www.fiftycal.org/AB50/AB50ACPubicSafetyAnalysis.pdf> (last visited on March 2, 2010)).

⁴¹ See Fifty Caliber Institute California Assembly Bill 50 (2004- KorteZ) available at <http://www.fiftycal.org/resourcesAB50.php> (last visited March 2, 2010).

⁴² See .50 BMG Rifles- Assembly Bill 50 Information Bulletin available at <http://ag.ca.gov/firearms/infobuls/50calinfobul.pdf> (last visited March 1, 2010).

⁴³ P.C. § 12278(a); see also P.C. § 12200 (defining a machinegun as “any weapon which shoots, is defined to shoot, or can readily be restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger”).

not include any ‘antique firearm’ [any firearm manufactured prior to January 1, 1899] nor any curio or relic...”⁴⁴

A “.50 BMG cartridge” is defined as “a cartridge that is designed and intended to be fired from a center fire rifle 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.
- (2) The bullet diameter for the cartridge is from .510 to, and including, .511 inch.
- (3) The case based diameter for the cartridge is from .800 inch to, and including, .804 inch.
- (4) The cartridge case length is 3.91 inches⁴⁵

III. EXCEPTIONS TO “ASSAULT WEAPON” AND .50 BMG RIFLE LAWS

There are very narrow exceptions for who may possess and transport “assault weapons” and .50 BMG rifles.

A. Exemption for Police Departments and Certain Other Government Agencies

The unlawful possession restriction of an “assault weapon” and a .50 BMG rifle listed above does not apply to the “sale to, purchase by, importation of, or possession of assault weapons or a .50 BMG rifle by the DOJ, police departments, sheriffs offices, marshals’ offices, the Youth and Adult Corrections Agency, the Department of the California Highway Patrol, district attorneys’ offices, the 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.”⁴⁶

B. Exemption for Peace Officers and Members of Federal Law Enforcement Agencies

Sworn peace officers are not prohibited for the possession or use of “assault weapons” or .50 BMG rifles.⁴⁷ Thus, peace officers are not prohibited from delivering, transferring or selling an “assault weapon” or .50 BMG rifle provided that the peace officer is authorized by his or her

⁴⁴ P.C. § 12278(c)-(d).

⁴⁵ P.C. § 12278(b).

⁴⁶ P.C. § 12280(e).

⁴⁷ P.C. § 12280(f)(1).

employer to possess or receive the “assault weapon” or .50 BMG rifle. Proper certification of authorization consists of a 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.” Peace officers are required to register their firearm.⁴⁸

Federal law enforcement agencies who are authorized by the employing agency to possess an “assault weapon” or .50 BMG rifle are not limited nor prohibited from the delivery, transfer, or sale of an “assault weapon” or a .50 BMG rifle.⁴⁹

C. Exemption for Possession of .50 BMG Rifle, not Classified as an “Assault Weapon” before May 1, 2006

The law provides an exemption for the possession of a .50 BMG rifle that is not classified as an “assault weapon” before May 1, 2006, so long as all of the following are applicable:

- (a) The person was eligible [] to register the .50 BMG rifle.
- (b) The person lawfully possessed the .50 BMG rifle prior to January 1, 2005.
- (c) The person was otherwise in compliance with [the AWCA].⁵⁰

IV. REGISTRATION AND RELATED RULES TO THE ACQUISITION OF NEW “ASSAULT WEAPONS” AND .50 BMG RIFLES

A. Registration

There remains great confusion on the part of the public with respect to purchasing firearms, registering handguns, and registering “assault weapons.” It is not unusual for members of the public, having filled out the detailed sale forms, provided comprehensive background information, gone through the process of purchasing a firearm, including a 10 day wait while the transaction and purchaser are approved by the DOJ (this is for both handguns and long guns under California law), to believe that the firearm was “registered” as an “assault weapon.”

This procedure does not register a firearm as an “assault weapon” at all. In the case of handguns, the handgun is registered to the purchaser as a *handgun*; not an “assault weapon.” In the case of long guns (meaning shotguns and rifles), the DOJ is required to destroy all records of

⁴⁸ P.C. § 12280(f)(2).

⁴⁹ P.C. § 12280(f)(3).

⁵⁰ See P.C. § 12280(s).

long gun transactions after the purchase and background check; consequently a long gun is not registered at all when purchased.

Furthermore, it is not unusual for persons, years later and often after the “assault weapon” registration period had passed, to find out that the firearm they legally purchased is now considered an “assault weapon” and the “registration” process they thought they went through in purchasing the firearm is not the same as the requirement to “register” the firearm as an “assault weapon.” Consequently, at the time of the termination of the “assault weapon” registration deadline, those people are often unknowingly in possession of newly designated “assault weapons,” and are suddenly guilty of felony offenses for the unregistered newly designated “assault weapons” they had in their possession.

The registration period of an “assault weapon” and “.50 BMG rifle” has long since passed. The DOJ is no longer accepting registration applications. In order to have properly registered, one must have paid a \$25 fee and submitted an application form to the DOJ which described the firearm uniquely and included all identification marks, the applicants full name and address, date of birth, thumbprint of the owner, and any other information the DOJ required.⁵¹ In the future person who lawfully possesses a firearm that was subsequently declared to be an “assault weapon” pursuant to P.C. § 12276.5 may register the firearm within 90 days of the declaration.⁵² Although it is very unlikely that a firearm will be deemed an “assault weapon” though this provision in the future).

Applicants were given the option of joint registration of “assault weapons” and .50 BMG rifles” owned by family members within the same household if they were over the age of 18, but each applicant was required to submit a \$25 fee.⁵³

If the applicant properly filed his or her registration with the specified time period, assuming all of the information was accurately provided, he or she would have received an “assault weapon” or “.50 BMG rifle” confirmation notice.

If an individual is in possession of an unregistered .50 BMG rifle, he or she can be punished by criminal prosecution (see above).⁵⁴

⁵¹ See P.C. § 12285(a)(2).

⁵² See P.C. § 12285(b)(1).

⁵³ See P.C. § 12285(e).

⁵⁴ See P.C. § 12280.

B. Person Who Moves into California with an “Assault Weapon” or .50 BMG Rifle

A person moving to California who owns a “assault weapon” or .50 BMG rifle is required to do the following:

1. Prior to bringing the firearm into this state, that person shall first obtain a permit from the Department of Justice (discussed below).
2. The person shall cause the firearm to be delivered to a licensed gun dealer, within California following the requirements of Federal law. If the person obtains a permit from the Department of Justice, the dealer shall redeliver that firearm to the person. If the licensed gun dealer is prohibited from delivering the firearm to a person, the dealer shall possess or dispose of the firearm as required by law.⁵⁵

V. PERMITS

A. Permit for Use of an “Assault Weapon” or .50 BMG Rifle Beyond Those Permitted Above

If an individual seeks to use an “assault weapon” or .50 BMG rifle for an additional use other than what is listed above, he or she must first obtain a permit from the DOJ. Furthermore, anyone who wishes to acquire an “assault weapon” or .50 BMG rifle is required to obtain a permit from the DOJ.⁵⁶ This form may be found at <http://ag.ca.gov/firearms/forms/pdf/FD030DWApp.pdf> (last visited July 28, 2010).

B. Issuance of Permits by the DOJ

Upon the finding of good cause, the DOJ may issue a permit for the manufacture or sale of an “assault weapon” or .50 BMG rifle for the sale to, purchase by, or possession of such a weapon to various agencies, entities, other persons. These tend to be entities which are involved in federal and state law enforcement as well as military agencies.⁵⁷

⁵⁵ See P.C. § 12285(b)(2) and (b)(4) (for “assault weapons” and .50 BMG rifles, respectively).

⁵⁶ See P.C. § 12286 *et seq.*

⁵⁷ See P.C. § 12287.

C. Licensed Gun Dealer Provisions

1. Licensed Gun Dealer Who Facilitates Service or Repair of an “Assault Weapon” or .50 BMG Rifle

A licensed gun dealer is permitted to take possession of an “assault weapon” or .50 BMG rifle in order to service or repair such a weapon from any person who is the legally registered owner or lawfully permitted to possess such a firearm. Furthermore, the licensed gun dealer may transfer possession of such a weapon to a gunsmith to assist with the service or repair so long as it is a gunsmith in the dealer’s employ or whom the dealer has contracted for gun smithing services.⁵⁸

2. Other Special Rules for Licensed Gun Dealers

Additionally, a licensed gun dealer is permitted to:

- (1) Transport the firearm between dealers or out of the state if that person is permitted by the National Firearms Act
- (2) Display the firearm at a gun show licensed by a state or local governmental entity.
- (3) Sell the firearm to a resident outside the state.
- (4) Sell the firearm to a person who has been issued a permit.⁵⁹

D. Inspection Conducted by the DOJ

For every permit that is issued by the DOJ, the DOJ is required to conduct an annual inspection upon every person, firm, or corporation to whom the permit was issued for security and safe storage purposes, as well as inventory purposes of the “assault weapons.”⁶⁰ “A person, firm, or corporation with an inventory of fewer than five devices that require any Department of Justice permit shall be subject to an inspection for security and safe storage purposes, and to reconcile inventory, once every five years, or more frequently if determined by the department.”⁶¹

⁵⁸ See P.C. § 12290(b).

⁵⁹ See P.C. § 12290(a).

⁶⁰ See P.C. § 12289.5(a).

⁶¹ P.C. § 12289.5(b).

VI. IF YOU THINK YOU ARE IN POSSESSION OF AN UNREGISTERED “ASSAULT WEAPON”

If you are concerned that a firearm you possess may be an “assault weapon” we suggest you do the following:

A. Determine if your firearm is an “assault weapon.”

There are two ways a firearm can fall under the classification of an “assault weapon” in California.

The first requires the firearm to be identified as an “assault weapon” by “make and model,” either under the Roberti-Roos Assault Weapons Control Act of 1989 (AWCA) in Penal Code section 12276 (Category 1 “assault weapons”), or by being declared an “assault weapon” under a regulatory add-on procedure set forth in section 12276.5 (Category 2 “assault weapons”). In either case the firearm must be on the list of firearms deemed “assault weapons” in the California Code of Regulations or the Attorney General's Identification Guide. *Harrott v. County of Kings* (2001) 25 Cal.4th 1138,1153.

The second way a firearm can meet the definition of an “assault weapon” under California law is that the firearm has certain features, a combination of which, make it an “assault weapon.” (Cal. Pen § 12276.1).

We suggest consulting the Assault Weapon Identification Guide, which can be downloaded at <http://ag.ca.gov/firearms/forms/pdf/awguide.pdf>. Pages 82-84 of the guide lists the firearms considered “assault weapons” by “make and model.” If your firearm is listed by “make and model” on any one of these pages your firearm is an “assault weapon.” If your firearm is not listed you will then need to make sure that the firearm does not have the prohibited characteristics that make the firearm an “assault weapon” discussed above under Category 3 “assault weapons.” If your firearm meets any of the below 8 descriptions it is an “assault weapon:”

(1) A semiautomatic, centerfire *rifle* that has the capacity to accept a detachable magazine and any one of the following:

- (A) A pistol grip that protrudes conspicuously beneath the action of the weapon.
- (B) A thumbhole stock.
- (C) A folding or telescoping stock.
- (D) A grenade launcher or flare launcher.
- (E) A flash suppressor.
- (F) A forward pistol grip.

(2) A semiautomatic, centerfire *rifle* that has a fixed magazine with the capacity to accept more than 10 rounds.

(3) A semiautomatic, centerfire *rifle* that has an overall length of less than 30 inches.

(4) A semiautomatic *pistol* that has the capacity to accept a detachable magazine and any one of the following:

(A) A threaded barrel, capable of accepting a flash suppressor, forward handgrip, or silencer.

(B) A second handgrip.

(C) A shroud that is attached to, or partially or completely encircles, the barrel that allows the bearer to fire the weapon without burning his or her hand, except a slide that encloses the barrel.

(D) The capacity to accept a detachable magazine at some location outside of the pistol grip.

(5) A semiautomatic *pistol* with a fixed magazine that has the capacity to accept more than 10 rounds.

(6) A semiautomatic *shotgun* that has both of the following:

(A) A folding or telescoping stock.

(B) A pistol grip that protrudes conspicuously beneath the action of the weapon, thumbhole stock, or vertical handgrip.

(7) A semiautomatic *shotgun* that has the ability to accept a detachable magazine.

(8) Any *shotgun* with a revolving cylinder.

Easy to read flow charts for each of the above firearm types (rifles, handguns, and shotguns) may be found at:

(1) <http://www.calguns.net/caawid/flowchart.pdf> for rifles

(2) <http://www.calguns.net/caawid/hgflowchart.pdf> for handguns

(3) <http://www.calguns.net/caawid/sgflowchart.pdf> for shotguns

B. Determine if you “assault weapon” was registered.

There remains great confusion on the part of the public with respect to purchasing firearms, registering handguns, and registering “assault weapons.” It is not unusual for members of the public, having filled out the detailed sale forms, provided comprehensive background information, gone through the process of purchasing a firearm, including a 10 day wait while the transaction and purchaser are approved by the DOJ (this is for both handguns and long guns), to believe that the firearm is “registered” at that time.

The process for registering an “assault weapon” was separate and different from the process of purchasing the firearm. This process required the purchaser to send documents to the California Department of Justice. If you did not do this at the time you purchased the firearm from the dealer or any time since then, your firearm is more than likely not registered.

UNFORTUNATELY THERE IS NO WAY TO REGISTER YOUR FIREARM AS AN “ASSAULT WEAPON” NOW.

If you don’t know or *think* that you registered your firearm you may request a list of the firearms you are the registered owner of by using a form from the California Department of Justice website known as the “Automated Firearms System Record Request” form. The form can be located at <http://ag.ca.gov/firearms/forms/pdf/AFSPivateCitizen.pdf> . DOJ will send you a list of the firearms of which you are the registered owner.

C. IF YOU ARE IN POSSESSION OF AN UNREGISTERED ASSAULT WEAPON

If the firearm you possess is listed in the above mentioned Assault Weapon Identification Guide or has the features listed above and was not properly registered you are in possession of an unregistered “assault weapon” and in violation of California law.

Unfortunately, there is no way for you to register your firearm as an “assault weapon” now. You have very limited options.

Our first suggestion is to take the firearm apart. Taking the firearm apart will give you little protection from prosecution if the “assault weapon” is a “make and model” “assault weapon.” If your firearm has the prohibited features taking those features off of the firearm will render the firearm lawful. An “assault weapon” with prohibited “features” is only an “assault weapon” with those features attached to the firearm.

Law enforcement would prefer that you turn the firearm into them. In fact, there is a Penal Code section that allows for the turning in of “assault weapons,” but the code section provides no protection from prosecution for individuals who do this.

There is no state law that prohibits a person from throwing a firearm in the trash. However, our office **strongly suggests that you do not do so**. Not only may you be subject to local ordinances that prohibit this practice but if an individual pulls an operational firearm out of the trash and uses it to commit a crime you may be criminally or civilly liable.

There is no restriction from destroying your firearm. If you are in possession of a “make and model” “assault weapon” this may be your only option. Often people balk at the idea of destroying a firearm that cost thousands of dollars but given the alternate possibility of felony possession charges and attorney fees that could cost much more than the firearm is worth, our office strongly suggests an individual in possession of a “make and model” “assault weapon” consider this alternative.

D. MODIFICATION OF A “CATEGORY 3” “ASSAULT WEAPON”

As discussed above, the removal of features from a “Category 3” “assault weapon” renders the firearm lawful.

Some shooters are attempting to comply with California law by removing one of the prerequisite attributes from their firearm so that it is no longer legally considered to be an “assault weapon.” A few owners convert their semi-automatic firearms to single action. Some convert their centerfire rifles to rimfire. A larger group of individuals are attempting to remove their firearm from the “Category 3” definitions of an “assault weapon” by rendering a detachable magazine legally “non-detachable” so the firearm would no longer be “capable of accepting a detachable magazine.”

The California Code of Regulations defines a “detachable” magazine as “an ammunition feeding device that can be removed readily from the firearm with neither disassembly of the firearm action nor use of a tool being required. A bullet or ammunition cartridge is considered a tool. ‘Ammunition feeding device’ includes any belted or linked ammunition, but does not include clips, en bloc clips, or stripper clips that load cartridges into the magazine.” (11 CCR 5469, see also California Attorney General Assault Weapons Identification Guide 3rd Edition Nov. 2001, pg 80).⁶²

⁶² In contrast a “fixed magazine” is a “magazine which remains affixed to the firearm during loading. Frequently a fixed magazine is charged (loaded) from a clip (en bloc or stripper) of cartridges inserted through the open breech into the magazine.” (Id.) A person can be prosecuted for possession of an “assault weapon” if the firearm is a semiautomatic, centerfire rifle that has a “fixed magazine” with the capacity to accept more than 10 rounds. (PC 12276.1(a)(2)).

In order to eliminate this “detachable magazine” attribute, individuals can replace or cover their firearm’s magazine release lever/button with an aftermarket product commonly called a “bullet button.” Depending on the type of firearm, a “bullet button” either covers or replaces the firearm’s original magazine release button. In cases where the release button is replaced, the “bullet button” has the same shape and size as the old. However, the button will no longer actuate the spring to allow magazine removal. These buttons have a much smaller inner button that sits recessed within the outer button and becomes the true magazine removal device. Due to the fact that the inner button sits recessed within the outer button and is too small and recessed to be pushed by a finger, a tool is required to depress the inner button to actuate the spring for magazine removal. The most common “tool” used to depress the “bullet button” and remove the magazine is a bullet tip, hence the term “bullet button.”

“Bullet buttons” that cover the magazine release lever/button simply encases the magazine release. The covering usually has a small opening too small for the human finger and the magazine release is accessed by the use of a thin tool or bullet tip.

In our opinion, a firearm with a “bullet button,” does not fall under the definition a firearm with a detachable magazine. The use of a “tool” to release the magazine, renders a previous detachable magazine; “non-detachable.” Consequently, the firearm *should not* qualify as an “assault weapon” under 12276.1(a)(1).

We do not concede that attaching a “bullet button” to a firearm constitutes the firearm having a “fixed magazine” either. Typically, firearms with “bullet buttons” are reloaded by removing the magazine, using the “tool,” and either a full magazine is inserted or the empty magazine is reloaded. Typically firearms with “bullet buttons” are not reloaded with the magazine affixed to the firearm, and so do not constitute “fixed magazines.” However, we do not suggest using a magazine that has a capacity larger than 10 rounds with a “bullet button.”

We included “*should*” in the above analysis because we cannot guarantee that law enforcement or a district attorney will come to the same conclusion that we have. Our office has attempted in the past to obtain an opinion concerning the legality of the "bullet button" from the California Department of Justice Firearm Division (DOJ). DOJ refuses to render an opinion on the legality of the device. We are informed that this refusal is based, in part, on DOJ’s dissatisfaction with the current definition of "detachable magazine" in the California Code of Regulations. This refusal to render an opinion as to the legality of the “bullet button” has caused great frustration to individuals and corporations who desire a clear and consistent interpretation of California law. Unfortunately, DOJ is satisfied with letting each district attorney decide the issue for themselves.