

Case No. 19-56004

In the United States Court of Appeals
for the Ninth Circuit

STEVEN RUPP, et al.,
Plaintiffs-Appellants,

v.

XAVIER BECERRA,
in his official capacity as Attorney General of the State of California,
Defendant-Appellee.

On Appeal from the United States District Court
for the Central District of California
Case No. 8:17-cv-00746-JLS-JDE

**APPELLANTS' EXCERPTS OF RECORD
VOLUME X OF XXII**

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January 27, 2020

Under Federal Rules of Appellate Procedure for the Ninth Circuit, rule 30-1, Plaintiffs-Appellants Steven Rupp, Steven Dember, Cheryl Johnson, Michael Jones, Christopher Seifert, Alfonso Valencia, Troy Willis, Dennis Martin, and California Rifle & Pistol Association, Incorporated, by and through their attorney of record, confirm to the contents and form of Appellants' Excerpts of Record.

Date: January 27, 2020

MICHEL & ASSOCIATES, P.C.

s/ Sean A. Brady

Sean A. Brady

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Steven Rupp, et al.

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CERTIFICATE OF SERVICE

I hereby certify that on January 27, 2020, an electronic PDF of APPELLANTS' EXCERPTS OF RECORD, VOLUME X OF XXII was uploaded to the Court's CM/ECF system, which will automatically generate and send by electronic mail a Notice of Docket Activity to all registered attorneys participating in the case. Such notice constitutes service on those registered attorneys.

Date: January 27, 2020

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s/ Sean A. Brady

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

STEVEN RUPP, et al.,

Plaintiffs,

vs.

XAVIER BECERRA, in his official
capacity as Attorney General of the
State of California,

Defendant.

Case No.: 8:17-cv-00746-JLS-JDE

**REQUEST FOR JUDICIAL
NOTICE IN SUPPORT OF
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

Hearing Date: May 31, 2019
Hearing Time: 10:30 a.m.
Courtroom: 10A
Judge: Josephine L. Staton

[Filed concurrently with Notice of
Motion for Summary Judgment,
Memorandum of Points and Authorities,
Statement of Uncontroverted Facts and
Conclusions of Law, Declarations of
Sean A. Brady, Steven Rupp, Steven
Dember, Cheryl Johnson, Christopher
Seifert, Alfonso Valencia, Troy Willis,
Michael Jones, Dennis Martin, and
Richard Travis]

REQUEST FOR JUDICIAL NOTICE

Under Federal Rule of Evidence 201, Plaintiffs Steven Rupp, Steven Dember, Cheryl Johnson, Michael Jones, Christopher Seifert, Alfonso Valencia, Troy Willis, Dennis Martin, and the California Rifle & Pistol Association, Incorporated, respectfully request that the Court take judicial notice of the following documents in support of Plaintiffs' motion for summary judgment:

1. **Conn. Gen. Stat. §§ 53-202a through 53-202k.** A true and correct copy of this document is attached as **Exhibit 1**. Exhibit 1 is a public record of the Connecticut Legislature that was accessed on or about March 25, 2019, from Westlaw, a fully searchable online legal database.

2. **D.C. Code Ann. §§ 7-2501.01(3A), 7-2502.02(a)(6).** A true and correct copy of this document is attached as **Exhibit 2**. Exhibit 2 is a public record of the Federal Legislature that was accessed on or about March 25, 2019, from Westlaw, a fully searchable online legal database.

3. **Haw. Rev. Stat. Ann. §§ 134-1, 134-8.** A true and correct copy of this document is attached as **Exhibit 3**. Exhibit 3 is a public record of the Hawaii Legislature that was accessed on or about March 25, 2019, from Westlaw, a fully searchable online legal database.

4. **Md. Code Ann., Crim. Law §§ 4-301, 4-303.** A true and correct copy of this document is attached as **Exhibit 4**. Exhibit 4 is a public record of the Maryland Legislature that was accessed on or about March 25, 2019, from Westlaw, a fully searchable online legal database.

5. **Mass. Gen. Laws ch. 140, §§ 121, 131M.** A true and correct copy of this document is attached as **Exhibit 5**. Exhibit 5 is a public record of the Massachusetts Legislature that was accessed on or about March 25, 2019, from Westlaw, a fully searchable online legal database.

6. **N.J. Stat. Ann. §§ 2C:39-1w, 2C:39-3.** A true and correct copy of this document is attached as **Exhibit 6**. Exhibit 6 is a public record of the New Jersey

1 Legislature that was accessed on or about March 25, 2019, from Westlaw, a fully
2 searchable online legal database.

3 7. **N.Y. Penal Law §§ 265.00(22), 265.02(7).** A true and correct copy of
4 this document is attached as **Exhibit 7**. Exhibit 7 is a public record of the New York
5 Legislature that was accessed on or about March 25, 2019, from Westlaw, a fully
6 searchable online legal database.

7 8. **The Violent Crime and Law Enforcement Act of 1994, Pub. L. 103-**
8 **322, 108 Stat. 1796.** A true and correct copy of this document is attached as **Exhibit**
9 **8**. Exhibit 8 is a public record of the United States Congress that was accessed on or
10 about March 25, 2019, from Congress.gov, the official website for U.S. federal
11 legislative information ([https://www.congress.gov/103/bills/hr3355/BILLS-](https://www.congress.gov/103/bills/hr3355/BILLS-103hr3355enr.pdf)
12 [103hr3355enr.pdf](https://www.congress.gov/103/bills/hr3355/BILLS-103hr3355enr.pdf)).
13

14 Judicial notice is proper because the documents for which this request is made
15 are “capable of accurate and ready determination by resort to sources who accuracy
16 cannot reasonably be questioned.” Fed. R. Evid. 201(b)(2). “A trial court may
17 presume that public records are authentic and trustworthy.” *Gilbrook v. City of*
18 *Westminster*, 177 F.3d 839, 858 (9th Cir. 1999) (taking judicial notice of agency
19 report). A court shall take judicial notice of such a fact if requested by a party and
20 supplied with the necessary information. Fed. R. Evid. 201(d).

21 “Legislative history is properly a subject of judicial notice.” *Anderson v.*
22 *Holder*, 673 F.3d 1089, 1094 n.1 (9th Cir. 2012); *Chaker v. Crogan*, 428 F.3d 1215,
23 1223 n.8 (9th Cir. 2005) (discussing legislative history of California statute).
24 Further, “a federal court must take judicial notice of state statutes ‘without plea or
25 proof.’” *Getty Petroleum Mktg., Inc. v. Capital Terminal Co.*, 391 F.3d 312, 323 (1st
26 Cir. 2004) (citing *Lamar v. Micou*, 114 U.S. 218, 223 (1885)).

27 Here, the accuracy of all the public records subject to Plaintiffs’ Request for
28 Judicial Notice, consisting of enacted legislation and legislative history, cannot
1609

1 reasonably be questioned. Judicial notice of these records is therefore appropriate.

2
3 Dated: March 25, 2019

MICHEL & ASSOCIATES, P.C.

4
5 /s/Sean A. Brady

6 Sean A. Brady

7 Attorneys for Plaintiffs
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EXHIBIT 1



KeyCite Red Flag - Severe Negative Treatment

Unconstitutional or PreemptedHeld Unconstitutional by [New York State Rifle and Pistol Ass'n, Inc. v. Cuomo](#), 2nd Cir.(Conn.), Oct. 19, 2015

[Connecticut General Statutes Annotated](#)

[Title 53. Crimes \(Refs & Annos\)](#)

[Chapter 943. Offenses Against Public Peace and Safety](#)

C.G.S.A. § 53-202a

§ 53-202a. Assault weapons: Definitions

Effective: June 18, 2013

[Currenttness](#)

As used in this section and [sections 53-202b to 53-202k](#), inclusive:

(1) “Assault weapon” means:

(A) (i) Any selective-fire firearm capable of fully automatic, semiautomatic or burst fire at the option of the user or any of the following specified semiautomatic firearms: Algimec Agmi; Armalite AR-180; Australian Automatic Arms SAP Pistol; Auto-Ordnance Thompson type; Avtomat Kalashnikov AK-47 type; Barrett Light-Fifty model 82A1; Beretta AR-70; Bushmaster Auto Rifle and Auto Pistol; Calico models M-900, M-950 and 100-P; Chartered Industries of Singapore SR-88; Colt AR-15 and Sporter; Daewoo K-1, K-2, Max-1 and Max-2; Encom MK-IV, MP-9 and MP-45; Fabrique Nationale FN/FAL, FN/LAR, or FN/FNC; FAMAS MAS 223; Feather AT-9 and Mini-AT; Federal XC-900 and XC-450; Franchi SPAS-12 and LAW-12; Galil AR and ARM; Goncz High-Tech Carbine and High-Tech Long Pistol; Heckler & Koch HK-91, HK-93, HK-94 and SP-89; Holmes MP-83; MAC-10, MAC-11 and MAC-11 Carbine type; Intratec TEC-9 and Scorpion; Iver Johnson Enforcer model 3000; Ruger Mini-14/5F folding stock model only; Scarab Skorpion; SIG 57 AMT and 500 series; Spectre Auto Carbine and Auto Pistol; Springfield Armory BM59, SAR-48 and G-3; Sterling MK-6 and MK-7; Steyr AUG; Street Sweeper and Striker 12 revolving cylinder shotguns; USAS-12; UZI Carbine, Mini-Carbine and Pistol; Weaver Arms Nighthawk; Wilkinson “Linda” Pistol;

(ii) A part or combination of parts designed or intended to convert a firearm into an assault weapon, as defined in subparagraph (A)(i) of this subdivision, or any combination of parts from which an assault weapon, as defined in subparagraph (A)(i) of this subdivision, may be rapidly assembled if those parts are in the possession or under the control of the same person;

(B) Any of the following specified semiautomatic centerfire rifles, or copies or duplicates thereof with the capability of any such rifles, that were in production prior to or on April 4, 2013: (i) AK-47; (ii) AK-74; (iii) AKM; (iv) AKS-74U; (v) ARM; (vi) MAADI AK47; (vii) MAK90; (viii) MISR; (ix) NHM90 and NHM91; (x) Norinco 56, 56S, 84S and 86S; (xi) Poly Technologies AKS and AK47; (xii) SA 85; (xiii) SA 93; (xiv) VEPR; (xv) WASR-10; (xvi) WUM; (xvii) Rock River Arms LAR-47; (xviii) Vector Arms AK-47; (xix) AR-10; (xx) AR-15; (xxi) Bushmaster Carbon 15, Bushmaster XM15, Bushmaster ACR Rifles, Bushmaster MOE Rifles; (xxii) Colt Match Target Rifles; (xxiii) Armalite M15; (xxiv) Olympic Arms AR-15, A1, CAR, PCR, K3B, K30R, K16, K48, K8 and K9 Rifles; (xxv) DPMS Tactical Rifles; (xxvi) Smith and Wesson M&P15 Rifles; (xxvii) Rock River Arms LAR-15; (xxviii) Doublestar AR Rifles; (xxix) Barrett REC7; (xxx) Beretta Storm; (xxxi) Calico Liberty 50, 50 Tactical, 100, 100 Tactical, I, I Tactical, II and II Tactical Rifles; (xxxii) Hi-

Point Carbine Rifles; (xxxiii) HK-PSG-1; (xxxiv) Kel-Tec Sub-2000, SU Rifles, and RFB; (xxxv) Remington Tactical Rifle Model 7615; (xxxvi) SAR-8, SAR-4800 and SR9; (xxxvii) SLG 95; (xxxviii) SLR 95 or 96; (xxxix) TNW M230 and M2HB; (xl) Vector Arms UZI; (xli) Galil and Galil Sporter; (xlii) Daewoo AR 100 and AR 110C; (xliii) Fabrique Nationale/FN 308 Match and L1A1 Sporter; (xliv) HK USC; (xlv) IZHMASH Saiga AK; (xlvi) SIG Sauer 551-A1, 556, 516, 716 and M400 Rifles; (xlvii) Valmet M62S, M71S and M78S; (xlviii) Wilkinson Arms Linda Carbine; and (xlix) Barrett M107A1;

(C) Any of the following specified semiautomatic pistols, or copies or duplicates thereof with the capability of any such pistols, that were in production prior to or on April 4, 2013: (i) Centurion 39 AK; (ii) Draco AK-47; (iii) HCR AK-47; (iv) IO Inc. Hellpup AK-47; (v) Mini-Draco AK-47; (vi) Yugo Krebs Krink; (vii) American Spirit AR-15; (viii) Bushmaster Carbon 15; (ix) Doublestar Corporation AR; (x) DPMS AR-15; (xi) Olympic Arms AR-15; (xii) Rock River Arms LAR 15; (xiii) Calico Liberty III and III Tactical Pistols; (xiv) Masterpiece Arms MPA Pistols and Velocity Arms VMA Pistols; (xv) Intratec TEC-DC9 and AB-10; (xvi) Colefire Magnum; (xvii) German Sport 522 PK and Chiappa Firearms Mfour-22; (xviii) DSA SA58 PKP FAL; (xix) I.O. Inc. PPS-43C; (xx) Kel-Tec PLR-16 Pistol; (xxi) Sig Sauer P516 and P556 Pistols; and (xxii) Thompson TA5 Pistols;

(D) Any of the following semiautomatic shotguns, or copies or duplicates thereof with the capability of any such shotguns, that were in production prior to or on April 4, 2013: All IZHMASH Saiga 12 Shotguns;

(E) Any semiautomatic firearm regardless of whether such firearm is listed in subparagraphs (A) to (D), inclusive, of this subdivision, and regardless of the date such firearm was produced, that meets the following criteria:

(i) A semiautomatic, centerfire rifle that has an ability to accept a detachable magazine and has at least one of the following:

(I) A folding or telescoping stock;

(II) Any grip of the weapon, including a pistol grip, a thumbhole stock, or any other stock, the use of which would allow an individual to grip the weapon, resulting in any finger on the trigger hand in addition to the trigger finger being directly below any portion of the action of the weapon when firing;

(III) A forward pistol grip;

(IV) A flash suppressor; or

(V) A grenade launcher or flare launcher; or

(ii) A semiautomatic, centerfire rifle that has a fixed magazine with the ability to accept more than ten rounds; or

(iii) A semiautomatic, centerfire rifle that has an overall length of less than thirty inches; or

- (iv) A semiautomatic pistol that has an ability to accept a detachable magazine and has at least one of the following:
 - (I) An ability to accept a detachable ammunition magazine that attaches at some location outside of the pistol grip;
 - (II) A threaded barrel capable of accepting a flash suppressor, forward pistol grip or silencer;
 - (III) A shroud that is attached to, or partially or completely encircles, the barrel and that permits the shooter to fire the firearm without being burned, except a slide that encloses the barrel; or
 - (IV) A second hand grip; or
 - (v) A semiautomatic pistol with a fixed magazine that has the ability to accept more than ten rounds; or
 - (vi) A semiautomatic shotgun that has both of the following:
 - (I) A folding or telescoping stock; and
 - (II) Any grip of the weapon, including a pistol grip, a thumbhole stock, or any other stock, the use of which would allow an individual to grip the weapon, resulting in any finger on the trigger hand in addition to the trigger finger being directly below any portion of the action of the weapon when firing; or
 - (vii) A semiautomatic shotgun that has the ability to accept a detachable magazine; or
 - (viii) A shotgun with a revolving cylinder; or
 - (ix) Any semiautomatic firearm that meets the criteria set forth in subdivision (3) or (4) of subsection (a) of section 53-202a of the general statutes, revision of 1958, revised to January 1, 2013; or
 - (F) A part or combination of parts designed or intended to convert a firearm into an assault weapon, as defined in any provision of subparagraphs (B) to (E), inclusive, of this subdivision, or any combination of parts from which an assault weapon, as defined in any provision of subparagraphs (B) to (E), inclusive, of this subdivision, may be assembled if those parts are in the possession or under the control of the same person;
- (2) “Assault weapon” does not include (A) any firearm modified to render it permanently inoperable, or (B) a part or any combination of parts of an assault weapon, that are not assembled as an assault weapon, when in the possession of a licensed gun dealer, as defined in subsection (f) of [section 53-202f](#), or a gunsmith who is in the licensed gun dealer's employ, for the purposes of servicing or repairing lawfully possessed assault weapons under sections 53-202a to [53-202k](#), inclusive;

- (3) “Action of the weapon” means the part of the firearm that loads, fires and ejects a cartridge, which part includes, but is not limited to, the upper and lower receiver, charging handle, forward assist, magazine release and shell deflector;
- (4) “Detachable magazine” means an ammunition feeding device that can be removed without disassembling the firearm action;
- (5) “Firearm” means a firearm, as defined in [section 53a-3](#);
- (6) “Forward pistol grip” means any feature capable of functioning as a grip that can be held by the nontrigger hand;
- (7) “Lawfully possesses” means, with respect to an assault weapon described in any provision of subparagraphs (B) to (F), inclusive, of this subdivision, (A) actual possession that is lawful under [sections 53-202b to 53-202k](#), (B) constructive possession pursuant to a lawful purchase transacted prior to or on April 4, 2013, regardless of whether the assault weapon was delivered to the purchaser prior to or on April 4, 2013, which lawful purchase is evidenced by a writing sufficient to indicate that (i) a contract for sale was made between the parties prior to or on April 4, 2013, for the purchase of the assault weapon, or (ii) full or partial payment for the assault weapon was made by the purchaser to the seller of the assault weapon prior to or on April 4, 2013, or (C) actual possession under subparagraph (A) of this subdivision, or constructive possession under subparagraph (B) of this subdivision, as evidenced by a written statement made under penalty of false statement on such form as the Commissioner of Emergency Services and Public Protection prescribes;
- (8) “Pistol grip” means a grip or similar feature that can function as a grip for the trigger hand; and
- (9) “Second hand grip” means a grip or similar feature that can function as a grip that is additional to the trigger hand grip.

Credits

(1993, P.A. 93-306, § 1; 2001, P.A. 01-130, § 1; 2013, P.A. 13-3, § 25, eff. April 4, 2013; 2013, P.A. 13-220, §§ 3, 4, 21, eff. June 18, 2013.)

Editors' Notes


VALIDITY

<For validity of this section, see [New York State Rifle & Pistol Ass’n, Inc. v. Cuomo](#), 2015, 804 F.3d 242.>

Notes of Decisions (18)

C. G. S. A. § 53-202a, CT ST § 53-202a

The statutes and Constitution are current through General Statutes of Connecticut, Revision of 1958, Revised to January 1, 2019.

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Connecticut General Statutes Annotated
Title 53. Crimes (Refs & Annos)
Chapter 943. Offenses Against Public Peace and Safety

C.G.S.A. § 53-202b

§ 53-202b. Sale or transfer of assault weapon prohibited.
Exemptions. Olympic pistols. Regulations. Class C felony

Effective: June 18, 2013

[Currentness](#)

(a) (1) Any person who, within this state, distributes, transports or imports into the state, keeps for sale, or offers or exposes for sale, or who gives any assault weapon, except as provided by [sections 53-202a to 53-202k](#), inclusive, shall be guilty of a class C felony and shall be sentenced to a term of imprisonment of which two years may not be suspended or reduced by the court.

(2) Any person who transfers, sells or gives any assault weapon to a person under eighteen years of age in violation of subdivision (1) of this subsection shall be sentenced to a term of imprisonment of six years, which shall not be suspended or reduced by the court and shall be in addition and consecutive to the term of imprisonment imposed under subdivision (1) of this subsection.

(b) The provisions of subsection (a) of this section shall not apply to:

(1) The sale of assault weapons to: (A) The Department of Emergency Services and Public Protection, police departments, the Department of Correction, the Division of Criminal Justice, the Department of Motor Vehicles, the Department of Energy and Environmental Protection or the military or naval forces of this state or of the United States; (B) a sworn and duly certified member of an organized police department, the Division of State Police within the Department of Emergency Services and Public Protection or the Department of Correction, a chief inspector or inspector in the Division of Criminal Justice, a salaried inspector of motor vehicles designated by the Commissioner of Motor Vehicles, a conservation officer or special conservation officer appointed by the Commissioner of Energy and Environmental Protection pursuant to [section 26-5](#), or a constable who is certified by the Police Officer Standards and Training Council and appointed by the chief executive authority of a town, city or borough to perform criminal law enforcement duties, pursuant to a letter on the letterhead of such department, division, commissioner or authority authorizing the purchase and stating that the sworn member, inspector, officer or constable will use the assault weapon in the discharge of official duties, and that a records check indicates that the sworn member, inspector, officer or constable has not been convicted of a crime of family violence, for use by such sworn member, inspector, officer or constable in the discharge of such sworn member's, inspector's, officer's or constable's official duties or when off duty, (C) a member of the military or naval forces of this state or of the United States, or (D) a nuclear facility licensed by the United States Nuclear Regulatory Commission for the purpose of providing security services at such facility, or any contractor or subcontractor of such facility for the purpose of providing security services at such facility;

(2) A person who is the executor or administrator of an estate that includes an assault weapon for which a certificate of possession has been issued under [section 53-202d](#) which is disposed of as authorized by the Probate Court, if the disposition is otherwise permitted by [sections 53-202a](#) to [53-202k](#), inclusive;

(3) The transfer of an assault weapon for which a certificate of possession has been issued under [section 53-202d](#), by bequest or intestate succession, or, upon the death of a testator or settlor: (A) To a trust, or (B) from a trust to a beneficiary who is eligible to possess the assault weapon;

(4) The sale of a semiautomatic pistol that is defined as an assault weapon in any provision of [subparagraphs \(B\) to \(F\), inclusive, of subdivision \(1\) of section 53-202a](#) that the Commissioner of Emergency Services and Public Protection designates as being designed expressly for use in target shooting events at the Olympic games sponsored by the International Olympic Committee pursuant to regulations adopted under this subdivision, and for which the purchaser signs a form prescribed by the commissioner and provided by the seller that indicates that the pistol will be used by the purchaser primarily for target shooting practice and events. The Commissioner of Emergency Services and Public Protection shall adopt regulations, in accordance with chapter 54,¹ to designate semiautomatic pistols that are defined as assault weapons in any provision of [subparagraphs \(B\) to \(F\), inclusive, of subdivision \(1\) of section 53-202a](#) that may be sold pursuant to this subdivision, provided the use of such pistols is sanctioned by the International Olympic Committee and USA Shooting, or any subsequent corresponding governing board for international shooting competition in the United States.

Credits

(1993, P.A. 93-306, § 2; 2011, P.A. 11-51, § 134(a), eff. July 1, 2011; 2013, P.A. 13-3, § 26, eff. April 4, 2013; 2013, P.A. 13-220, § 5, eff. June 18, 2013.)

Notes of Decisions (5)

Footnotes

¹ C.G.S.A. § 4-166 et seq.

C. G. S. A. § 53-202b, CT ST § 53-202b

The statutes and Constitution are current through General Statutes of Connecticut, Revision of 1958, Revised to January 1, 2019.

Connecticut General Statutes Annotated
Title 53. Crimes (Refs & Annos)
Chapter 943. Offenses Against Public Peace and Safety

C.G.S.A. § 53-202c

§ 53-202c. Possession of assault weapon prohibited. Exemptions. Class D felony

Effective: June 18, 2013

Currentness

(a) Except as provided in [section 53-202e](#), any person who, within this state, possesses an assault weapon, except as provided in [sections 53-202a to 53-202k](#), inclusive, and [53-202o](#), shall be guilty of a class D felony and shall be sentenced to a term of imprisonment of which one year may not be suspended or reduced by the court, except that a first-time violation of this subsection shall be a class A misdemeanor if (1) the person presents proof that such person lawfully possessed the assault weapon (A) prior to October 1, 1993, with respect to an assault weapon described in [subparagraph \(A\) of subdivision \(1\) of section 53-202a](#), or (B) on April 4, 2013, under the provisions of [sections 53-202a to 53-202k](#), inclusive, in effect on January 1, 2013, with respect to an assault weapon described in any provision of [subparagraphs \(B\) to \(F\), inclusive, of subdivision \(1\) of section 53-202a](#), and (2) the person has otherwise possessed the assault weapon in compliance with subsection (f) of [section 53-202d](#).

(b) The provisions of subsection (a) of this section shall not apply to the possession of assault weapons by: (1) The Department of Emergency Services and Public Protection, police departments, the Department of Correction, the Division of Criminal Justice, the Department of Motor Vehicles, the Department of Energy and Environmental Protection or the military or naval forces of this state or of the United States, (2) a sworn and duly certified member of an organized police department, the Division of State Police within the Department of Emergency Services and Public Protection or the Department of Correction, a chief inspector or inspector in the Division of Criminal Justice, a salaried inspector of motor vehicles designated by the Commissioner of Motor Vehicles, a conservation officer or special conservation officer appointed by the Commissioner of Energy and Environmental Protection pursuant to [section 26-5](#), or a constable who is certified by the Police Officer Standards and Training Council and appointed by the chief executive authority of a town, city or borough to perform criminal law enforcement duties, for use by such sworn member, inspector, officer or constable in the discharge of such sworn member's, inspector's, officer's or constable's official duties or when off duty, (3) a member of the military or naval forces of this state or of the United States, or (4) a nuclear facility licensed by the United States Nuclear Regulatory Commission for the purpose of providing security services at such facility, or any contractor or subcontractor of such facility for the purpose of providing security services at such facility.

(c) The provisions of subsection (a) of this section shall not apply to the possession of an assault weapon described in [subparagraph \(A\) of subdivision \(1\) of section 53-202a](#) by any person prior to July 1, 1994, if all of the following are applicable:

(1) The person is eligible under [sections 53-202a to 53-202k](#), inclusive, to apply for a certificate of possession for the assault weapon by July 1, 1994;

(2) The person lawfully possessed the assault weapon prior to October 1, 1993; and

(3) The person is otherwise in compliance with [sections 53-202a to 53-202k](#), inclusive.

(d) The provisions of subsection (a) of this section shall not apply to the possession of an assault weapon described in any provision of [subparagraphs \(B\) to \(F\), inclusive, of subdivision \(1\) of section 53-202a](#) by any person prior to April 5, 2013, if all of the following are applicable:

(1) The person is eligible under [sections 53-202a to 53-202k](#), inclusive, to apply for a certificate of possession for the assault weapon by January 1, 2014;

(2) The person lawfully possessed the assault weapon on April 4, 2013, under the provisions of [sections 53-202a to 53-202k](#), inclusive, in effect on January 1, 2013; and

(3) The person is otherwise in compliance with [sections 53-202a to 53-202k](#), inclusive.

(e) The provisions of subsection (a) of this section shall not apply to a person who is the executor or administrator of an estate that includes an assault weapon, or the trustee of a trust that includes an assault weapon, for which a certificate of possession has been issued under [section 53-202d](#) if the assault weapon is possessed at a place set forth in [subdivision \(1\) of subsection \(f\) of section 53-202d](#) or as authorized by the Probate Court.

(f) The provisions of subsection (a) of this section shall not apply to the possession of a semiautomatic pistol that is defined as an assault weapon in any provision of [subparagraphs \(B\) to \(F\), inclusive, of subdivision \(1\) of section 53-202a](#) that the Commissioner of Emergency Services and Public Protection designates as being designed expressly for use in target shooting events at the Olympic games sponsored by the International Olympic Committee pursuant to regulations adopted under [subdivision \(4\) of subsection \(b\) of section 53-202b](#) that is (1) possessed and transported in accordance with subsection (f) of [section 53-202d](#), or (2) possessed at or transported to or from a collegiate, Olympic or target pistol shooting competition in this state which 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, provided such pistol is transported in the manner prescribed in subsection (a) of [section 53-202f](#).


Credits

(1993, P.A. 93-306, § 3; 2002, P.A. 02-120, § 5, eff. June 7, 2002; 2011, P.A. 11-51, § 134(a), eff. July 1, 2011; 2013, P.A. 13-3, § 27, eff. April 4, 2013; 2013, P.A. 13-220, § 6, eff. June 18, 2013.)

Notes of Decisions (7)

C. G. S. A. § 53-202c, CT ST § 53-202c

The statutes and Constitution are current through General Statutes of Connecticut, Revision of 1958, Revised to January 1, 2019.

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Proposed Legislation

Connecticut General Statutes Annotated
Title 53. Crimes (Refs & Annos)
Chapter 943. Offenses Against Public Peace and Safety

C.G.S.A. § 53-202d

§ 53-202d. Certificate of possession of assault weapon. Certificate of transfer of assault weapon to gun dealer. Circumstances where possession of assault weapon authorized

Effective: October 1, 2015

Currentness

(a) (1) (A) Except as provided in subparagraph (B) of this subdivision, any person who lawfully possesses an assault weapon, as defined in [subparagraph \(A\) of subdivision \(1\) of section 53-202a](#), prior to October 1, 1993, shall apply by October 1, 1994, or, if such person is a member of the military or naval forces of this state or of the United States and is unable to apply by October 1, 1994, because such member is or was on official duty outside of this state, shall apply within ninety days of returning to the state to the Department of Emergency Services and Public Protection, for a certificate of possession with respect to such assault weapon.

(B) No person who lawfully possesses an assault weapon pursuant to [subdivision \(1\), \(2\) or \(4\) of subsection \(b\) of section 53-202c](#) shall be required to obtain a certificate of possession pursuant to this subdivision with respect to an assault weapon used for official duties, except that any person described in [subdivision \(2\) of subsection \(b\) of section 53-202c](#) who purchases an assault weapon, as defined in [subparagraph \(A\) of subdivision \(1\) of section 53-202a](#), for use in the discharge of official duties who retires or is otherwise separated from service shall apply within ninety days of such retirement or separation from service to the Department of Emergency Services and Public Protection for a certificate of possession with respect to such assault weapon.

(2) (A) Except as provided in subparagraph (B) of this subdivision, any person who lawfully possesses an assault weapon, as defined in any provision of [subparagraphs \(B\) to \(F\), inclusive, of subdivision \(1\) of section 53-202a](#), on April 4, 2013, under the provisions of [sections 53-202a to 53-202k](#), inclusive, in effect on January 1, 2013, or any person who regains possession of an assault weapon as defined in any provision of said subparagraphs pursuant to subsection (e) of [section 53-202f](#), or any person who lawfully purchases a firearm on or after April 4, 2013, but prior to June 18, 2013, that meets the criteria set forth in [subdivision \(3\) or \(4\) of subsection \(a\) of section 53-202a of the general statutes](#), revision of 1958, revised to January 1, 2013, shall apply by January 1, 2014, or, if such person is a member of the military or naval forces of this state or of the United States and is unable to apply by January 1, 2014, because such member is or was on official duty outside of this state, shall apply within ninety days of returning to the state to the Department of Emergency Services and Public Protection for a certificate of possession with respect to such assault weapon. Any person who lawfully purchases a semiautomatic pistol that is defined as an assault weapon in any provision of [subparagraphs \(B\) to \(F\), inclusive, of subdivision \(1\) of section 53-202a](#) that the Commissioner of Emergency Services and Public Protection designates as being designed expressly for use in target shooting events at the Olympic games sponsored by the International Olympic Committee pursuant to regulations adopted under [subdivision \(4\) of subsection \(b\) of section 53-202b](#) shall apply within ninety days of such purchase to the Department of Emergency Services and Public Protection for a certificate of possession with respect to such assault weapon.

(B) No person who lawfully possesses an assault weapon pursuant to subdivision (1), (2) or (4) of subsection (b) of section 53-202c shall be required to obtain a certificate of possession pursuant to this subdivision with respect to an assault weapon used for official duties, except that any person described in subdivision (2) of subsection (b) of section 53-202c who purchases an assault weapon, as defined in any provision of subparagraphs (B) to (F), inclusive, of subdivision (1) of section 53-202a for use in the discharge of official duties who retires or is otherwise separated from service shall apply within ninety days of such retirement or separation from service to the Department of Emergency Services and Public Protection for a certificate of possession with respect to such assault weapon.

(3) Any person who obtained a certificate of possession for an assault weapon, as defined in subparagraph (A) of subdivision (1) of section 53-202a, prior to April 5, 2013, that is defined as an assault weapon pursuant to any provision of subparagraphs (B) to (F), inclusive, of subdivision (1) of section 53-202a shall be deemed to have obtained a certificate of possession for such assault weapon for the purposes of sections 53-202a to 53-202k, inclusive, and shall not be required to obtain a subsequent certificate of possession for such assault weapon.

(4) The certificate of possession shall contain a description of the firearm that identifies it uniquely, including all identification marks, the full name, address, date of birth and thumbprint of the owner, and any other information as the department may deem appropriate.

(5) The department shall adopt regulations, in accordance with the provisions of chapter 54,¹ to establish procedures with respect to the application for and issuance of certificates of possession pursuant to this section. Notwithstanding the provisions of sections 1-210 and 1-211, the name and address of a person issued a certificate of possession shall be confidential and shall not be disclosed, except such records may be disclosed to (A) law enforcement agencies and employees of the United States Probation Office acting in the performance of their duties and parole officers within the Department of Correction acting in the performance of their duties, and (B) the Commissioner of Mental Health and Addiction Services to carry out the provisions of subsection (c) of section 17a-500.

(b) (1) No assault weapon, as defined in subparagraph (A) of subdivision (1) of section 53-202a, possessed pursuant to a certificate of possession issued under this section may be sold or transferred on or after January 1, 1994, to any person within this state other than to a licensed gun dealer, as defined in subsection (f) of section 53-202f, or as provided in section 53-202e, or by bequest or intestate succession, or, upon the death of a testator or settlor: (A) To a trust, or (B) from a trust to a beneficiary who is eligible to possess the assault weapon.

(2) No assault weapon, as defined in any provision of subparagraphs (B) to (F), inclusive, of subdivision (1) of section 53-202a, possessed pursuant to a certificate of possession issued under this section may be sold or transferred on or after April 5, 2013, to any person within this state other than to a licensed gun dealer, as defined in subsection (f) of section 53-202f, or as provided in section 53-202e, or by bequest or intestate succession, or, upon the death of a testator or settlor: (A) To a trust, or (B) from a trust to a beneficiary who is eligible to possess the assault weapon.

(c) Any person who obtains title to an assault weapon for which a certificate of possession has been issued under this section by bequest or intestate succession shall, within ninety days of obtaining title, apply to the Department of Emergency Services and Public Protection for a certificate of possession as provided in subsection (a) of this section, render the assault weapon permanently inoperable, sell the assault weapon to a licensed gun dealer or remove the assault weapon from the state.

(d) Any person who moves into the state in lawful possession of an assault weapon, shall, within ninety days, either render the assault weapon permanently inoperable, sell the assault weapon to a licensed gun dealer or remove the assault weapon from this state, except that any person who is a member of the military or naval forces of this state or of the United States, is in lawful possession of an assault weapon and has been transferred into the state after October 1, 1994, may, within ninety days of arriving in the state, apply to the Department of Emergency Services and Public Protection for a certificate of possession with respect to such assault weapon.

(e) If an owner of an assault weapon sells or transfers the assault weapon to a licensed gun dealer, such dealer shall, at the time of delivery of the assault weapon, execute a certificate of transfer and cause the certificate of transfer to be mailed or delivered to the Commissioner of Emergency Services and Public Protection. The certificate of transfer shall contain: (1) The date of sale or transfer; (2) the name and address of the seller or transferor and the licensed gun dealer, their Social Security numbers or motor vehicle operator license numbers, if applicable; (3) the licensed gun dealer's federal firearms license number and seller's permit number; (4) a description of the assault weapon, including the caliber of the assault weapon and its make, model and serial number; and (5) any other information the commissioner prescribes. The licensed gun dealer shall present such dealer's motor vehicle operator's license or Social Security card, federal firearms license and seller's permit to the seller or transferor for inspection at the time of purchase or transfer. The Commissioner of Emergency Services and Public Protection shall maintain a file of all certificates of transfer at the commissioner's central office.

(f) Any person who has been issued a certificate of possession for an assault weapon under this section may possess the assault weapon only under the following conditions:

(1) At that person's residence, place of business or other property owned by that person, or on property owned by another person with the owner's express permission;

(2) 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;

(3) While on a target range which holds a regulatory or business license for the purpose of practicing shooting at that target range;

(4) While on the premises of a licensed shooting club;

(5) While attending any exhibition, display or educational project which is about firearms and which 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;

(6) While transporting the assault weapon between any of the places set forth in this subsection, or to any licensed gun dealer, as defined in subsection (f) of [section 53-202f](#), for servicing or repair pursuant to subsection (c) of [section 53-202f](#), provided the assault weapon is transported as required by [section 53-202f](#);

(7) With respect to a nonresident of this state, while transporting a semiautomatic pistol that is defined as an assault weapon in any provision of subparagraphs (B) to (F), inclusive, of subdivision (1) of section 53-202a that the Commissioner of Emergency Services and Public Protection designates as being designed expressly for use in target shooting events at the Olympic games sponsored by the International Olympic Committee pursuant to regulations adopted under subdivision (4) of subsection (b) of section 53-202b, into or through this state in order to attend any exhibition, display or educational project described in subdivision (5) of this subsection, or to participate in a collegiate, Olympic or target pistol shooting competition in this state which 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, provided (A) such pistol is transported into or through this state not more than forty-eight hours prior to or after such exhibition, display, project or competition, (B) such pistol is unloaded and carried in a locked carrying case and the ammunition for such pistol is carried in a separate locked container, (C) such nonresident has not been convicted of a felony in this state or of an offense in another state that would constitute a felony if committed in this state, and (D) such nonresident has in his or her possession a pistol permit or firearms registration card if such permit or card is required for possession of such pistol under the laws of his or her state of residence.

Credits

(1993, P.A. 93-306, § 4; 1994, July Sp.Sess., P.A. 94-1, § 19, eff. July 7, 1994; 1998, P.A. 98-129, § 8; 2011, P.A. 11-51, § 170, eff. July 1, 2011; 2012, P.A. 12-177, § 3; 2013, P.A. 13-3, § 28, eff. April 4, 2013; 2013, P.A. 13-220, §§ 7, 8, eff. June 18, 2013; 2015, P.A. 15-216, § 5.)

Notes of Decisions (1)

Footnotes

¹ C.G.S.A. § 4-166 et seq.

C. G. S. A. § 53-202d, CT ST § 53-202d

The statutes and Constitution are current through General Statutes of Connecticut, Revision of 1958, Revised to January 1, 2019.

Connecticut General Statutes Annotated
Title 53. Crimes (Refs & Annos)
Chapter 943. Offenses Against Public Peace and Safety

C.G.S.A. § 53-202e

§ 53-202e. Relinquishment of assault weapon to law enforcement agency

Effective: June 15, 2012

Currentness

Any individual may arrange in advance to relinquish an assault weapon to a police department or the Department of Emergency Services and Public Protection. The assault weapon shall be transported in accordance with the provisions of [section 53-202f](#).

Credits


(1993, P.A. 93-306, § 5; 2012, June 12 Sp.Sess., P.A. 12-2, § 115, eff. June 15, 2012.)

C. G. S. A. § 53-202e, CT ST § 53-202e

The statutes and Constitution are current through General Statutes of Connecticut, Revision of 1958, Revised to January 1, 2019.

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Connecticut General Statutes Annotated
Title 53. Crimes (Refs & Annos)
Chapter 943. Offenses Against Public Peace and Safety

C.G.S.A. § 53-202f

§ 53-202f. Transportation and transfer of assault weapon. Authorized actions
of gun dealer, manufacturer, pawnbroker or consignment shop operator

Effective: October 1, 2013

Currentness

(a) While transporting an assault weapon between any of the places set forth in subdivisions (1) to (6), inclusive, of subsection (f) of [section 53-202d](#), no person shall carry a loaded assault weapon concealed from public view or knowingly have, in any motor vehicle owned, operated or occupied by such person (1) a loaded assault weapon, or (2) an unloaded assault weapon unless such weapon is kept in the trunk of such vehicle or in a case or other container which is inaccessible to the operator of such vehicle or any passenger in such vehicle. The provisions of this subsection shall not apply to a member, inspector, officer or constable that possesses an assault weapon pursuant to [subdivision \(2\) of subsection \(b\) of section 53-202c](#). Any person who violates the provisions of this subsection shall be guilty of a class E felony.

(b) Any licensed gun dealer, as defined in subsection (f) of this section, who lawfully possesses an assault weapon pursuant to [section 53-202d](#), in addition to the uses allowed in [section 53-202d](#), may transport the assault weapon between dealers or out of the state, display the assault weapon at any gun show licensed by a state or local governmental entity or sell the assault weapon to a resident outside the state. Any transporting of the assault weapon allowed by this subsection must be done as required by subsection (a) of this section.

(c) (1) Any licensed gun dealer, as defined in subsection (f) of this section, or a federally-licensed firearm manufacturer may take possession of any assault weapon for the purposes of servicing or repair from any person to whom has been issued a certificate of possession for such weapon pursuant to [sections 53-202a to 53-202k](#), inclusive.

(2) Any licensed gun dealer may transfer possession of any assault weapon received pursuant to subdivision (1) of this subsection to a gunsmith for purposes of accomplishing service or repair of the same. Such transfers are permissible only to the following persons:

(A) A gunsmith who is in the licensed gun dealer's employ; or

(B) A gunsmith with whom the dealer has contracted for gunsmithing services, provided the gunsmith receiving the assault weapon holds a dealer's license issued pursuant to Chapter 44, commencing with [Section 921, of Title 18 of the United States Code](#) and the regulations issued pursuant thereto.

(d) Not later than December 31, 2013, any person who lawfully possessed an assault weapon described in any provision of subparagraphs (B) to (F), inclusive, of subdivision (1) of section 53-202a on April 4, 2013, which was lawful under the provisions of sections 53-202a to 53-202k, inclusive, in effect on January 1, 2013, may transfer possession of the assault weapon to a licensed gun dealer within or outside of this state for sale outside of this state, and may transport the assault weapon to such dealer for the purpose of making such transfer, without obtaining a certificate of possession under section 53-202d.

(e) Not later than October 1, 2013, any licensed gun dealer, pawnbroker licensed under section 21-40, or consignment shop operator, as defined in section 21-39a, may transfer possession of an assault weapon to any person who (1) legally possessed the assault weapon prior to or on April 4, 2013, (2) placed the assault weapon in the possession of such dealer, pawnbroker or operator prior to or on April 4, 2013, pursuant to an agreement between such person and such dealer, pawnbroker or operator for the sale of the assault weapon to a third person, and (3) is eligible to possess a firearm on the date of such transfer.

(f) The term “licensed gun dealer”, as used in sections 53-202a to 53-202k, inclusive, means a person who has a federal firearms license and a permit to sell firearms pursuant to section 29-28.

Credits

(1993, P.A. 93-306, § 6; 2013, P.A. 13-3, § 29, eff. April 4, 2013; 2013, P.A. 13-220, § 9, eff. June 18, 2013; 2013, P.A. 13-258, § 29.)

C. G. S. A. § 53-202f, CT ST § 53-202f

The statutes and Constitution are current through General Statutes of Connecticut, Revision of 1958, Revised to January 1, 2019.

Connecticut General Statutes Annotated
Title 53. Crimes (Refs & Annos)
Chapter 943. Offenses Against Public Peace and Safety

C.G.S.A. § 53-202g

§ 53-202g. Report of loss or theft of assault weapon or other firearm. Penalty

Effective: October 1, 2013

Currentness

(a) Any person who lawfully possesses an assault weapon under [sections 53-202a to 53-202k](#), inclusive, or a firearm, as defined in [section 53a-3](#), that is lost or stolen from such person shall report the loss or theft to the organized local police department for the town in which the loss or theft occurred or, if such town does not have an organized local police department, to the state police troop having jurisdiction for such town within seventy-two hours of when such person discovered or should have discovered the loss or theft. Such department or troop shall forthwith forward a copy of such report to the Commissioner of Emergency Services and Public Protection. The provisions of this subsection shall not apply to the loss or theft of an antique firearm as defined in [section 29-37a](#).

(b) Any person who fails to make a report required by subsection (a) of this section, within the prescribed time period shall commit an infraction and be fined not more than ninety dollars for a first offense and be guilty of a class C felony for any subsequent offense, except that, if such person intentionally fails to make such report within the prescribed time period, such person shall be guilty of a class B felony. Any person who violates subsection (a) of this section for the first offense shall not lose such person's right to hold or obtain any firearm permit under the general statutes.

Credits

(1993, P.A. 93-306, § 7; 2007, P.A. 07-163, § 1; 2011, P.A. 11-51, § 134(a), eff. July 1, 2011; 2013, P.A. 13-3, § 12, eff. April 4, 2013; 2013, P.A. 13-3, § 50.)

C. G. S. A. § 53-202g, CT ST § 53-202g

The statutes and Constitution are current through General Statutes of Connecticut, Revision of 1958, Revised to January 1, 2019.

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Connecticut General Statutes Annotated
Title 53. Crimes (Refs & Annos)
Chapter 943. Offenses Against Public Peace and Safety

C.G.S.A. § 53-202h

§ 53-202h. Temporary transfer or possession of assault weapon for transport to out-of-state event

Currentness

The provisions of subsection (a) of [section 53-202b](#) and subsection (a) of [section 53-202c](#) shall not apply to the temporary transfer or possession of an assault weapon, for which a certificate of possession has been issued pursuant to [section 53-202d](#), for purposes of transporting such weapon to and from any shooting competition or exhibition, display or educational project which is about firearms and which 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, which competition, exhibition, display or educational project is held outside this state.

Credits

(1993, P.A. 93-306, § 10.)

C. G. S. A. § 53-202h, CT ST § 53-202h

The statutes and Constitution are current through General Statutes of Connecticut, Revision of 1958, Revised to January 1, 2019.

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Connecticut General Statutes Annotated
Title 53. Crimes (Refs & Annos)
Chapter 943. Offenses Against Public Peace and Safety

C.G.S.A. § 53-202i

§ 53-202i. Circumstances in which manufacture, transportation
or temporary transfer of assault weapons not prohibited

Effective: June 18, 2013

Currentness

Nothing in [sections 53-202a to 53-202k](#), inclusive, shall be construed to prohibit a federally-licensed firearm manufacturer engaged in the business of manufacturing assault weapons in this state from (1) manufacturing or transporting assault weapons in this state for sale within this state in accordance with [subdivision \(1\) of subsection \(b\) of section 53-202b](#) or for sale outside this state, or (2) transporting and temporarily transferring assault weapons to and from a third party for the sole purpose of permitting the third party to perform a function in the manufacturing production process.

Credits

(1993, P.A. 93-306, § 11; 2013, P.A. 13-3, § 30, eff. April 4, 2013; 2013, P.A. 13-220, § 10, eff. June 18, 2013.)

C. G. S. A. § 53-202i, CT ST § 53-202i

The statutes and Constitution are current through General Statutes of Connecticut, Revision of 1958, Revised to January 1, 2019.

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Connecticut General Statutes Annotated
Title 53. Crimes (Refs & Annos)
Chapter 943. Offenses Against Public Peace and Safety

C.G.S.A. § 53-202j

§ 53-202j. Commission of a class A, B or C felony with an assault weapon: Eight-year nonsuspendable sentence

Currentness

Any person who commits any class A, B or C felony and in the commission of such felony uses, or is armed with and threatens the use of, or displays, or represents by his words or conduct that he possesses an assault weapon, as defined in [section 53-202a](#), shall be imprisoned for a term of eight years, which shall not be suspended or reduced and shall be in addition and consecutive to any term of imprisonment imposed for conviction of such felony.

Credits

(1993, P.A. 93-306, § 8.)

C. G. S. A. § 53-202j, CT ST § 53-202j

The statutes and Constitution are current through General Statutes of Connecticut, Revision of 1958, Revised to January 1, 2019.

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Connecticut General Statutes Annotated
Title 53. Crimes (Refs & Annos)
Chapter 943. Offenses Against Public Peace and Safety

C.G.S.A. § 53-202k

§ 53-202k. Commission of a class A, B or C felony with a firearm: Five-year nonsuspendable sentence

Currentness

Any person who commits any class A, B or C felony and in the commission of such felony uses, or is armed with and threatens the use of, or displays, or represents by his words or conduct that he possesses any firearm, as defined in [section 53a-3](#), except an assault weapon, as defined in [section 53-202a](#), shall be imprisoned for a term of five years, which shall not be suspended or reduced and shall be in addition and consecutive to any term of imprisonment imposed for conviction of such felony.

Credits

(1993, P.A. 93-306, § 9.)

Notes of Decisions (82)

C. G. S. A. § 53-202k, CT ST § 53-202k

The statutes and Constitution are current through General Statutes of Connecticut, Revision of 1958, Revised to January 1, 2019.

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EXHIBIT 2



KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

West's District of Columbia Code Annotated 2001 Edition
Division I. Government of District.
Title 7. Human Health Care and Safety. (Refs & Annos)
Subtitle J. Public Safety.
Chapter 25. Firearms Control.
Unit A. Firearms Control Regulations.
Subchapter I. Definitions. (Refs & Annos)

DC ST § 7-2501.01

Formerly cited as DC ST 1981 § 6-2302

§ 7-2501.01. Definitions.

Effective: May 19, 2017

[Currentness](#)

As used in this unit the term:

(1) “Acts of Congress” means:

(A) Chapter 45 of Title 22;

(B) Omnibus Crime Control and Safe Streets Act of 1968, as amended (title VII, Unlawful Possession or Receipt of Firearms (82 Stat. 1236; 18 U.S.C. Appendix)); and

(C) An Act to Amend Title 18, United States Code, To Provide for Better Control of the Interstate Traffic in Firearms Act of 1968 (82 Stat. 1213; [18 U.S.C. § 921 et seq.](#)).

(2) “Ammunition” means cartridge cases, shells, projectiles (including shot), primers, bullets (including restricted pistol bullets), propellant powder, or other devices or materials designed, redesigned, or intended for use in a firearm or destructive device.

(3) “Antique firearm” means:

(A) Any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898; and

(B) Any replica of any firearm described in subparagraph (A) if such replica:

(i) Is not designed or redesigned for using rim-fire or conventional center-fire fixed ammunition; or

(ii) Uses rim-fire or conventional ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

(3A)(A) “Assault weapon” means:

(i) The following semiautomatic firearms:

(I) All of the following specified rifles:

(aa) All AK series including, but not limited to, the models identified as follows:

(1) Made in China AK, AKM, AKS, AK47, AK47S, 56, 56S, 84S, and 86S;

(2) Norinco (all models);

(3) Poly Technologies (all models);

(4) MAADI AK47 and ARM; and

(5) Mitchell (all models).

(bb) UZI and Galil;

(cc) Beretta AR-70;

(dd) CETME Sporter;

(ee) Colt AR-15 series;

(ff) Daewoo K-1, K-2, Max 1, Max 2, AR 100, and AR110 C;

(gg) Fabrique Nationale FAL, LAR, FNC, 308 Match, and Sporter;

(hh) MAS 223.

(ii) HK-91, HK-93, HK-94, and HK-PSG-1;

(jj) The following MAC types:

(1) RPB Industries Inc. sM10 and sM11; and

(2) SWD Incorporated M11;

(kk) SKS with detachable magazine;

(ll) SIG AMT, PE-57, SG 550, and SG 551;

(mm) Springfield Armory BM59 and SAR-48;

(nn) Sterling MK-6;

(oo) Steyer AUG, Steyr AUG;

(pp) Valmet M62S, M71S, and M78S;

(qq) Armalite AR-180;

(rr) Bushmaster Assault Rifle;

(ss) Calico --900;

(tt) J&R ENG --68; and

(uu) Weaver Arms Nighthawk.

(II) All of the following specified pistols:

(aa) UZI;

(bb) Encom MP-9 and MP-45;

(cc) The following MAC types:

- (1) RPB Industries Inc. sM10 and sM11;
- (2) SWD Incorporated -11;
- (3) Advance Armament Inc. --11; and
- (4) Military Armament Corp. Ingram M-11;

(dd) Intratec TEC-9 and TEC-DC9;

(ee) Sites Spectre;

(ff) Sterling MK-7;

(gg) Calico M-950; and

(hh) Bushmaster Pistol.

(III) All of the following specified shotguns:

- (aa) Franchi SPAS 12 and LAW 12; and
- (bb) Striker 12. The Streetsweeper type S/S Inc. SS/12;

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

- (aa) A pistol grip that protrudes conspicuously beneath the action of the weapon;
- (bb) A thumbhole stock;
- (cc) A folding or telescoping stock;
- (dd) A grenade launcher or flare launcher;

(ee) A flash suppressor; or

(ff) A forward pistol grip;

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

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

(bb) A second handgrip;

(cc) 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; or

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

(VI) A semiautomatic shotgun that has one or more of the following:

(aa) A folding or telescoping stock;

(bb) A pistol grip that protrudes conspicuously beneath the action of the weapon;

(cc) A thumbhole stock; or

(dd) A vertical handgrip; and

(VII) A semiautomatic shotgun that has the ability to accept a detachable magazine; and

(VIII) All other models within a series that are variations, with minor differences, of those models listed in subparagraph (A) of this paragraph, regardless of the manufacturer;

(ii) Any shotgun with a revolving cylinder; provided, that this sub-subparagraph shall not apply to a weapon with an attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition; and

(iii) Any firearm that the Chief may designate as an assault weapon by rule, based on a determination that the firearm would reasonably pose the same or similar danger to the health, safety, and security of the residents of the District as those weapons enumerated in this paragraph.

(B) The term “assault weapon” shall not include:

(i) Any antique firearm; or

(ii) Any of the following pistols, which are designed expressly for use in Olympic target shooting events, sanctioned by the International Olympic Committee and by USA Shooting, the national governing body for international shooting competition in the United States, and used for Olympic target shooting purposes:

MANUFACTURER	MODEL	CALIBER
BENELLI	MP90	.22LR
BENELLI	MP90	.32 S&W LONG
BENELLI	MP95	.22LR
BENELLI	MP95	.32 S&W LONG
HAMMERLI	280	.22LR
HAMMERLI	280	.32 S&W LONG
HAMMERLI	SP20	.22LR
HAMMERLI	SP20	.32 S&W LONG
PARDINI	GPO	.22 SHORT
PARDINI	GP-SCHUMANN	.22 SHORT
PARDINI	HP	.32 S&W LONG
PARDINI	MP	.32 S&W LONG
PARDINI	SP	.22LR
PARDINI	SPE	.22LR
WALTHER	GSP	.22LR
WALTHER	GSP	.32 S&W LONG
WALTHER	OSP	.22 SHORT
WALTHER	OSP-2000	.22 SHORT

(C) The Chief may exempt, by rule, 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 exemption of competitive pistols shall be based either on recommendations by USA Shooting consistent with the regulations

contained in the USA Shooting Official Rules or on the recommendation or rules of any other organization that the Chief considers relevant.

(4) “Chief” means the Chief of Police of the Metropolitan Police Department of the District of Columbia or his designated agent.

(5) “Crime of violence” shall have the same meaning as provided in § 23-1331(4).

(6) “Dealer's license” means a license to buy or sell, repair, trade, or otherwise deal in firearms, destructive devices, or ammunition as provided for in subchapter IV of this unit.

(7) “Destructive device” means:

(A) An explosive, incendiary, or poison gas bomb, grenade, rocket, missile, mine, or similar device;

(B) Any device by whatever name known which will, or is designed or redesigned, or may be readily converted or restored to expel a projectile by the action of an explosive or other propellant through a smooth bore barrel, except a shotgun;

(C) Any device containing tear gas or a chemically similar lacrimator or sternutator by whatever name known;

(D) Repealed.

(E) Any combination of parts designed or intended for use in converting any device into any destructive device; or from which a destructive device may be readily assembled; provided, that the term shall not include:

(i) Any pneumatic, spring, or B-B gun which expels a single projectile not exceeding .18 inch in diameter;

(ii) Any device which is neither designed nor redesigned for use as a weapon;

(iii) Any device originally a weapon which has been redesigned for use as a signaling, line throwing, or safety device; or

(iv) Any device which the Chief finds is not likely to be used as a weapon.

(8) “District” means District of Columbia.

(8A) “.50 BMG rifle” means:

(A) A rifle capable of firing a center-fire cartridge in .50 BMG caliber, including a 12.7 mm equivalent of .50 BMG and any other metric equivalent; or

(B) A copy or duplicate of any rifle described in subparagraph (A) of this paragraph, or any other rifle developed and manufactured after January 6, 2009, regardless of caliber, if such rifle is capable of firing a projectile that attains a muzzle energy of 12,000 foot-pounds or greater in any combination of bullet, propellant, case, or primer.

(9) “Firearm” means any weapon, regardless of operability, which will, or is designed or redesigned, made or remade, readily converted, restored, or repaired, or is intended to, expel a projectile or projectiles by the action of an explosive; the frame or receiver of any such device; or any firearm muffler or silencer; provided, that such term shall not include:

(A) Antique firearms; or

(B) Destructive devices;

(C) Any device used exclusively for line throwing, signaling, or safety, and required or recommended by the Coast Guard or Interstate Commerce Commission;

(D) Any device used exclusively for firing explosive rivets, stud cartridges, or similar industrial ammunition and incapable for use as a weapon; or

(E) A stun gun.

(9A) “Firearms instructor” means an individual who is certified by the Chief to be qualified to teach firearms training and safety courses.

(9B) “Intrafamily offense” shall have the same meaning as provided in [§ 16-1001\(8\)](#).

(10) “Machine gun” means any firearm which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term “machine gun” shall also include the frame or receiver of any such firearm, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a firearm into a machine gun, and any combination of parts from which a machine gun can be assembled if such parts are in the possession or under the control of a person.

(11) “Organization” means any partnership, company, corporation, or other business entity, or any group or association of 2 or more persons united for a common purpose.

(12) “Pistol” means any firearm originally designed to be fired by use of a single hand or with a barrel less than 12 inches in length.

(12A) “Place of business” means a business that is located in an immovable structure at a fixed location and that is operated and owned entirely, or in substantial part, by the firearm registrant.

(13) “Registration certificate” means a certificate validly issued pursuant to this unit evincing the registration of a firearm pursuant to this unit.

(13A)(A) “Restricted pistol bullet” means:

(i) A projectile or projectile core which may be used in a pistol and which is constructed entirely (excluding the presence of traces of other substances) from one or a combination of tungsten alloys, steel, iron, brass, bronze, beryllium copper, or depleted uranium;

(ii) A full jacketed projectile larger than .22 caliber designed and intended for use in a pistol and whose jacket has a weight of more than 25% of the total weight of the projectile; or

(iii) Ammunition for a .50 BMG rifle.

(B) The term “restricted pistol bullet” does not include:

(i) Shotgun shot required by federal or state environmental or game regulations for hunting purposes;

(ii) A frangible projectile designed for target shooting;

(iii) A projectile which the Attorney General of the United States finds is primarily intended to be used for sporting purposes; or

(iv) Any other projectile or projectile core which the Attorney General of the United States finds is intended to be used for industrial purposes, including a charge used in an oil and gas well perforating device.

(14) “Rifle” means a grooved bore firearm using a fixed metallic cartridge with a single projectile and designed or redesigned, made or remade, and intended to be fired from the shoulder.

(15) “Sawed-off shotgun” means a shotgun having a barrel of less than 18 inches in length; or a firearm made from a shotgun if such firearm as modified has an overall length of less than 26 inches or any barrel of less than 18 inches in length.

(16) “Shotgun” means a smooth bore firearm using a fixed shotgun shell with either a number of ball shot or a single projectile, and designed or redesigned, made or remade, and intended to be fired from the shoulder.

(17) “Short barreled rifle” means a rifle having any barrel less than 16 inches in length, or a firearm made from a rifle if such firearm as modified has an overall length of less than 26 inches or any barrel of less than 16 inches.

(17A) “Stun gun” means any device designed or redesigned, made or remade, or readily converted or restored, and used or intended to be used offensively or defensively to immobilize or incapacitate a person by the use of electric current or audible, optical, or electromagnetic pulse.

(18) “Weapons offense” means any violation in any jurisdiction of any law which involves the sale, purchase, transfer in any manner, receipt, acquisition, possession, having under control, use, repair, manufacture, carrying, or transportation of any firearm, ammunition, or destructive device.

Credits

(Sept. 24, 1976, D.C. Law 1-85, title I, § 101, 23 DCR 2464; Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780; Aug. 2, 1983, D.C. Law 5-19, § 2, 30 DCR 3328; Mar. 31, 2009, D.C. Law 17-372, § 3(a), 56 DCR 1365; Sept. 26, 2012, D.C. Law 19-170, § 2(a), 59 DCR 5691; Apr. 27, 2013, D.C. Law 19-295, § 2(a), 60 DCR 2623; May 19, 2017, D.C. Law 21-281, § 2(a), 64 DCR 1648.)

Notes of Decisions (12)

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DC CODE § 7-2501.01
Current through March 15, 2019

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KeyCite Yellow Flag - Negative Treatment

Unconstitutional or Preempted Prior Version Held Unconstitutional by [Palmer v. District of Columbia](#), D.D.C., July 24, 2014



KeyCite Yellow Flag - Negative Treatment Proposed Legislation

West's District of Columbia Code Annotated 2001 Edition
Division I. Government of District.
Title 7. Human Health Care and Safety. (Refs & Annos)
Subtitle J. Public Safety.
Chapter 25. Firearms Control.
Unit A. Firearms Control Regulations.
Subchapter II. Firearms and Destructive Devices.

DC ST § 7-2502.02

Formerly cited as DC ST 1981 § 6-2312

§ 7-2502.02. Registration of certain firearms prohibited.

Effective: June 16, 2015

[Currentness](#)

(a) A registration certificate shall not be issued for a:

(1) Sawed-off shotgun;

(2) Machine gun;

(3) Short-barreled rifle;

(4) Pistol not validly registered to the current registrant in the District prior to September 24, 1976, except that the prohibition on registering a pistol shall not apply to:

(A) Any organization that employs at least one commissioned special police officer or other employee licensed to carry a firearm and that arms the employee with a firearm during the employee's duty hours;

(B) A police officer who has retired from the Metropolitan Police Department;

(C) Any person who seeks to register a pistol:

(i) For use in self-defense within that person's home or place of business; or

(ii) As part of the application process for a license to carry a concealed pistol pursuant to [§ 7-2509.02](#); or

(D) A firearms instructor, or an organization that employs a firearms instructor, for the purpose of conducting firearms training.

(5) An unsafe firearm prohibited under § 7-2505.04;

(6) An assault weapon; or

(7) A .50 BMG rifle.

(b) Repealed.

Credits

(Sept. 24, 1976, D.C. Law 1-85, title II, § 202, 23 DCR 2464; Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780; May 7, 1993, D.C. Law 9-266, § 2(b), 39 DCR 5676; Mar. 31, 2009, D.C. Law 17-372, § 3(c), 56 DCR 1365; Sept. 26, 2012, D.C. Law 19-170, § 2(c), 59 DCR 5691; June 16, 2015, D.C. Law 20-279, § 2(b), 62 DCR 1944.)

Notes of Decisions (31)

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DC CODE § 7-2502.02

Current through March 15, 2019

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EXHIBIT 3



KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

West's Hawai'i Revised Statutes Annotated
Division 1. Government
Title 10. Public Safety and Internal Security
Chapter 134. Firearms, Ammunition and Dangerous Weapons
Part I. General Regulations

HRS § 134-1

§ 134-1. Definitions

Currentness

As used in this chapter, unless the context indicates otherwise:

“Acquire” means gain ownership of.

“Antique pistol or revolver” means any pistol or revolver manufactured before 1899 and any replica thereof if it either is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition or is designed or redesigned to use rimfire or conventional centerfire fixed ammunition that is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

“Assault pistol” means a semiautomatic pistol that accepts a detachable magazine and has two or more of the following characteristics:

- (1) An ammunition magazine that attaches to the pistol outside of the pistol grip;
- (2) A threaded barrel capable of accepting a barrel extender, flash suppressor, forward hand grip, or silencer;
- (3) A shroud that is attached to or partially or completely encircles the barrel and permits the shooter to hold the firearm with the second hand without being burned;
- (4) A manufactured weight of fifty ounces or more when the pistol is unloaded;
- (5) A centerfire pistol with an overall length of twelve inches or more; or
- (6) It is a semiautomatic version of an automatic firearm;

but does not include a firearm with a barrel sixteen or more inches in length, an antique pistol as defined in this section, or a curio or relic as those terms are used in [18 United States Code section 921\(a\)\(13\)](#) or [27 Code of Federal Regulations section 478.11](#).

“Automatic firearm” means any firearm that shoots, is designed to shoot, or can be readily modified to shoot automatically more than one shot, without a manual reloading, by a single function of the trigger. This term shall also include the frame or receiver of any such firearm, any part designed and intended solely and exclusively, or any combination of parts designed and intended, for use in converting a firearm into an automatic firearm, and any combination of parts from which an automatic firearm can be assembled if the parts are in the possession or under the control of a single person.

“Chief of police” means the chief of police of the counties of Hawaii, Maui, Kauai, or the city and county of Honolulu.

“Crime of violence” means any offense, as defined in title 37, that involves injury or threat of injury to the person of another, including sexual assault in the fourth degree under [section 707-733](#) and harassment by stalking under [section 711-1106.5](#).

“Electric gun” means any portable device that is electrically operated to project a missile or electromotive force. It does not include any electric livestock prod used in animal husbandry and any automatic external defibrillator used in emergency medical situations.

“Firearm” means any weapon, for which the operating force is an explosive, including but not limited to pistols, revolvers, rifles, shotguns, automatic firearms, noxious gas projectors, mortars, bombs, and cannon.

“Firearm loaded with ammunition” and “loaded firearm” means a firearm with ammunition present within the firing chamber, revolving cylinder, or within a magazine which is inserted in a firearm.

“Fugitive from justice” means any person (1) who has fled from any state, territory, the District of Columbia, or possession of the United States, to avoid prosecution for a felony or to avoid giving testimony in any criminal proceeding or (2) who has fled from any country other than the United States and is avoiding lawful extradition back to that country.

“Pistol” or “revolver” means any firearm of any shape with a barrel less than sixteen inches in length and capable of discharging loaded ammunition or any noxious gas.

“Public highway” shall have the same meaning as defined in [section 264-1\(a\)](#).

“Semiautomatic” means the mode of operation by which a firearm uses the energy of the explosive in a fixed cartridge to extract a fired cartridge and chamber a fresh cartridge with each single pull of a trigger.


Credits

Laws 1988, ch. 275, § 2; Laws 1988, ch. 271, § 2; Laws 1989, ch. 263, §§ 2, 3; [Laws 1990, ch. 195, § 1](#); [Laws 1992, ch. 286, § 1](#); [Laws 1994, ch. 204, § 2](#); [Laws 2001, ch. 252, § 2](#); [Laws 2016, ch. 55, § 1](#), eff. June 6, 2016; [Laws 2016, ch. 109, § 2](#), eff. June 22, 2016.

[Notes of Decisions \(15\)](#)

H R S § 134-1, HI ST § 134-1

Current through the end of the 2018 Second Special Session.

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West's Hawai'i Revised Statutes Annotated
Division 1. Government
Title 10. Public Safety and Internal Security
Chapter 134. Firearms, Ammunition and Dangerous Weapons
Part I. General Regulations

HRS § 134-8

§ 134-8. Ownership, etc., of automatic firearms, silencers, etc., prohibited; penalties

Currentness

(a) The manufacture, possession, sale, barter, trade, gift, transfer, or acquisition of any of the following is prohibited: assault pistols, except as provided by [section 134-4\(e\)](#); automatic firearms; rifles with barrel lengths less than sixteen inches; shotguns with barrel lengths less than eighteen inches; cannons; mufflers, silencers, or devices for deadening or muffling the sound of discharged firearms; hand grenades, dynamite, blasting caps, bombs, or bombshells, or other explosives; or any type of ammunition or any projectile component thereof coated with teflon or any other similar coating designed primarily to enhance its capability to penetrate metal or pierce protective armor; and any type of ammunition or any projectile component thereof designed or intended to explode or segment upon impact with its target.

(b) Any person who installs, removes, or alters a firearm part with the intent to convert the firearm to an automatic firearm shall be deemed to have manufactured an automatic firearm in violation of subsection (a).

(c) The manufacture, possession, sale, barter, trade, gift, transfer, or acquisition of detachable ammunition magazines with a capacity in excess of ten rounds which are designed for or capable of use with a pistol is prohibited. This subsection shall not apply to magazines originally designed to accept more than ten rounds of ammunition which have been modified to accept no more than ten rounds and which are not capable of being readily restored to a capacity of more than ten rounds.

(d) Any person violating subsection (a) or (b) shall be guilty of a class C felony and shall be imprisoned for a term of five years without probation. Any person violating subsection (c) shall be guilty of a misdemeanor except when a detachable magazine prohibited under this section is possessed while inserted into a pistol in which case the person shall be guilty of a class C felony.

Credits

Laws 1988, ch. 275, § 2; Laws 1989, ch. 261, § 6; Laws 1989, ch. 263, § 4; [Laws 1992, ch. 286, §§ 3, 4](#).

[Notes of Decisions \(13\)](#)

HRS § 134-8, HI ST § 134-8

Current through the end of the 2018 Second Special Session.

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EXHIBIT 4



KeyCite Yellow Flag - Negative Treatment

Unconstitutional or Preempted Prior Version's Validity Called into Doubt by [Kolbe v. Hogan](#), 4th Cir.(Md.), Feb. 04, 2016



KeyCite Yellow Flag - Negative Treatment Proposed Legislation

West's Annotated Code of Maryland
Criminal Law (Refs & Annos)
Title 4. Weapon Crimes
Subtitle 3. Assault Weapons and Detachable Magazines (Refs & Annos)

MD Code, Criminal Law, § 4-301
Formerly cited as MD CODE Art. 27, §36H-1

§ 4-301. Definitions

Effective: October 1, 2018

[Currentness](#)

In general

(a) In this subtitle the following words have the meanings indicated.

Assault long gun

(b) “Assault long gun” means any assault weapon listed under [§ 5-101\(r\)\(2\) of the Public Safety Article](#).

Assault pistol

(c) “Assault pistol” means any of the following firearms or a copy regardless of the producer or manufacturer:

- (1) AA Arms AP-9 semiautomatic pistol;
- (2) Bushmaster semiautomatic pistol;
- (3) Claridge HI-TEC semiautomatic pistol;
- (4) D Max Industries semiautomatic pistol;
- (5) Encom MK-IV, MP-9, or MP-45 semiautomatic pistol;
- (6) Heckler and Koch semiautomatic SP-89 pistol;
- (7) Holmes MP-83 semiautomatic pistol;

- (8) Ingram MAC 10/11 semiautomatic pistol and variations including the Partisan Avenger and the SWD Cobray;
- (9) Intratec TEC-9/DC-9 semiautomatic pistol in any centerfire variation;
- (10) P.A.W.S. type semiautomatic pistol;
- (11) Skorpion semiautomatic pistol;
- (12) Spectre double action semiautomatic pistol (Sile, F.I.E., Mitchell);
- (13) UZI semiautomatic pistol;
- (14) Weaver Arms semiautomatic Nighthawk pistol; or
- (15) Wilkinson semiautomatic “Linda” pistol.

Assault weapon

(d) “Assault weapon” means:

- (1) an assault long gun;
- (2) an assault pistol; or
- (3) a copycat weapon.

Binary trigger system

(e) “Binary trigger system” means a device that, when installed in or attached to a firearm, fires both when the trigger is pulled and on release of the trigger.

Bump stock

(f) “Bump stock” means a device that, when installed in or attached to a firearm, increases the rate of fire of the firearm by using energy from the recoil of the firearm to generate a reciprocating action that facilitates repeated activation of the trigger.

Burst trigger system

(g) “Burst trigger system” means a device that, when installed in or attached to a firearm, allows the firearm to discharge two or more shots with a single pull of the trigger by altering the trigger reset.

Copycat weapon

(h)(1) “Copycat weapon” means:

(i) a semiautomatic centerfire rifle that can accept a detachable magazine and has any two of the following:

1. a folding stock;
2. a grenade launcher or flare launcher; or
3. a flash suppressor;

(ii) a semiautomatic centerfire rifle that has a fixed magazine with the capacity to accept more than 10 rounds;

(iii) a semiautomatic centerfire rifle that has an overall length of less than 29 inches;

(iv) a semiautomatic pistol with a fixed magazine that can accept more than 10 rounds;

(v) a semiautomatic shotgun that has a folding stock; or

(vi) a shotgun with a revolving cylinder.

(2) “Copycat weapon” does not include an assault long gun or an assault pistol.

Detachable magazine

(i) “Detachable magazine” means an ammunition feeding device that can be removed readily from a firearm without requiring disassembly of the firearm action or without the use of a tool, including a bullet or cartridge.

Flash suppressor

(j) “Flash suppressor” means a device that functions, or is intended to function, to perceptibly reduce or redirect muzzle flash from the shooter's field of vision.

Hellfire trigger

(k) “Hellfire trigger” means a device that, when installed in or attached to a firearm, disengages the trigger return spring when the trigger is pulled.

Licensed firearms dealer

(l) “Licensed firearms dealer” means a person who holds a dealer's license under Title 5, Subtitle 1 of the Public Safety Article.

Rapid fire trigger activator

(m)(1) “Rapid fire trigger activator” means any device, including a removable manual or power-driven activating device, constructed so that, when installed in or attached to a firearm:

(i) the rate at which the trigger is activated increases; or

(ii) the rate of fire increases.

(2) “Rapid fire trigger activator” includes a bump stock, trigger crank, hellfire trigger, binary trigger system, burst trigger system, or a copy or a similar device, regardless of the producer or manufacturer.

(3) “Rapid fire trigger activator” does not include a semiautomatic replacement trigger that improves the performance and functionality over the stock trigger.

Trigger crank

(n) “Trigger crank” means a device that, when installed in or attached to a firearm, repeatedly activates the trigger of the firearm through the use of a crank, a lever, or any other part that is turned in a circular motion.

Credits

Added by [Acts 2002, c. 26, § 2, eff. Oct. 1, 2002](#). Amended by [Acts 2013, c. 427, § 1, eff. Oct. 1, 2013](#); [Acts 2018, c. 252, § 1, eff. Oct. 1, 2018](#).

Editors' Notes

LEGISLATIVE NOTES

Revisor's Note (Acts 2002, c. 26):

This section is new language derived without substantive change from former Art. 27, § 36H-1.

In the introductory language of this section, the former word “specified” is deleted as surplusage.

Also in the introductory language of this section, the reference to the “producer or manufacturer” is substituted for the former reference to the “company [which] produced and manufactured the firearm” for brevity.

MD Code, Criminal Law, § 4-301, MD CRIM LAW § 4-301

Current through all legislation from the 2018 Regular Session of the General Assembly

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KeyCite Yellow Flag - Negative Treatment

Unconstitutional or Preempted Prior Version's Validity Called into Doubt by [Kolbe v. Hogan](#), 4th Cir.(Md.), Feb. 04, 2016



KeyCite Yellow Flag - Negative Treatment Proposed Legislation

[West's Annotated Code of Maryland](#)

[Criminal Law \(Refs & Annos\)](#)

[Title 4. Weapon Crimes](#)

[Subtitle 3. Assault Weapons and Detachable Magazines \(Refs & Annos\)](#)

MD Code, Criminal Law, § 4-303
Formerly cited as MD CODE Art. 27, § 36H-3

§ 4-303. Assault weapons--Prohibited

Effective: October 1, 2018

[Currentness](#)

In general

(a) Except as provided in subsection (b) of this section, a person may not:

- (1) transport an assault weapon into the State; or
- (2) possess, sell, offer to sell, transfer, purchase, or receive an assault weapon.

Exception

(b)(1) A person who lawfully possessed an assault pistol before June 1, 1994, and who registered the assault pistol with the Secretary of State Police before August 1, 1994, may:

- (i) continue to possess and transport the assault pistol; or
- (ii) while carrying a court order requiring the surrender of the assault pistol, transport the assault pistol directly to a law enforcement unit, barracks, or station, a State or local law enforcement agency, or a federally licensed firearms dealer, as applicable, if the person has notified a law enforcement unit, barracks, or station that the person is transporting the assault pistol in accordance with a court order and the assault pistol is unloaded.

(2) A licensed firearms dealer may continue to possess, sell, offer for sale, or transfer an assault long gun or a copycat weapon that the licensed firearms dealer lawfully possessed on or before October 1, 2013.

(3) A person who lawfully possessed, has a purchase order for, or completed an application to purchase an assault long gun or a copycat weapon before October 1, 2013, may:

(i) possess and transport the assault long gun or copycat weapon; or

(ii) while carrying a court order requiring the surrender of the assault long gun or copycat weapon, transport the assault long gun or copycat weapon directly to a law enforcement unit, barracks, or station, a State or local law enforcement agency, or a federally licensed firearms dealer, as applicable, if the person has notified a law enforcement unit, barracks, or station that the person is transporting the assault long gun or copycat weapon in accordance with a court order and the assault long gun or copycat weapon is unloaded.

(4) A person may transport an assault weapon to or from:

(i) an ISO 17025 accredited, National Institute of Justice-approved ballistics testing laboratory; or

(ii) a facility or entity that manufactures or provides research and development testing, analysis, or engineering for personal protective equipment or vehicle protection systems.

(5) A federally licensed firearms dealer may receive and possess an assault weapon received from a person in accordance with a court order to transfer firearms under [§ 6-234 of the Criminal Procedure Article](#).

Credits

Added by [Acts 2002, c. 26, § 2, eff. Oct. 1, 2002](#). Amended by [Acts 2010, c. 712, § 1, eff. Oct. 1, 2010](#); [Acts 2013, c. 427, § 1, eff. Oct. 1, 2013](#); [Acts 2018, c. 251, § 1, eff. Oct. 1, 2018](#).

Formerly Art. 27, § 36H-3.

Editors' Notes

LEGISLATIVE NOTES

Revisor's Note (Acts 2002, c. 26):

This section is new language derived without substantive change from former Art. 27, § 36H-3.

In the introductory language of subsection (a) of this section, the former phrase “[s]ubject to the provisions of this subheading” is deleted as redundant of [§ 4-302](#) of this subtitle, which specifies that the exemptions contained in that section apply to the entire subtitle.

Also in the introductory language of subsection (a) of this section, the former effective date “June 1, 1994” is deleted as obsolete.

In subsection (a)(2) of this section, the former phrase “in the State” is deleted because the State's jurisdiction is limited to activities within the State.

Defined terms: “Assault pistol” [§ 4-301](#)

“Person” § 1-101

Notes of Decisions (7)

MD Code, Criminal Law, § 4-303, MD CRIM LAW § 4-303

Current through all legislation from the 2018 Regular Session of the General Assembly

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EXHIBIT 5



KeyCite Yellow Flag - Negative Treatment

Unconstitutional or Preempted Prior Version Held Unconstitutional by [Com. v. Beal](#), Mass., May 24, 2016



KeyCite Yellow Flag - Negative Treatment Proposed Legislation

Massachusetts General Laws Annotated

Part I. Administration of the Government (Ch. 1-182)

Title XX. Public Safety and Good Order (Ch. 133-148a)

Chapter 140. Licenses (Refs & Annos)

M.G.L.A. 140 § 121

§ 121. Firearms sales; definitions; antique firearms; application of law; exceptions

Effective: August 17, 2018

[Currentness](#)

<[Introductory paragraph of first paragraph effective until August 17, 2018. For text effective August 17, 2018, see below.]>

As used in [sections 122 to 131Q](#), inclusive, the following words shall, unless the context clearly requires otherwise, have the following meanings:--

<[Introductory paragraph of first paragraph as amended by 2018, 123, [Sec. 1](#) effective August 17, 2018. See 2018, 123, [Sec. 18](#). For text effective until August 17, 2018, see above.]>

As used in [sections 122 to 131Y](#), inclusive, the following words shall, unless the context clearly requires otherwise, have the following meanings:--

“Ammunition”, cartridges or cartridge cases, primers (igniter), bullets or propellant powder designed for use in any firearm, rifle or shotgun. The term “ammunition” shall also mean tear gas cartridges.

“Assault weapon”, shall have the same meaning as a semiautomatic assault weapon as defined in the federal Public Safety and Recreational Firearms Use Protection Act, [18 U.S.C. section 921\(a\)\(30\)](#) as appearing in such section on September 13, 1994, and shall include, but not be limited to, any of the weapons, or copies or duplicates of the weapons, of any caliber, known as: (i) Avtomat Kalashnikov (AK) (all models); (ii) Action Arms Israeli Military Industries UZI and Galil; (iii) Beretta Ar70 (SC-70); (iv) Colt AR-15; (v) Fabrique National FN/FAL, FN/LAR and FNC; (vi) SWD M-10, M-11, M-11/9 and M-12; (vii) Steyr AUG; (viii) INTRATEC TEC-9, TEC-DC9 and TEC-22; and (ix) revolving cylinder shotguns, such as, or similar to, the Street Sweeper and Striker 12; provided, however, that the term assault weapon shall not include: (i) any of the weapons, or replicas or duplicates of such weapons, specified in appendix A to [18 U.S.C. section 922](#) as appearing in such appendix on September 13, 1994, as such weapons were manufactured on October 1, 1993; (ii) any weapon that is operated by manual bolt, pump, lever or slide action; (iii) any weapon that has been rendered permanently inoperable or otherwise rendered permanently unable to be designated a semiautomatic assault weapon; (iv) any weapon that was manufactured prior to the year 1899; (v) any weapon that is an antique or relic, theatrical prop or other weapon that is not capable of firing a projectile and which is not intended for use as a functional weapon and cannot be readily modified through a combination of available parts into an operable assault weapon; (vi) any semiautomatic rifle that cannot accept a detachable magazine that holds more than five rounds of ammunition; or (vii) any semiautomatic shotgun that cannot hold more than five rounds of ammunition in a fixed or detachable magazine.

<[Definition of “Bump stock” in first paragraph applicable as provided by 2017, 110, [Sec. 53](#).]>

“Bump stock”, any device for a weapon that increases the rate of fire achievable with such weapon by using energy from the recoil of the weapon to generate a reciprocating action that facilitates repeated activation of the trigger.

“Conviction”, a finding or verdict of guilt or a plea of guilty, whether or not final sentence is imposed.

<[Definition of “Court” inserted following definition of “Conviction” in first paragraph by 2018, 123, [Sec. 2](#) effective August 17, 2018. See 2018, 123, [Sec. 18](#).]>

“Court”, as used in [sections 131R to 131Y](#), inclusive, the division of the district court department or the Boston municipal court department of the trial court having jurisdiction in the city or town in which the respondent resides.

“Deceptive weapon device”, any device that is intended to convey the presence of a rifle, shotgun or firearm that is used in the commission of a violent crime, as defined in this section, and which presents an objective threat of immediate death or serious bodily harm to a person of reasonable and average sensibility.

<[Definitions of “Extreme risk protection order” and “Family or household member” inserted following definition of “Deceptive weapon device” in first paragraph by 2018, 123, [Sec. 3](#) effective August 17, 2018. See 2018, 123, [Sec. 18](#).]>

“Extreme risk protection order”, an order by the court ordering the immediate suspension and surrender of any license to carry firearms or firearm identification card which the respondent may hold and ordering the respondent to surrender all firearms, rifles, shotguns, machine guns, weapons or ammunition which the respondent then controls, owns or possesses; provided, however, that an extreme risk protection order shall be in effect for up to 1 year from the date of issuance and may be renewed upon petition.

“Family or household member”, a person who: (i) is or was married to the respondent; (ii) is or was residing with the respondent in the same household; (iii) is or was related by blood or marriage to the respondent; (iv) has or is having a child in common with the respondent, regardless of whether they have ever married or lived together; (v) is or has been in a substantive dating relationship with the respondent; or (vi) is or has been engaged to the respondent.

<[Definition of “Firearm” in first paragraph effective until July 3, 2018. For text effective July 3, 2018, see below.]>

“Firearm”, a pistol, revolver or other weapon of any description, loaded or unloaded, from which a shot or bullet can be discharged and of which the length of the barrel or barrels is less than 16 inches or 18 inches in the case of a shotgun as originally manufactured; provided, however, that the term firearm shall not include any weapon that is: (i) constructed in a shape that does not resemble a handgun, short-barreled rifle or short-barreled shotgun including, but not limited to, covert weapons that resemble key-chains, pens, cigarette-lighters or cigarette-packages; or (ii) not detectable as a weapon or potential weapon by x-ray machines commonly used at airports or walk- through metal detectors.

<[Definition of “Firearm” in first paragraph as amended by 2018, 123, [Sec. 4](#) effective July 3, 2018. For text effective until July 3, 2018, see above.]>

“Firearm”, a stun gun or a pistol, revolver or other weapon of any description, loaded or unloaded, from which a shot or bullet can be discharged and of which the length of the barrel or barrels is less than 16 inches or 18 inches in the case of a shotgun as originally manufactured; provided, however, that the term firearm shall not include any weapon that is: (i) constructed in a shape that does not resemble a handgun, short-barreled rifle or short-barreled shotgun including, but not limited to, covert weapons that resemble key-chains, pens, cigarette-lighters or cigarette-packages; or (ii) not detectable as a weapon or potential weapon by x-ray machines commonly used at airports or walk- through metal detectors.

“Gunsmith”, any person who engages in the business of repairing, altering, cleaning, polishing, engraving, blueing or performing any mechanical operation on any firearm, rifle, shotgun or machine gun.

“Imitation firearm”, any weapon which is designed, manufactured or altered in such a way as to render it incapable of discharging a shot or bullet.

“Large capacity feeding device”, (i) a fixed or detachable magazine, box, drum, feed strip or similar device capable of accepting, or that can be readily converted to accept, more than ten rounds of ammunition or more than five shotgun shells; or (ii) a large capacity ammunition feeding device as defined in the federal Public Safety and Recreational Firearms Use Protection Act, [18 U.S.C. section 921\(a\)\(31\)](#) as appearing in such section on September 13, 1994. The term “large capacity feeding device” shall not include an attached tubular device designed to accept, and capable of operating only with, .22 caliber ammunition.

“Large capacity weapon”, any firearm, rifle or shotgun: (i) that is semiautomatic with a fixed large capacity feeding device; (ii) that is semiautomatic and capable of accepting, or readily modifiable to accept, any detachable large capacity feeding device; (iii) that employs a rotating cylinder capable of accepting more than ten rounds of ammunition in a rifle or firearm and more than five shotgun shells in the case of a shotgun or firearm; or (iv) that is an assault weapon. The term “large capacity weapon” shall be a secondary designation and shall apply to a weapon in addition to its primary designation as a firearm, rifle or shotgun and shall not include: (i) any weapon that was manufactured in or prior to the year 1899; (ii) any weapon that operates by manual bolt, pump, lever or slide action; (iii) any weapon that is a single-shot weapon; (iv) any weapon that has been modified so as to render it permanently inoperable or otherwise rendered permanently unable to be designated a large capacity weapon; or (v) any weapon that is an antique or relic, theatrical prop or other weapon that is not capable of firing a projectile and which is not intended for use as a functional weapon and cannot be readily modified through a combination of available parts into an operable large capacity weapon.

“Length of barrel” or “barrel length”, that portion of a firearm, rifle, shotgun or machine gun through which a shot or bullet is driven, guided or stabilized and shall include the chamber.

“Licensing authority”, the chief of police or the board or officer having control of the police in a city or town, or persons authorized by them.

<[Definition of “Machine gun” in first paragraph applicable as provided by 2017, 110, [Sec. 53](#).]>

“Machine gun”, a weapon of any description, by whatever name known, loaded or unloaded, from which a number of shots or bullets may be rapidly or automatically discharged by one continuous activation of the trigger, including a submachine gun; provided, however, that “machine gun” shall include bump stocks and trigger cranks.

<[Definitions of “Petition” and “Petitioner” inserted following definition of “Machine gun” in first paragraph by 2018, 123, [Sec. 5](#) effective August 17, 2018. See 2018, 123, [Sec. 18](#).]>

“Petition”, a request filed with the court by a petitioner for the issuance or renewal of an extreme risk protection order.

“Petitioner”, the family or household member, or the licensing authority of the municipality where the respondent resides, filing a petition.

“Purchase” and “sale” shall include exchange; the word “purchaser” shall include exchanger; and the verbs “sell” and “purchase”, in their different forms and tenses, shall include the verb exchange in its appropriate form and tense.

<[Definition of “Respondent” inserted following definition of “Purchase” in first paragraph by 2018, 123, [Sec. 6](#) effective August 17, 2018. See 2018, 123, [Sec. 18](#).]>

“Respondent”, the person identified as the respondent in a petition against whom an extreme risk protection order is sought.

“Rifle”, a weapon having a rifled bore with a barrel length equal to or greater than 16 inches and capable of discharging a shot or bullet for each pull of the trigger.

“Sawed-off shotgun”, any weapon made from a shotgun, whether by alteration, modification or otherwise, if such weapon as modified has one or more barrels less than 18 inches in length or as modified has an overall length of less than 26 inches.

“Semiautomatic”, capable of utilizing a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and requiring a separate pull of the trigger to fire each cartridge.

“Shotgun”, a weapon having a smooth bore with a barrel length equal to or greater than 18 inches with an overall length equal to or greater than 26 inches, and capable of discharging a shot or bullet for each pull of the trigger.

<[Definitions of “Stun gun” and “Substantive dating relationship” inserted following definition of “Shotgun” in first paragraph by 2018, 123, [Sec. 7](#) effective July 3, 2018.]>

“Stun gun”, a portable device or weapon, regardless of whether it passes an electrical shock by means of a dart or projectile via a wire lead, from which an electrical current, impulse, wave or beam that is designed to incapacitate temporarily, injure or kill may be directed.

“Substantive dating relationship”, a relationship as determined by the court after consideration of the following factors: (i) the length of time of the relationship; (ii) the type of relationship; (iii) the frequency of interaction between the parties; and (iv) if the relationship has been terminated by either person, the length of time elapsed since the termination of the relationship.

<[Definition of “Trigger crank” in first paragraph applicable as provided by 2017, 110, [Sec. 53](#).]>

“Trigger crank”, any device to be attached to a weapon that repeatedly activates the trigger of the weapon through the use of a lever or other part that is turned in a circular motion; provided, however, that “trigger crank” shall not include any weapon initially designed and manufactured to fire through the use of a crank or lever.

“Violent crime”, shall mean any crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use or possession of a deadly weapon that would be punishable by imprisonment for such term if committed by an adult, that: (i) has as an element the use, attempted use or threatened use of physical force or

a deadly weapon against the person of another; (ii) is burglary, extortion, arson or kidnapping; (iii) involves the use of explosives; or (iv) otherwise involves conduct that presents a serious risk of physical injury to another.

“Weapon”, any rifle, shotgun or firearm.

Where the local licensing authority has the power to issue licenses or cards under this chapter, but no such licensing authority exists, any resident or applicant may apply for such license or firearm identification card directly to the colonel of state police and said colonel shall for this purpose be the licensing authority.

The provisions of [sections 122 to 129D](#), inclusive, and [sections 131, 131A, 131B and 131E](#) shall not apply to:

(A) any firearm, rifle or shotgun manufactured in or prior to the year 1899;

(B) any replica of any firearm, rifle or shotgun described in clause (A) if such replica: (i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition; or (ii) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade; and

(C) manufacturers or wholesalers of firearms, rifles, shotguns or machine guns.


Credits

Amended by St.1934, c. 359, § 1; St.1957, c. 688, § 4; St.1959, c. 296, § 1; St.1960, c. 186; St.1968, c. 737, § 1; St.1969, c. 799, § 1; St.1971, c. 456, § 1; St.1973, c. 892, § 1; St.1983, c. 516, § 1; St.1984, c. 116, § 1; [St.1989, c. 433](#); [St.1990, c. 511, § 1](#); [St.1996, c. 151, §§ 300, 301](#); [St.1998, c. 180, § 8](#); [St.1999, c. 1, § 1](#); [St.2004, c. 150, §§ 1 to 3, eff. Sept. 13, 2004](#); [St.2014, c. 284, §§ 19, eff. Jan. 1, 2015](#); [St.2014, c. 284, §§ 20, 21, eff. Aug. 13, 2014](#); [St.2017, c. 110, §§ 18 to 20, eff. Feb. 1, 2018](#); [St.2018, c. 123, §§ 1 to 3, 5, 6, eff. Aug. 17, 2018](#); [St.2018, c. 123, §§ 4, 7, eff. July 3, 2018](#).

[Notes of Decisions \(110\)](#)

M.G.L.A. 140 § 121, MA ST 140 § 121

Current through the 2018 2nd Annual Session

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Massachusetts General Laws Annotated
Part I. Administration of the Government (Ch. 1-182)
Title XX. Public Safety and Good Order (Ch. 133-148a)
Chapter 140. Licenses (Refs & Annos)

M.G.L.A. 140 § 131M

§ 131M. Assault weapon or large capacity feeding device not lawfully
possessed on September 13, 1994; sale, transfer or possession; punishment

Effective: August 13, 2014

[Currentness](#)

No person shall sell, offer for sale, transfer or possess an assault weapon or a large capacity feeding device that was not otherwise lawfully possessed on September 13, 1994. Whoever not being licensed under the provisions of [section 122](#) violates the provisions of this section shall be punished, for a first offense, by a fine of not less than \$1,000 nor more than \$10,000 or by imprisonment for not less than one year nor more than ten years, or by both such fine and imprisonment, and for a second offense, by a fine of not less than \$5,000 nor more than \$15,000 or by imprisonment for not less than five years nor more than 15 years, or by both such fine and imprisonment.

The provisions of this section shall not apply to: (i) the possession by a law enforcement officer; or (ii) the possession by an individual who is retired from service with a law enforcement agency and is not otherwise prohibited from receiving such a weapon or feeding device from such agency upon retirement.

Credits

Added by [St.1998, c. 180, § 47](#). Amended by [St.2014, c. 284, § 65, eff. Aug. 13, 2014](#).

M.G.L.A. 140 § 131M, MA ST 140 § 131M
Current through the 2018 2nd Annual Session

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EXHIBIT 6



KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

New Jersey Statutes Annotated

Title 2C. The New Jersey Code of Criminal Justice (Refs & Annos)

Subtitle 2. Definition of Specific Offenses

Part 5. Offenses Against Public Order, Health and Decency

Chapter 39. Firearms, Other Dangerous Weapons and Instruments of Crime (Refs & Annos)

N.J.S.A. 2C:39-1

2C:39-1. Definitions

Effective: November 8, 2018

[Currentness](#)

Definitions. The following definitions apply to this chapter and to chapter 58:

- a. "Antique firearm" means any rifle or shotgun and "antique cannon" means a destructive device defined in paragraph (3) of subsection c. of this section, if the rifle, shotgun or destructive device, as the case may be, is incapable of being fired or discharged, or which does not fire fixed ammunition, regardless of date of manufacture, or was manufactured before 1898 for which cartridge ammunition is not commercially available, and is possessed as a curiosity or ornament or for its historical significance or value.
- b. "Deface" means to remove, deface, cover, alter or destroy the name of the maker, model designation, manufacturer's serial number or any other distinguishing identification mark or number on any firearm.
- c. "Destructive device" means any device, instrument or object designed to explode or produce uncontrolled combustion, including (1) any explosive or incendiary bomb, mine or grenade; (2) any rocket having a propellant charge of more than four ounces or any missile having an explosive or incendiary charge of more than one-quarter of an ounce; (3) any weapon capable of firing a projectile of a caliber greater than 60 caliber, except a shotgun or shotgun ammunition generally recognized as suitable for sporting purposes; (4) any Molotov cocktail or other device consisting of a breakable container containing flammable liquid and having a wick or similar device capable of being ignited. The term does not include any device manufactured for the purpose of illumination, distress signaling, line-throwing, safety or similar purposes.
- d. "Dispose of" means to give, give away, lease, loan, keep for sale, offer, offer for sale, sell, transfer, or otherwise transfer possession.
- e. "Explosive" means any chemical compound or mixture that is commonly used or is possessed for the purpose of producing an explosion and which contains any oxidizing and combustible materials or other ingredients in such proportions, quantities or packing that an ignition by fire, by friction, by concussion or by detonation of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects. The term shall not include small arms ammunition, or explosives in the form prescribed by the official United States Pharmacopoeia.

f. "Firearm" means any handgun, rifle, shotgun, machine gun, automatic or semi-automatic rifle, or any gun, device or instrument in the nature of a weapon from which may be fired or ejected any solid projectable ball, slug, pellet, missile or bullet, or any gas, vapor or other noxious thing, by means of a cartridge or shell or by the action of an explosive or the igniting of flammable or explosive substances. It shall also include, without limitation, any firearm which is in the nature of an air gun, spring gun or pistol or other weapon of a similar nature in which the propelling force is a spring, elastic band, carbon dioxide, compressed or other gas or vapor, air or compressed air, or is ignited by compressed air, and ejecting a bullet or missile smaller than three-eighths of an inch in diameter, with sufficient force to injure a person.

g. "Firearm silencer" means any instrument, attachment, weapon or appliance for causing the firing of any gun, revolver, pistol or other firearm to be silent, or intended to lessen or muffle the noise of the firing of any gun, revolver, pistol or other firearm.

h. "Gravity knife" means any knife which has a blade which is released from the handle or sheath thereof by the force of gravity or the application of centrifugal force.

i. "Machine gun" means any firearm, mechanism or instrument not requiring that the trigger be pressed for each shot and having a reservoir, belt or other means of storing and carrying ammunition which can be loaded into the firearm, mechanism or instrument and fired therefrom. A machine gun also shall include, without limitation, any firearm with a trigger crank attached.

j. "Manufacturer" means any person who receives or obtains raw materials or parts and processes them into firearms or finished parts of firearms, except a person who exclusively processes grips, stocks and other nonmetal parts of firearms. The term does not include a person who repairs existing firearms or receives new and used raw materials or parts solely for the repair of existing firearms.

k. "Handgun" means any pistol, revolver or other firearm originally designed or manufactured to be fired by the use of a single hand.

l. "Retail dealer" means any person including a gunsmith, except a manufacturer or a wholesale dealer, who sells, transfers or assigns for a fee or profit any firearm or parts of firearms or ammunition which he has purchased or obtained with the intention, or for the purpose, of reselling or reassigning to persons who are reasonably understood to be the ultimate consumers, and includes any person who is engaged in the business of repairing firearms or who sells any firearm to satisfy a debt secured by the pledge of a firearm.

m. "Rifle" means any firearm designed to be fired from the shoulder and using the energy of the explosive in a fixed metallic cartridge to fire a single projectile through a rifled bore for each single pull of the trigger.

n. "Shotgun" means any firearm designed to be fired from the shoulder and using the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shots or a single projectile for each pull of the trigger, or any firearm designed to be fired from the shoulder which does not fire fixed ammunition.

o. "Sawed-off shotgun" means any shotgun having a barrel or barrels of less than 18 inches in length measured from the breech to the muzzle, or a rifle having a barrel or barrels of less than 16 inches in length measured from the breech to the muzzle, or any firearm made from a rifle or a shotgun, whether by alteration, or otherwise, if such firearm as modified has an overall length of less than 26 inches.

p. "Switchblade knife" means any knife or similar device which has a blade which opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife.

q. "Superintendent" means the Superintendent of the State Police.

r. "Weapon" means anything readily capable of lethal use or of inflicting serious bodily injury. The term includes, but is not limited to, all (1) firearms, even though not loaded or lacking a clip or other component to render them immediately operable; (2) components which can be readily assembled into a weapon; (3) gravity knives, switchblade knives, daggers, dirks, stilettos, or other dangerous knives, billies, blackjacks, bludgeons, metal knuckles, sandclubs, slingshots, cesti or similar leather bands studded with metal filings or razor blades imbedded in wood; and (4) stun guns; and any weapon or other device which projects, releases, or emits tear gas or any other substance intended to produce temporary physical discomfort or permanent injury through being vaporized or otherwise dispensed in the air.

s. "Wholesale dealer" means any person, except a manufacturer, who sells, transfers, or assigns firearms, or parts of firearms, to persons who are reasonably understood not to be the ultimate consumers, and includes persons who receive finished parts of firearms and assemble them into completed or partially completed firearms, in furtherance of such purpose, except that it shall not include those persons dealing exclusively in grips, stocks and other nonmetal parts of firearms.

t. "Stun gun" means any weapon or other device which emits an electrical charge or current intended to temporarily or permanently disable a person.

u. "Ballistic knife" means any weapon or other device capable of lethal use and which can propel a knife blade.

v. "Imitation firearm" means an object or device reasonably capable of being mistaken for a firearm.

w. "Assault firearm" means:

(1) The following firearms:

Algimec AGM1 type

Any shotgun with a revolving cylinder such as the "Street Sweeper" or "Striker 12"

Armalite AR-180 type

Australian Automatic Arms SAR

Avtomat Kalashnikov type semi-automatic firearms

Beretta AR-70 and BM59 semi-automatic firearms

Bushmaster Assault Rifle

Calico M-900 Assault carbine and M-900

CETME G3

Chartered Industries of Singapore SR-88 type

Colt AR-15 and CAR-15 series

Daewoo K-1, K-2, Max 1 and Max 2, AR 100 types

Demro TAC-1 carbine type

Encom MP-9 and MP-45 carbine types

FAMAS MAS223 types

FN-FAL, FN-LAR, or FN-FNC type semi-automatic firearms

Franchi SPAS 12 and LAW 12 shotguns

G3SA type

Galil type Heckler and Koch HK91, HK93, HK94, MP5, PSG-1

Intratec TEC 9 and 22 semi-automatic firearms

M1 carbine type

M14S type

MAC 10, MAC 11, MAC 11-9mm carbine type firearms

PJK M-68 carbine type

Plainfield Machine Company Carbine

Ruger K-Mini-14/5F and Mini-14/5RF

SIG AMT, SIG 550SP, SIG 551SP, SIG PE-57 types

SKS with detachable magazine type

Spectre Auto carbine type

Springfield Armory BM59 and SAR-48 type

Sterling MK-6, MK-7 and SAR types

Steyr A.U.G. semi-automatic firearms

USAS 12 semi-automatic type shotgun

Uzi type semi-automatic firearms

Valmet M62, M71S, M76, or M78 type semi-automatic firearms

Weaver Arm Nighthawk.

(2) Any firearm manufactured under any designation which is substantially identical to any of the firearms listed above.

(3) A semi-automatic shotgun with either a magazine capacity exceeding six rounds, a pistol grip, or a folding stock.

(4) A semi-automatic rifle with a fixed magazine capacity exceeding 10 rounds. "Assault firearm" shall not include a semi-automatic rifle which has an attached tubular device and which is capable of operating only with .22 caliber rimfire ammunition.

(5) A part or combination of parts designed or intended to convert a firearm into an assault firearm, or any combination of parts from which an assault firearm may be readily assembled if those parts are in the possession or under the control of the same person.

(6) A firearm with a bump stock attached.

x. "Semi-automatic" means a firearm which fires a single projectile for each single pull of the trigger and is self-reloading or automatically chambers a round, cartridge, or bullet.

y. "Large capacity ammunition magazine" means a box, drum, tube or other container which is capable of holding more than 10 rounds of ammunition to be fed continuously and directly therefrom into a semi-automatic firearm. The term shall not include an attached tubular device which is capable of holding only .22 caliber rimfire ammunition.

z. "Pistol grip" means a well-defined handle, similar to that found on a handgun, that protrudes conspicuously beneath the action of the weapon, and which permits the shotgun to be held and fired with one hand.

aa. "Antique handgun" means a handgun manufactured before 1898, or a replica thereof, which is recognized as being historical in nature or of historical significance and either (1) utilizes a match, friction, flint, or percussion ignition, or

which utilizes a pin-fire cartridge in which the pin is part of the cartridge or (2) does not fire fixed ammunition or for which cartridge ammunition is not commercially available.

bb. “Trigger lock” means a commercially available device approved by the Superintendent of State Police which is operated with a key or combination lock that prevents a firearm from being discharged while the device is attached to the firearm. It may include, but need not be limited to, devices that obstruct the barrel or cylinder of the firearm, as well as devices that immobilize the trigger.

cc. “Trigger locking device” means a device that, if installed on a firearm and secured by means of a key or mechanically, electronically or electromechanically operated combination lock, prevents the firearm from being discharged without first deactivating or removing the device by means of a key or mechanically, electronically or electromechanically operated combination lock.

dd. “Personalized handgun” means a handgun which incorporates within its design, and as part of its original manufacture, technology which automatically limits its operational use and which cannot be readily deactivated, so that it may only be fired by an authorized or recognized user. The technology limiting the handgun's operational use may include, but not be limited to: radio frequency tagging, touch memory, remote control, fingerprint, magnetic encoding and other automatic user identification systems utilizing biometric, mechanical or electronic systems. No make or model of a handgun shall be deemed to be a “personalized handgun” unless the Attorney General has determined, through testing or other reasonable means, that the handgun meets any reliability standards that the manufacturer may require for its commercially available handguns that are not personalized or, if the manufacturer has no such reliability standards, the handgun meets the reliability standards generally used in the industry for commercially available handguns.

ee. “Bump stock” means any device or instrument for a firearm that increases the rate of fire achievable with the firearm by using energy from the recoil of the firearm to generate a reciprocating action that facilitates repeated activation of the trigger.

ff. “Trigger crank” means any device or instrument to be attached to a firearm that repeatedly activates the trigger of the firearm through the use of a lever or other part that is turned in a circular motion; provided, however, the term shall not include any weapon initially designed and manufactured to fire through the use of a crank or lever.

gg. “Armor piercing ammunition” means: (1) a projectile or projectile core which may be used in a handgun and is constructed entirely, excluding the presence of traces of other substances, from one or a combination of tungsten alloys, steel, iron, brass, bronze, beryllium copper, or depleted uranium; or (2) a full jacketed projectile larger than .22 caliber designed and intended for use in a handgun and whose jacket has a weight of more than 25 percent of the total weight of the projectile. “Armor piercing ammunition” shall not include shotgun shot required by federal or State environmental or game regulations for hunting purposes, a frangible projectile designed for target shooting, a projectile which the United States Attorney General finds is primarily intended to be used for sporting purposes, or any other projectile or projectile core which the United States Attorney General finds is intended to be used for industrial purposes, including a charge used in an oil gas well perforating device.

hh. “Covert firearm” means any firearm that is constructed in a shape or configuration such that it does not resemble a handgun, rifle, shotgun, or machine gun including, but not limited to, a firearm that resembles a key-chain, pen, cigarette lighter, cigarette package, cellphone, smart phone, wallet, or cane.

ii. “Undetectable firearm” means a firearm that: (1) after removal of all parts other than major components, is not as detectable as the Security Exemplar, by walk-through metal detectors calibrated and operated to detect the Security Exemplar; or (2) includes a major component which, if the firearm were subjected to inspection by the types of detection devices commonly used at airports for security screening, would not generate an image that accurately depicts the shape of the component. “Undetectable firearm” shall not be construed to include a firearm subject to the provisions of paragraphs (3) through (6) of subsection (p) of 18 U.S.C. s.922.

jj. “Major component” means the slide or cylinder or the frame or receiver of a firearm and, in the case of a rifle or shotgun, also includes the barrel.

kk. “Security Exemplar” means the Security Exemplar fabricated in accordance with subparagraph (C) of paragraph (2) of subsection (p) of 18 U.S.C. s.922.

Credits

L.1978, c. 95, § 2C:39-1, eff. Sept. 1, 1979. Amended by L.1981, c. 363, § 1, eff. Dec. 30, 1981; L.1983, c. 479, § 1, eff. Jan. 12, 1984; L.1985, c. 360, § 1, eff. Nov. 12, 1985; L.1987, c. 228, § 1, eff. July 30, 1987; L.1989, c. 120, § 1, eff. Aug. 1, 1989; L.1990, c. 32, § 1, eff. May 30, 1990; L.1999, c. 233, § 1, eff. Jan. 1, 2000; L.1999, c. 255, § 1, eff. Oct. 15, 1999; L.2002, c. 130, § 5, eff. Dec. 23, 2002; L.2017, c. 323, § 1, eff. Jan. 16, 2018; L.2018, c. 38, § 1, eff. June 13, 2018; L.2018, c. 39, § 1, eff. June 13, 2018; L.2018, c. 138, § 1, eff. Nov. 8, 2018.

Editors' Notes

2019 Electronic Update

ASSEMBLY JUDICIARY COMMITTEE STATEMENT WITH COMMITTEE AMENDMENTS

Senate Bill No. 2465 (First Reprint)--L.2018, c. 138

DATED: SEPTEMBER 17, 2018

The Assembly Judiciary Committee reports favorably and with committee amendments Senate Bill No. 2465 (1R).

This bill, as amended, would establish the following crimes: (1) purchasing firearm parts to unlawfully manufacture firearms without a serial number; (2) manufacturing or possessing covert or undetectable firearms; and (3) manufacturing or facilitating the manufacture of firearms using a three-dimensional printer.

COVERT AND UNDETECTABLE FIREARMS (SECTIONS 1, 2 AND 3 OF THE BILL)

This bill, as amended, makes it a crime of the third degree to: (1) manufacture, cause to be manufactured, transport, ship, sell, or dispose of any covert or undetectable firearm; (2) possess any covert or undetectable firearm; or (3) possess a firearm enclosed in a container or covering that is designed or modified to allow the firearm to be fired while so enclosed and that disguises or obscures the shape of the firearm such that it does not resemble a handgun, rifle, shotgun, or machine gun.

The bill defines “covert firearm” as any firearm that is constructed in a shape or configuration such that it does not resemble a handgun, rifle, shotgun, or machine gun including, but not limited to, a firearm that resembles a key-chain, pen, cigarette lighter, cigarette package, cellphone, smart phone, wallet, or cane. The bill defines “undetectable firearm” as a firearm constructed entirely of non-metal substances, or a firearm that does not include at least one major component, such as the barrel, slide, cylinder, frame or receiver of the firearm, that is made entirely of metal such that, if the firearm were subjected to inspection by the types of detection devices commonly used at airports for security screening, it would not generate an image that accurately depicts the shape of the component.

FIREARMS WITHOUT SERIAL NUMBERS (SECTION 3 OF THE BILL)

This bill, as amended, makes it a crime of the third degree to purchase firearm parts to illegally manufacture a firearm without a serial number, also known as a “ghost gun.” Specifically, the bill prohibits a person who, with purpose to manufacture or otherwise assemble a firearm and without being registered or licensed to do so, from purchasing or otherwise obtaining separately or as part of a kit: (1) a firearm frame or firearm receiver which is not imprinted with a serial number that is registered with a federally licensed manufacturer, or (2) any combination of parts from which a firearm without a serial number may be readily manufactured or otherwise assembled, but which does not have the capacity to function as a firearm unless manufactured or otherwise assembled.

Under the bill, “firearm frame or firearm receiver” is defined as the part of a firearm that provides housing for the firearm’s internal components, such as the hammer, bolt or breechblock, action, and firing mechanism, and includes without limitation any object or part which is not a firearm frame or receiver in finished form but is designed or intended to be used for that purpose and which may readily be made into a firearm frame or receiver through milling or other means.

Under current law, a person who manufactures a handgun, rifle, or shotgun without being licensed to do so is guilty of a fourth degree crime. The manufacture of a machine gun, sawed-off shotgun, or assault firearm without a license to do so is a crime of the third degree.

A violation of the bill’s provisions is not to merge with any other criminal conviction and a court is to impose separate sentences for a violation of the bill’s provisions and any other criminal offense.

THREE-DIMENSIONAL PRINTING (SECTION 3 OF THE BILL)

The bill, as amended, makes it a crime of the third degree to manufacture or facilitate the manufacture of a firearm using a three-dimensional printer. More specifically it would be a crime for: (1) a person who is not registered or licensed to do so as a manufacturer as provided in chapter 58 of Title 2C of the New Jersey Statutes, to use a three-dimensional printer or similar device to manufacture or produce a firearm, firearm receiver, magazine, or firearm component; or (2) a person to distribute by any means, including the Internet, to a person in New Jersey who is not registered or licensed as a manufacturer as provided in chapter 58 of Title 2C of the New Jersey Statutes, digital instructions in the form of computer-aided design files or other code or instructions stored and displayed in electronic format as a digital model that may be used to program a three-dimensional printer to manufacture or produce a firearm, firearm receiver, magazine, or firearm component.

The bill defines “three-dimensional printer” as a computer or computer-driven machine or device capable of producing a three-dimensional object from a digital model; and “distribute” means to sell, or to manufacture, give, provide, lend, trade, mail, deliver, publish, circulate, disseminate, present, exhibit, display, share,

advertise, offer, or make available via the Internet or by any other means, whether for pecuniary gain or not, and includes an agreement or attempt to distribute.

A crime of the third degree is punishable by a term of incarceration of three to five years, a fine of up to \$15,000, or both.

The committee made technical amendments to the bill to conform the statute to the provisions of a recent enactment, P.L.2018, c.38, concerning armor piercing ammunition.

As reported by the committee, this bill is identical to Assembly Bill No. 3129 (1R) which was also reported by the committee on this date.

COMMITTEE AMENDMENTS:

The committee amendments:

1. Insert new section 1 amending N.J.S.2C:39-1 to add definitions of “covert firearm” and “undetectable firearm.”

2. Insert new section 2 amending [N.J.S.2C:39-3](#) making it a crime of the third degree to possess any covert firearm, undetectable firearm, or firearm enclosed in a container or covering that is designed or modified to allow the firearm to be fired while so enclosed and that disguises or obscures the shape of the firearm such that it does not resemble a handgun, rifle, shotgun, or machine gun.

3. Amend section 3 (amends [N.J.S.2C:39-9](#)) as follows:

(a) Change the term “untraceable firearm” to “firearm without a serial number.”

(b) Make it a crime of third degree if a person, with the purpose to manufacture or otherwise assemble a firearm and without being registered or licensed under current law, purchases or otherwise obtains separately or as part of a kit: (1) a firearm frame or firearm receiver which is not imprinted with a serial number registered with a federally licensed manufacturer, or (2) any combination of parts from which a firearm without a serial number may be manufactured or otherwise assembled, but which does not have the capacity to function as a firearm unless manufactured or otherwise assembled. As introduced, the bill had made it a crime of the third degree if a person purchased separately or as a kit any combination of parts from which a firearm may be readily assembled with the purpose to manufacture an untraceable firearm.

(c) Remove the definition of “untraceable firearm” and add the definition of “firearm frame or firearm receiver.”

(d) Create a new third degree crime of manufacturing or facilitating the manufacture of a firearm using a three-dimensional printer and defines three-dimensional printer.

(e) Make it a crime of the third degree to manufacture, cause to be manufactured, transport, ship, sell, or dispose of any covert firearm or undetectable firearm.

4. Renumber the effective date as section 4 of the bill.

5. Replace the title and synopsis to reflect the amendments.

6. Make technical amendments to the bill to conform N.J.S.2C:39- 9 to P.L.2018, c.38.

2019 Electronic Update

ASSEMBLY JUDICIARY COMMITTEE STATEMENT WITH COMMITTEE AMENDMENTS

Assembly Bill No. 2759--L.2018, c. 38

DATED: FEBRUARY 28, 2018

The Assembly Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 2759.

As amended and reported by the committee, Assembly Bill No. 2759 makes it a crime of the fourth degree to possess a new generation of handgun ammunition which poses a special threat to the law enforcement community because it has the capacity to breach or penetrate body armor.

Under current federal and State law, the possession of hollow nose or dum-dum bullets is prohibited, as is the possession of bullets which are Teflon-coated or which have specially hardened metal jackets or cores.

Police officers have encountered a new and highly destructive bullet. The SS190AP ammunition for the Five-seveN Tactical handgun is uniquely designed. It is a full metal jacketed bullet, but utilizes two metal inserts. The tip of the bullet has a steel penetrator which is followed by an aluminum core. The weight relationship between the two metals causes the bullet to tumble in soft body tissue, resulting in massive and, in many instances, deadly wounds.

But it is not just the substantial body trauma these bullets can cause that makes them a special threat to the law enforcement community. When fired from the Five-seveN handgun, the SS190AP bullet can penetrate 48 layers of Kevlar, the protective material used to make many types of body armor.

This amended bill prohibits individuals, other than law enforcement officers or other statutorily exempted parties such as members of the Armed Forces of the United States and licensed dealers who sell these types of ammunition to military or law enforcement agencies, from legally possessing ammunition designed and constructed like the SS190AP bullet that can penetrate body armor. Violators would be guilty of a crime of the fourth degree, which is punishable by a fine of not more than \$10,000, imprisonment for a term of not more than 18 months, or both.

COMMITTEE AMENDMENTS:

The committee amended the bill to make a technical correction to update a provision of the bill to reflect the changes made pursuant to P.L.2017, c.323.

SENATE LAW, PUBLIC SAFETY AND DEFENSE COMMITTEE STATEMENT

Senate, No. 841--L. 1989, c. 120

Senate Bill 841, as amended, prohibits as a crime of the fourth degree under N.J.S. 2C:39-4 the possession of an imitation firearm under circumstances that would lead an observer to reasonably believe that it is possessed for an unlawful purpose. “Imitation firearm” is defined by the bill as an object or device reasonably capable of being mistaken for a firearm.

Prior to being amended, the bill prohibited the possession of an imitation firearm under N.J.S. 2C:39-5 in circumstances not manifestly appropriate for such uses as it may have.

This bill was pre-filed for introduction in the 1988 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

Assembly, Nos. 2626, 2807 and Senate, No. 2108--L.1987, c. 228

The Senate Law, Public Safety and Defense Committee favorably reports the Assembly Committee Substitute for Assembly Bill Nos. 2626 and 2807 and Senate Bill No. 2108 with amendments.

As amended, this bill prohibits as a crime of the fourth degree the sale of hunting, fishing, combat, and survival knives with blade lengths of five inches or more or overall lengths of 10 inches or more to persons under the age of 18. The bill provides an affirmative defense to any seller prosecuted for violating this provision if the seller establishes all of the following circumstances by a preponderance of the evidence: (a) that the purchaser falsely represented his age by producing a driver's license bearing a photograph of the licensee or by producing a photographic identification issued pursuant to section 1 of P.L.1969, c. 313 (C. 33:1-81.2) or by producing a similar card purporting to be a valid identification card indicating that he was 18 years of age or older; and (b) that the appearance of the purchaser was such that an ordinary, prudent person would believe him to be 18 years of age or older; and (c) that the sale was made in good faith relying upon the indicators of age mentioned above.

In addition, the bill makes it a crime of the fourth degree to manufacture, transport, sell, dispose of, or possess without an explainable lawful purpose a ballistic knife. A law enforcement officer who confiscates a ballistic knife as evidence of the commission of a crime or because he believes the knife to be possessed illegally by the person from whom it is taken is exempt from the prohibition if the officer promptly notifies his superiors.

The committee amended the bill to delete the definition of martial arts device and the provision which would have made it a crime of the fourth degree to manufacture, transport, sell, dispose of, or possess without an explainable lawful purpose a martial arts device.

Senate, No. 2871--L.1985, c. 360

Senate Bill No. 2781, as amended by the Senate Law, Public Safety and Defense Committee, prohibits as a crime of the fourth degree the possession of a stun gun by any person, including a law enforcement officer. A crime of the fourth degree carries a penalty of imprisonment for up to 18 months, a fine of up to \$7,500.00, or both. Prior to being amended the bill classified possession of a stun gun as a crime of the third degree.

The committee amended the bill to include a provision authorizing the Attorney General, at his discretion, to exempt law enforcement officers from the prohibition against possessing stun guns.

The bill was also amended by the committee to include stun guns in the definition of “weapon” in paragraph r. of N.J.S. 2C:39-1.

ASSEMBLY JUDICIARY, LAW, PUBLIC SAFETY AND DEFENSE COMMITTEE STATEMENT

Assembly, No. 3702 and Senate No. 3502--L.1983, c. 479

Assembly Committee Substitute for Assembly Bill No. 3702 and Senate Bill No. 3502 amends chapters 39 and 58 of Title 2C of the New Jersey Statutes to exempt “antique cannons” from those sections of the law ([N.J.S. 2C:39-5](#)) which would otherwise prohibit their possession. The bill would require that a person transporting, exhibiting or firing an antique cannon, comply with any regulations promulgated by the Superintendent of the State Police and to notify the State Police of an exhibition or discharge of an antique cannon not less than 30 days before the event.

Changes to the original bills were made at the request of the Attorney General's office.

[Notes of Decisions \(59\)](#)

N. J. S. A. 2C:39-1, NJ ST 2C:39-1

Current with laws through L.2019, c. 38

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Proposed Legislation

New Jersey Statutes Annotated

Title 2C. The New Jersey Code of Criminal Justice (Refs & Annos)

Subtitle 2. Definition of Specific Offenses

Part 5. Offenses Against Public Order, Health and Decency

Chapter 39. Firearms, Other Dangerous Weapons and Instruments of Crime (Refs & Annos)

N.J.S.A. 2C:39-3

2C:39-3. Prohibited weapons and devices

Effective: December 19, 2018

Currentness

Prohibited Weapons and Devices.

- a. Destructive devices. Any person who knowingly has in his possession any destructive device is guilty of a crime of the third degree.
- b. Sawed-off shotguns. Any person who knowingly has in his possession any sawed-off shotgun is guilty of a crime of the third degree.
- c. Silencers. Any person who knowingly has in his possession any firearm silencer is guilty of a crime of the fourth degree.
- d. Defaced firearms. Any person who knowingly has in his possession any firearm which has been defaced, except an antique firearm or an antique handgun, is guilty of a crime of the fourth degree.
- e. Certain weapons. Any person who knowingly has in his possession any gravity knife, switchblade knife, dagger, dirk, stiletto, billy, blackjack, metal knuckle, sandclub, slingshot, cestus or similar leather band studded with metal filings or razor blades imbedded in wood, ballistic knife, without any explainable lawful purpose, is guilty of a crime of the fourth degree.
- f. Dum-dum or armor piercing ammunition. (1) Any person, other than a law enforcement officer or persons engaged in activities pursuant to subsection f. of [N.J.S.2C:39-6](#), who knowingly has in his possession any hollow nose or dum-dum bullet, or (2) any person, other than a collector of firearms or ammunition as curios or relics as defined in [Title 18, United States Code, section 921 \(a\) \(13\)](#) and has in his possession a valid Collector of Curios and Relics License issued by the Bureau of Alcohol, Tobacco, Firearms, and Explosives, who knowingly has in his possession any armor piercing ammunition, as defined in subsection gg. of [N.J.S.2C:39-1](#), is guilty of a crime of the fourth degree. For purposes of this section, a collector may possess not more than three examples of each distinctive variation of the ammunition described above. A distinctive variation includes a different head stamp, composition, design, or color.

g. Exceptions. (1)(a) Nothing in subsection a., b., c., d., e., f., j. or k. of this section shall apply to any member of the Armed Forces of the United States or the National Guard, or except as otherwise provided, to any law enforcement officer while actually on duty or traveling to or from an authorized place of duty, provided that his possession of the prohibited weapon or device has been duly authorized under the applicable laws, regulations or military or law enforcement orders.

(b) Nothing in subsection j. of this section shall apply to a law enforcement officer who possesses and carries while off-duty a large capacity ammunition magazine capable of holding not more than 17 rounds of ammunition that can be fed continuously and directly into a semi-automatic firearm.

(c) Notwithstanding subparagraph (b) of this paragraph, subsection j. of this section shall not apply to a law enforcement officer who possesses and carries while off-duty a large capacity ammunition magazine capable of holding more than 17 rounds of ammunition that can be fed continuously and directly into a semi-automatic firearm provided the large capacity ammunition magazine is used with a service firearm issued to the officer by the officer's employer for use in the officer's official duties.

(d) Nothing in subsection h. of this section shall apply to any law enforcement officer who is exempted from the provisions of that subsection by the Attorney General. Nothing in this section shall apply to the possession of any weapon or device by a law enforcement officer who has confiscated, seized or otherwise taken possession of said weapon or device as evidence of the commission of a crime or because he believed it to be possessed illegally by the person from whom it was taken, provided that said law enforcement officer promptly notifies his superiors of his possession of such prohibited weapon or device.

(2) (a) Nothing in subsection f. (1) shall be construed to prevent a person from keeping such ammunition at his dwelling, premises or other land owned or possessed by him, or from carrying such ammunition from the place of purchase to said dwelling or land, nor shall subsection f. (1) be construed to prevent any licensed retail or wholesale firearms dealer from possessing such ammunition at its licensed premises, provided that the seller of any such ammunition shall maintain a record of the name, age and place of residence of any purchaser who is not a licensed dealer, together with the date of sale and quantity of ammunition sold.

(b) Nothing in subsection f.(1) shall be construed to prevent a designated employee or designated licensed agent for a nuclear power plant under the license of the Nuclear Regulatory Commission from possessing hollow nose ammunition while in the actual performance of his official duties, if the federal licensee certifies that the designated employee or designated licensed agent is assigned to perform site protection, guard, armed response or armed escort duties and is appropriately trained and qualified, as prescribed by federal regulation, to perform those duties.

(3) Nothing in paragraph (2) of subsection f. or in subsection j. shall be construed to prevent any licensed retail or wholesale firearms dealer from possessing that ammunition or large capacity ammunition magazine at its licensed premises for sale or disposition to another licensed dealer, the Armed Forces of the United States or the National Guard, or to a law enforcement agency, provided that the seller maintains a record of any sale or disposition to a law enforcement agency. The record shall include the name of the purchasing agency, together with written authorization of the chief of police or highest ranking official of the agency, the name and rank of the purchasing law enforcement officer, if applicable, and the date, time and amount of ammunition sold or otherwise disposed. A copy of this record shall be forwarded by the seller to the Superintendent of the Division of State Police within 48 hours of the sale or disposition.

(4) Nothing in subsection a. of this section shall be construed to apply to antique cannons as exempted in subsection d. of [N.J.S.2C:39-6](#).

(5) Nothing in subsection c. of this section shall be construed to apply to any person who is specifically identified in a special deer management permit issued by the Division of Fish and Wildlife to utilize a firearm silencer as part of an alternative deer control method implemented in accordance with a special deer management permit issued pursuant to section 4 of [P.L.2000, c. 46 \(C.23:4-42.6\)](#), while the person is in the actual performance of the permitted alternative deer control method and while going to and from the place where the permitted alternative deer control method is being utilized. This exception shall not, however, otherwise apply to any person to authorize the purchase or possession of a firearm silencer.

h. Stun guns. Any person who knowingly has in his possession any stun gun is guilty of a crime of the fourth degree.

i. Nothing in subsection e. of this section shall be construed to prevent any guard in the employ of a private security company, who is licensed to carry a firearm, from the possession of a nightstick when in the actual performance of his official duties, provided that he has satisfactorily completed a training course approved by the Police Training Commission in the use of a nightstick.

j. Any person who knowingly has in his possession a large capacity ammunition magazine is guilty of a crime of the fourth degree unless the person has registered:

(1) an assault firearm pursuant to section 11 of [P.L.1990, c. 32 \(C.2C:58-12\)](#) and the magazine is maintained and used in connection with participation in competitive shooting matches sanctioned by the Director of Civilian Marksmanship of the United States Department of the Army; or

(2) a firearm with a fixed magazine capacity or detachable magazine capable of holding up to 15 rounds pursuant to section 7 of [P.L.2018, c. 39 \(C.2C:39-20\)](#).

k. Handcuffs. Any person who knowingly has in his possession handcuffs as defined in [P.L.1991, c. 437 \(C.2C:39-9.2\)](#), under circumstances not manifestly appropriate for such lawful uses as handcuffs may have, is guilty of a disorderly persons offense. A law enforcement officer shall confiscate handcuffs possessed in violation of the law.

l. Bump stock or trigger crank. Any person who knowingly possesses a bump stock as defined in subsection ee. of [N.J.S.2C:39-1](#) or a trigger crank as defined in subsection ff. of [N.J.S.2C:39-1](#), regardless of whether the person is in possession of a firearm, is guilty of a crime of the third degree.

Notwithstanding the provisions of [N.J.S.2C:1-8](#) or any other provision of law, a conviction arising out of this subsection shall not merge with a conviction for possessing an assault firearm in violation of subsection f. of [N.J.S.2C:39-5](#) or a machine gun in violation of subsection a. of [N.J.S.2C:39-5](#) and a separate sentence shall be imposed upon each conviction. Notwithstanding the provisions of [N.J.S.2C:44-5](#) or any other provisions of law, the sentence imposed pursuant to this subsection shall be served consecutively to that imposed for unlawfully possessing an assault firearm in violation of subsection f. of [N.J.S.2C:39-5](#).

m. Covert or undetectable firearms. Any person who knowingly possesses any covert firearm as defined in subsection hh. of [N.J.S.2C:39-1](#), an undetectable firearm as defined in subsection ii. of [N.J.S.2C:39-1](#), or a firearm enclosed in a container or covering that is designed or modified to allow the firearm to be fired while so enclosed and that disguises or obscures the shape of the firearm such that it does not resemble a handgun, rifle, shotgun, or machine gun is guilty of a crime of the third degree.

Credits

L.1978, c. 95, § 2C:39-3, eff. Sept. 1, 1979. Amended by L.1979, c. 179, § 2, eff. Sept. 1, 1979; L.1983, c. 58, § 1, eff. Feb. 7, 1983; L.1983, c. 479, § 2, eff. Jan. 12, 1984; L.1985, c. 360, § 2, eff. Nov. 12, 1985; L.1987, c. 228, § 2, eff. July 30, 1987; L.1989, c. 11, § 1, eff. Feb. 1, 1989; L.1990, c. 32, § 10, eff. May 30, 1990; L.1991, c. 437, § 1, eff. Jan. 18, 1992; L.1999, c. 233, § 2, eff. Jan. 1, 2000; L.2000, c. 46, § 5, eff. June 30, 2000; L.2003, c. 168, § 1, eff. Sept. 3, 2003; L.2017, c. 323, § 2, eff. Jan. 16, 2018; L.2018, c. 38, § 2, eff. June 13, 2018; L.2018, c. 39, § 2, eff. June 13, 2018; L.2018, c. 138, § 2, eff. Nov. 8, 2018; L.2018, c. 161, § 1, eff. Dec. 19, 2018.

Editors' Notes

SENATE LAW, PUBLIC SAFETY AND DEFENSE COMMITTEE STATEMENT

Senate, No. 650--L.1989, c. 11

Senate 650 permits a guard who is licensed to carry a firearm and is employed by a private security company to lawfully carry a nightstick when in the actual performance of his official duties, provided that he has satisfactorily completed a training course.

The bill requires that a training course, approved by the Police Training Commission, in the use of a nightstick must be completed before a private security guard licensed to carry a firearm is authorized to carry a nightstick while in the performance of his official duties.

This bill was pre-filed for introduction in the 1988 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

Notes of Decisions (43)

N. J. S. A. 2C:39-3, NJ ST 2C:39-3

Current with laws through L.2019, c. 38

EXHIBIT 7



KeyCite Yellow Flag - Negative Treatment

Unconstitutional or Preempted Negative Treatment Reconsidered by [New York State Rifle and Pistol Ass'n, Inc. v. Cuomo](#), 2nd Cir.(Conn.), Oct. 19, 2015



KeyCite Yellow Flag - Negative Treatment Proposed Legislation

[McKinney's Consolidated Laws of New York Annotated](#)
[Penal Law \(Refs & Annos\)](#)
[Chapter 40. Of the Consolidated Laws \(Refs & Annos\)](#)
[Part Three. Specific Offenses](#)
[Title P. Offenses Against Public Safety](#)
[Article 265. Firearms and Other Dangerous Weapons \(Refs & Annos\)](#)

McKinney's Penal Law § 265.00

§ 265.00 Definitions

Effective: June 11, 2018

[Currenttness](#)

As used in this article and in article four hundred, the following terms shall mean and include:

1. “Machine-gun” means a weapon of any description, irrespective of size, by whatever name known, loaded or unloaded, from which a number of shots or bullets may be rapidly or automatically discharged from a magazine with one continuous pull of the trigger and includes a sub-machine gun.
2. “Firearm silencer” means any instrument, attachment, weapon or appliance for causing the firing of any gun, revolver, pistol or other firearms to be silent, or intended to lessen or muffle the noise of the firing of any gun, revolver, pistol or other firearms.
3. “Firearm” means (a) any pistol or revolver; or (b) a shotgun having one or more barrels less than eighteen inches in length; or (c) a rifle having one or more barrels less than sixteen inches in length; or (d) any weapon made from a shotgun or rifle whether by alteration, modification, or otherwise if such weapon as altered, modified, or otherwise has an overall length of less than twenty-six inches; or (e) an assault weapon. For the purpose of this subdivision the length of the barrel on a shotgun or rifle shall be determined by measuring the distance between the muzzle and the face of the bolt, breech, or breechlock when closed and when the shotgun or rifle is cocked; the overall length of a weapon made from a shotgun or rifle is the distance between the extreme ends of the weapon measured along a line parallel to the center line of the bore. Firearm does not include an antique firearm.
4. “Switchblade knife” means any knife which has a blade which opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife.
5. “Gravity knife” means any knife which has a blade which is released from the handle or sheath thereof by the force of gravity or the application of centrifugal force which, when released, is locked in place by means of a button, spring, lever or other device.

5-a. "Pilum ballistic knife" means any knife which has a blade which can be projected from the handle by hand pressure applied to a button, lever, spring or other device in the handle of the knife.

5-b. "Metal knuckle knife" means a weapon that, when closed, cannot function as a set of plastic knuckles or metal knuckles, nor as a knife and when open, can function as both a set of plastic knuckles or metal knuckles as well as a knife.

5-c. "Automatic knife" includes a stiletto, a switchblade knife, a gravity knife, a cane sword, a pilum ballistic knife, and a metal knuckle knife.

6. "Dispose of" means to dispose of, give, give away, lease, loan, keep for sale, offer, offer for sale, sell, transfer and otherwise dispose of.

7. "Deface" means to remove, deface, cover, alter or destroy the manufacturer's serial number or any other distinguishing number or identification mark.

8. "Gunsmith" means any person, firm, partnership, corporation or company who engages in the business of repairing, altering, assembling, manufacturing, cleaning, polishing, engraving or trueing, or who performs any mechanical operation on, any firearm, large capacity ammunition feeding device or machine-gun.

9. "Dealer in firearms" means any person, firm, partnership, corporation or company who engages in the business of purchasing, selling, keeping for sale, loaning, leasing, or in any manner disposing of, any assault weapon, large capacity ammunition feeding device, pistol or revolver.

10. "Licensing officer" means in the city of New York the police commissioner of that city; in the county of Nassau the commissioner of police of that county; in the county of Suffolk the sheriff of that county except in the towns of Babylon, Brookhaven, Huntington, Islip and Smithtown, the commissioner of police of that county; for the purposes of [section 400.01](#) of this chapter the superintendent of state police; and elsewhere in the state a judge or justice of a court of record having his office in the county of issuance.

11. "Rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

12. "Shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

13. "Cane Sword" means a cane or swagger stick having concealed within it a blade that may be used as a sword or stiletto.

14. [See also subd. 14 below] “Chuka stick” means any device designed primarily as a weapon, consisting of two or more lengths of a rigid material joined together by a thong, rope or chain in such a manner as to allow free movement of a portion of the device while held in the hand and capable of being rotated in such a manner as to inflict serious injury upon a person by striking or choking. These devices are also known as nunchakus and centrifugal force sticks.

14. [See also subd. 14 above] “Antique firearm” means:

Any unloaded muzzle loading pistol or revolver with a matchlock, flintlock, percussion cap, or similar type of ignition system, or a pistol or revolver which uses fixed cartridges which are no longer available in the ordinary channels of commercial trade.

15. “Loaded firearm” means any firearm loaded with ammunition or any firearm which is possessed by one who, at the same time, possesses a quantity of ammunition which may be used to discharge such firearm.

15-a. “Electronic dart gun” means any device designed primarily as a weapon, the purpose of which is to momentarily stun, knock out or paralyze a person by passing an electrical shock to such person by means of a dart or projectile.

15-b. “Kung Fu star” means a disc-like object with sharpened points on the circumference thereof and is designed for use primarily as a weapon to be thrown.

15-c. “Electronic stun gun” means any device designed primarily as a weapon, the purpose of which is to stun, cause mental disorientation, knock out or paralyze a person by passing a high voltage electrical shock to such person.

16. “Certified not suitable to possess a self-defense spray device, a rifle or shotgun” means that the director or physician in charge of any hospital or institution for mental illness, public or private, has certified to the superintendent of state police or to any organized police department of a county, city, town or village of this state, that a person who has been judicially adjudicated incompetent, or who has been confined to such institution for mental illness pursuant to judicial authority, is not suitable to possess a self-defense spray device, as defined in [section 265.20](#) of this article, or a rifle or shotgun.

17. “Serious offense” means (a) any of the following offenses defined in the former penal law as in force and effect immediately prior to September first, nineteen hundred sixty-seven: illegally using, carrying or possessing a pistol or other dangerous weapon; making or possessing burglar's instruments; buying or receiving stolen property; unlawful entry of a building; aiding escape from prison; that kind of disorderly conduct defined in subdivisions six and eight of section seven hundred twenty-two of such former penal law; violations of sections four hundred eighty-three, four hundred eighty-three-b, four hundred eighty-four-h and article one hundred six of such former penal law; that kind of criminal sexual act or rape which was designated as a misdemeanor; violation of section seventeen hundred forty-seven-d and seventeen hundred forty-seven-e of such former penal law; any violation of any provision of article thirty-three of the public health law relating to narcotic drugs which was defined as a misdemeanor by section seventeen hundred fifty-one-a of such former penal law, and any violation of any provision of article thirty-three-A of the public health law relating to depressant and stimulant drugs which was defined as a misdemeanor by section seventeen hundred forty-seven-b of such former penal law.

(b) [As amended by L.1999, c. 635, § 11. See, also, par. (b) below.] any of the following offenses defined in the penal law: illegally using, carrying or possessing a pistol or other dangerous weapon; possession of burglar's tools; criminal possession of stolen property in the third degree; escape in the third degree; jostling; fraudulent accosting; endangering the welfare of a child; the offenses defined in article two hundred thirty-five; issuing abortional articles; permitting prostitution; promoting prostitution in the third degree; stalking in the fourth degree; stalking in the third degree; the offenses defined in article one hundred thirty; the offenses defined in article two hundred twenty.

(b) [As amended by L.1999, c. 635, § 15. See, also, par. (b) above.] any of the following offenses defined in the penal law: illegally using, carrying or possessing a pistol or other dangerous weapon; possession of burglar's tools; criminal possession of stolen property in the third degree; escape in the third degree; jostling; fraudulent accosting; endangering the welfare of a child; the offenses defined in article two hundred thirty-five; issuing abortional articles; permitting prostitution; promoting prostitution in the third degree; stalking in the third degree; stalking in the fourth degree; the offenses defined in article one hundred thirty; the offenses defined in article two hundred twenty.

(c) any of the following offenses, where the defendant and the person against whom the offense was committed were members of the same family or household as defined in [subdivision one of section 530.11 of the criminal procedure law](#) and as established pursuant to [section 370.15 of the criminal procedure law](#): assault in the third degree; menacing in the third degree; menacing in the second degree; criminal obstruction of breathing or blood circulation; unlawful imprisonment in the second degree; coercion in the third degree; criminal tampering in the third degree; criminal contempt in the second degree; harassment in the first degree; aggravated harassment in the second degree; criminal trespass in the third degree; criminal trespass in the second degree; arson in the fifth degree; or attempt to commit any of the above-listed offenses.

18. "Armor piercing ammunition" means any ammunition capable of being used in pistols or revolvers containing a projectile or projectile core, or a projectile or projectile core for use in such ammunition, that is constructed entirely (excluding the presence of traces of other substances) from one or a combination of any of the following: tungsten alloys, steel, iron, brass, bronze, beryllium copper, or uranium.

19. "Duly authorized instructor" means (a) a duly commissioned officer of the United States army, navy, marine corps or coast guard, or of the national guard of the state of New York; or (b) a duly qualified adult citizen of the United States who has been granted a certificate as an instructor in small arms practice issued by the United States army, navy or marine corps, or by the adjutant general of this state, or by the national rifle association of America, a not-for-profit corporation duly organized under the laws of this state; or (c) by a person duly qualified and designated by the department of environmental conservation under [paragraph d of subdivision six of section 11-0713 of the environmental conservation law](#) as its agent in the giving of instruction and the making of certifications of qualification in responsible hunting practices.

20. "Disguised gun" means any weapon or device capable of being concealed on the person from which a shot can be discharged through the energy of an explosive and is designed and intended to appear to be something other than a gun.

21. "Semiautomatic" means any repeating rifle, shotgun or pistol, regardless of barrel or overall length, which utilizes a portion of the energy of a firing cartridge or shell to extract the fired cartridge case or spent shell and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge or shell.

22. “Assault weapon” means

(a) a semiautomatic rifle that has an ability to accept a detachable magazine and has at least one of the following characteristics:

(i) a folding or telescoping stock;

(ii) a pistol grip that protrudes conspicuously beneath the action of the weapon;

(iii) a thumbhole stock;

(iv) a second handgrip or a protruding grip that can be held by the non-trigger hand;

(v) a bayonet mount;

(vi) a flash suppressor, muzzle break, muzzle compensator, or threaded barrel designed to accommodate a flash suppressor, muzzle break, or muzzle compensator;

(vii) a grenade launcher; or

(b) a semiautomatic shotgun that has at least one of the following characteristics:

(i) a folding or telescoping stock;

(ii) a thumbhole stock;

(iii) a second handgrip or a protruding grip that can be held by the non-trigger hand;

(iv) a fixed magazine capacity in excess of seven rounds;

(v) an ability to accept a detachable magazine; or

(c) a semiautomatic pistol that has an ability to accept a detachable magazine and has at least one of the following characteristics:

(i) a folding or telescoping stock;

- (ii) a thumbhole stock;
 - (iii) a second handgrip or a protruding grip that can be held by the non-trigger hand;
 - (iv) capacity to accept an ammunition magazine that attaches to the pistol outside of the pistol grip;
 - (v) a threaded barrel capable of accepting a barrel extender, flash suppressor, forward handgrip, or silencer;
 - (vi) a shroud that is attached to, or partially or completely encircles, the barrel and that permits the shooter to hold the firearm with the non-trigger hand without being burned;
 - (vii) a manufactured weight of fifty ounces or more when the pistol is unloaded; or
 - (viii) a semiautomatic version of an automatic rifle, shotgun or firearm;
- (d) a revolving cylinder shotgun;
- (e) a semiautomatic rifle, a semiautomatic shotgun or a semiautomatic pistol or weapon defined in subparagraph (v) of paragraph (e) of subdivision twenty-two of section 265.00 of this chapter as added by chapter one hundred eighty-nine of the laws of two thousand and otherwise lawfully possessed pursuant to such chapter of the laws of two thousand prior to September fourteenth, nineteen hundred ninety-four;
- (f) a semiautomatic rifle, a semiautomatic shotgun or a semiautomatic pistol or weapon defined in paragraph (a), (b) or (c) of this subdivision, possessed prior to the date of enactment of the chapter of the laws of two thousand thirteen which added this paragraph;
- (g) provided, however, that such term does not include:
- (i) any rifle, shotgun or pistol that (A) is manually operated by bolt, pump, lever or slide action; (B) has been rendered permanently inoperable; or (C) is an antique firearm as defined in [18 U.S.C. 921\(a\)\(16\)](#);
 - (ii) a semiautomatic rifle that cannot accept a detachable magazine that holds more than five rounds of ammunition;
 - (iii) a semiautomatic shotgun that cannot hold more than five rounds of ammunition in a fixed or detachable magazine; or
 - (iv) a rifle, shotgun or pistol, or a replica or a duplicate thereof, specified in Appendix A to [18 U.S.C. 922](#) as such weapon was manufactured on October first, nineteen hundred ninety-three. The mere fact that a weapon is not listed in Appendix A shall not be construed to mean that such weapon is an assault weapon;

(v) any weapon validly registered pursuant to [subdivision sixteen-a of section 400.00](#) of this chapter. Such weapons shall be subject to the provisions of paragraph (h) of this subdivision;

(vi) any firearm, rifle, or shotgun that was manufactured at least fifty years prior to the current date, but not including replicas thereof that is validly registered pursuant to [subdivision sixteen-a of section 400.00](#) of this chapter;

(h) Any weapon defined in paragraph (e) or (f) of this subdivision and any large capacity ammunition feeding device that was legally possessed by an individual prior to the enactment of the chapter of the laws of two thousand thirteen which added this paragraph, may only be sold to, exchanged with or disposed of to a purchaser authorized to possess such weapons or to an individual or entity outside of the state provided that any such transfer to an individual or entity outside of the state must be reported to the entity wherein the weapon is registered within seventy-two hours of such transfer. An individual who transfers any such weapon or large capacity ammunition device to an individual inside New York state or without complying with the provisions of this paragraph shall be guilty of a class A misdemeanor unless such large capacity ammunition feeding device, the possession of which is made illegal by the chapter of the laws of two thousand thirteen which added this paragraph, is transferred within one year of the effective date of the chapter of the laws of two thousand thirteen which added this paragraph.

23. "Large capacity ammunition feeding device" means a magazine, belt, drum, feed strip, or similar device, that (a) has a capacity of, or that can be readily restored or converted to accept, more than ten rounds of ammunition, or (b) [Suspended and not effective, pursuant to [L.2013, c. 57, pt. FF, § 4, eff. March 29, 2013, deemed eff. Jan. 15, 2013.](#)] contains more than seven rounds of ammunition, or (c) [Suspended and not effective, pursuant to [L.2013, c. 57, pt. FF, § 4, eff. March 29, 2013, deemed eff. Jan. 15, 2013.](#)] is obtained after the effective date of the chapter of the laws of two thousand thirteen which amended this subdivision and has a capacity of, or that can be readily restored or converted to accept, more than seven rounds of ammunition; provided, however, that such term does not include an attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition or a feeding device that is a curio or relic. A feeding device that is a curio or relic is defined as a device that (i) was manufactured at least fifty years prior to the current date, (ii) is only capable of being used exclusively in a firearm, rifle, or shotgun that was manufactured at least fifty years prior to the current date, but not including replicas thereof, (iii) is possessed by an individual who is not prohibited by state or federal law from possessing a firearm and (iv) is registered with the division of state police pursuant to [subdivision sixteen-a of section 400.00](#) of this chapter, except such feeding devices transferred into the state may be registered at any time, provided they are registered within thirty days of their transfer into the state. Notwithstanding paragraph (h) of subdivision twenty-two of this section, such feeding devices may be transferred provided that such transfer shall be subject to the provisions of [section 400.03](#) of this chapter including the check required to be conducted pursuant to such section.

24. "Seller of ammunition" means any person, firm, partnership, corporation or company who engages in the business of purchasing, selling or keeping ammunition.

25. "Qualified retired New York or federal law enforcement officer" means an individual who is a retired police officer as police officer is defined in [subdivision thirty-four of section 1.20 of the criminal procedure law](#), a retired peace officer as peace officer is defined in [section 2.10 of the criminal procedure law](#) or a retired federal law enforcement officer as federal law enforcement officer is defined in [section 2.15 of the criminal procedure law](#), who: (a) separated from service in good standing from a public agency located in New York state in which such person served as either a police officer, peace officer or federal law enforcement officer; and (b) before such separation, was authorized by law to engage in or

supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and had statutory powers of arrest, pursuant to their official duties, under the criminal procedure law; and (c) (i) before such separation, served as either a police officer, peace officer or federal law enforcement officer for five years or more and at the time of separation, is such an officer; or (ii) separated from service with such agency, after completing any applicable probationary period of such service, due to a service-connected disability, as determined by such agency at or before the time of separation; and (d)(i) has not been found by a qualified medical professional employed by such agency to be unqualified for reasons relating to mental health; or (ii) has not entered into an agreement with such agency from which the individual is separating from service in which that individual acknowledges he or she is not qualified for reasons relating to mental health; and (e) is not otherwise prohibited by New York or federal law from possessing any firearm.

Credits

(L.1965, c. 1030. Amended L.1967, c. 791, § 46; L.1969, c. 123, § 1; L.1972, c. 588, § 1; L.1972, c. 605, § 1; L.1974, c. 179, § 1; L.1974, c. 462, § 1; L.1974, c. 986, §§ 1, 2; L.1974, c. 1041, § 1; L.1976, c. 217, § 1; L.1982, c. 492, § 1; L.1985, c. 61, § 1; L.1986, c. 328, § 2; L.1986, c. 646, § 1; L.1988, c. 264, § 1; L.1990, c. 264, § 1; L.1995, c. 219, § 2; L.1996, c. 354, § 2; L.1997, c. 446, § 2, eff. Aug. 25, 1997; L.1998, c. 378, § 1, eff. Nov. 1, 1998; L.1999, c. 210, § 1, eff. Nov. 1, 1999; L.1999, c. 635, §§ 11, 15, eff. Dec. 1, 1999; L.2000, c. 189, §§ 8 to 10, eff. Nov. 1, 2000; L.2003, c. 264, § 33, eff. Nov. 1, 2003; L.2007, c. 510, § 3, eff. Feb. 11, 2008; L.2008, c. 257, § 3, eff. Nov. 1, 2008; L.2010, c. 232, §§ 2, 3, eff. July 30, 2010; L.2013, c. 1, § 37, eff. Jan. 15, 2013; L.2013, c. 1, § 38; L.2013, c. 1, § 39, eff. March 16, 2013; L.2013, c. 98, § 1, eff. July 5, 2013; L.2018, c. 60, § 1, eff. June 11, 2018.)

Editors' Notes

VALIDITY

<For validity of this section, see *New York State Rifle and Pistol Ass'n, Inc. v. Cuomo*, 990 F.Supp.2d 349, 351 (W.D.N.Y. Dec. 31, 2013) and *N.Y. State Rifle & Pistol Ass'n, Inc. v. Cuomo*, 804 F.3d 242 (2d Cir. 2015), cert. denied sub nom. *Shew v. Malloy*, 136 S. Ct. 2486, 195 L. Ed. 2d 822 (2016)>

SUPPLEMENTARY PRACTICE COMMENTARY

by William C. Donnino

Definitions

Switchblade knife

A “switchblade knife” means “any knife which has a blade which opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife.” Penal Law 265.00(4). An accusatory instrument charging attempted possession of a switchblade knife was not jurisdictionally deficient where the arresting officer stated that he knew the knife was a switchblade “because, when I applied hand pressure to a spring-loaded portion of the blade of the knife protruding from the handle of the knife, the blade swung open automatically.” *People v. Berrezueta*, 31 N.Y.3d 1091, 79 N.Y.S.3d 622, 104 N.E.3d 726 (2018). While that description was not in the literal language of the definition, the Court found that it constituted “sufficient notice of the charged conduct to prepare a defense and avoid double jeopardy.”

Gravity knife

An accusatory instrument was not jurisdictionally defective where the arresting officer stated that the knife he recovered from the defendant was a gravity knife, “in that it opens with centrifugal force and locks automatically in place.” *People v. Sans*, 26 N.Y.3d 13, 15, 19 N.Y.S.3d 468, 41 N.E.3d 333 (2015). The Court rejected the defendant's argument that an accusatory instrument alleging possession of a gravity knife “must expressly” state that element of the definition of a “gravity knife” which requires that the knife lock by means of a device. In the Court's view that element was incorporated in the language that it locked “automatically” in place. *People v. Sans*, 26 N.Y.3d 13, 16, 19 N.Y.S.3d 468, 41 N.E.3d 333 (2015).

The Second Circuit Court of Appeals has held that the definition of a “gravity knife” is not unconstitutionally vague on its face. *Copeland v. Vance*, 893 F.3d 101 (2d Cir. 2018). The Court, however, thought that there are circumstances in which a claim that the statute was unconstitutional as applied “might succeed. For example, a gravity knife conviction might be constitutionally infirm if the knife could be flicked open to a locked position only with great difficulty or by a person with highly unusual abilities. A knife that responds inconsistently to the wrist-flick test might also provide grounds to challenge the law on an as-applied basis.” *Id.* at 9.

Serious Offense

In 2018 (c. 60), the definition of “serious offense” set forth in Penal Law § 265.00(17) was amended to add paragraph (c) to include misdemeanors which may relate to acts of “domestic violence.”

One effect of that amended definition was to expand liability for the crime of “criminal possession of a weapon in the fourth degree” [Penal Law § 265.01(4)] because a conviction of a “serious offense” is an element of that crime.

The legislative purpose, however, was broader than expanding the liability for a crime. The main purpose of the revised statutes was aimed at disqualifying a person convicted of a misdemeanor related to “domestic violence” from having a firearms license. By adding to the definition of “serious offense” a list of misdemeanors potentially related to a “domestic violence” event, the legislation expanded the list of offenses for which a person convicted of would be disqualified from obtaining a firearms license [Penal Law § 400.00(1)], and if that person had a license, the conviction operated to revoke that license [Penal Law § 400.00(11)].

As explained in the Legislative Memorandum in support of the law:

“New York law prohibits the possession of firearms for individuals convicted of felony or “serious“ offenses. However, this excludes [prior to the instant legislation] certain misdemeanor offenses involving domestic violence. To ensure that all domestic violence offenders are held to the same standard, the [legislation includes] additional domestic violence misdemeanors on the list of [serious] offenses.”

Not every one of the misdemeanors added to the definition of “serious offense” will arise out of “domestic violence” conduct. There is, however, no provision in the definition of “serious offense” or otherwise in the Penal Law that limits the application accordingly. The same legislation, however, repealed and reenacted CPL 370.15 and 380.97, and the reenacted sections, particularly CPL 370.15, purport to provide a basis for a defendant convicted of the “serious offense” misdemeanor to claim that the misdemeanor did not involve “domestic violence,” or more particularly, did not involve “members of the same family or household,” as defined in CPL 530.11(1). See CPL 370.15 (“Procedure for determining whether certain misdemeanor crimes

are serious offenses under the Penal Law”) and the Practice Commentary thereto. *But see* [CPL 370.25](#), added by the same legislation, and requiring a court, upon a defendant's conviction of a felony or “serious offense,” to order [in accord with [Penal Law § 265.20\(a\)\(1\)\(f\)](#) and [Penal Law § 400.05\(6\)](#)] the “immediate surrender” of all “firearms, rifles and shotguns owned or possessed by the defendant.”

PRACTICE COMMENTARIES

by William C. Donnino

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History

In 1963, as a result of years of study and the recommendations of the Joint Legislative Committee on Firearms and Ammunition, the provisions of the former Penal Law dealing with weapons were revised. L.1963, c. 136; former Penal Law §§ 1896-1904. That revision placed in one section the definitions of most of the substantive crimes [see former Penal Law § 1897, “Possession of weapons and dangerous instruments and appliances”].

In 1967, the current Penal Law took effect and carried forward, almost verbatim, the weapon provisions of the former Penal Law, placing the major provisions primarily in Penal Law former § 265.05. In 1974, the then-existing [Penal Law § 265.05](#) was restructured by dividing the various crimes defined in that one section into five sections, currently [Penal Law § 265.01](#) through [Penal Law § 265.05](#), in a degree structure which was generally in accord with the structure of other Penal Law statutes. L.1974, c. 1041.

There were a substantial number of amendments thereafter, most of which added new crimes, and that history is set forth in the comments to the applicable amendment.

Second Amendment

The Second Amendment to the Federal Constitution provides: “A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”

In [District of Columbia v. Heller](#), 554 U.S. 570, 635, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008), the Supreme Court held that the District of Columbia's “ban on handgun possession in the home violates the Second Amendment, as does its prohibition against rendering any lawful firearm in the home operable for the purpose of immediate self-defense.” Thereafter, the Supreme Court applied the Second Amendment to the states. [McDonald v. City of Chicago](#), 561 U.S. 742, 786, 130 S.Ct. 3020, 3047, 177 L.Ed.2d 894 (2010).

In *Heller's* view, “the inherent right of self-defense has been central to the Second Amendment right. The handgun ban amounts to a prohibition of an entire class of ‘arms’ that is overwhelmingly chosen by American society for that lawful purpose.” [Heller](#), 554 U.S. at 628.

Thus, the protected weapons are those which were in “common use” at the time of the amendment for lawful purposes, such as self-defense and defense of one's home. *Id.* at 624-27. That reference to weapons in “common use” at the time of the amendment was not intended to necessarily exclude from the amendment's protection weapons presently in common use for lawful purposes, given the Court's holding that the amendment “extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding.” *Id.* at 582. See [Caetano v. Massachusetts](#), 577 U.S. ___, 136 S.Ct. 1027, 194 L.Ed.2d 99 (2016).

The amendment “does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes, such as short barreled shotguns” [*Id.* at 625], machineguns [*Id.* at 624] and a M-16 rifle. *Id.* at 627. Nor does the amendment support “a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.” [Heller](#), 554 U.S. at 626.

With respect to regulatory laws, the Court expressly declined to provide an “exhaustive” list of “lawful regulatory measures,” but the Court did explain that the Second Amendment does not interdict “prohibitions

on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.” *Id.* 626-27 and n.26; *McDonald v. City of Chicago*, 561 U.S. at 786, *supra* (emphasizing the *Heller* limitations of the Second Amendment with respect the ability to carry any weapon in any manner for whatever purpose and with respect to regulatory measures).

Then, in *Caetano v. Massachusetts*, 577 U.S. ___, *supra*, the Court, in a per curiam opinion, rejected the three reasons that the Massachusetts court had given for upholding a state ban on the possession of stun guns and remanded the case for further consideration. The Supreme Court began by reiterating that *Heller* held that “the Second Amendment extends, *prima facie*, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding.” Thus, the state court’s first reason, that stun guns “were not in common use at the time of the Second Amendment’s enactment” was inconsistent with that holding. Next, the state court had reasoned that stun guns meet the historical exception of prohibiting the carrying of dangerous and “unusual” weapons; but when the state equated “unusual” with the stun gun not in common use at the time of the amendment’s enactment, the Supreme Court found that it did no more than reiterate its first erroneous reason. As for its third reason, that stun guns are not readily adaptable to use in the military, the Supreme Court stated that “*Heller* rejected the proposition ‘that only those weapons useful in warfare are protected.’”

New York has a statute which parallels the Second Amendment. *Civil Rights Law* § 4 states: “A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms cannot be infringed.”

To date, that statute has not been interpreted to negate any of New York’s statutory restrictions on the possession of firearms. *See Moore v. Gallup*, 267 A.D. 64, 45 N.Y.S.2d 63 (3d Dept. 1943), *affirmed without opinion* 293 N.Y. 846, 59 N.E.2d 439 (1944), *but remittitur amended* 294 N.Y. 699, 60 N.E.2d 847 (1945) to state that the Court had held that the New York statutes relating to a license to carry a concealed pistol were not repugnant to the provisions of the Fourteenth Amendment.

Since *Heller*, New York has continued to uphold its statutory scheme which prohibits the possession of a firearm without an appropriate license. In *People v. Hughes*, 22 N.Y.3d 44, 978 N.Y.S.2d 97, 1 N.E.3d 298 (2013), the Court of Appeals held that a conviction of “criminal possession of a weapon in the second degree” and “criminal possession of a weapon in the third degree,” predicated on the defendant’s having been previously convicted of a crime, did not violate the Second Amendment. *See also Schulz v. State of N. Y. Exec.*, 134 A.D.3d 52, 53, 19 N.Y.S.3d 92 (3d Dept. 2015), *appeal dismissed upon the ground that no substantial constitutional question is directly involved* 26 N.Y.3d 1139, 27 N.Y.S.3d 502, 47 N.E.3d 782 (2016); *People v. Perkins*, 62 A.D.3d 1160, 1161, 880 N.Y.S.2d 209 (3d Dept. 2009) (“Unlike the statute at issue in *Heller*, Penal Law article 265 does not effect a complete ban on handguns and is, therefore, not a ‘severe restriction’ improperly infringing upon defendant’s Second Amendment rights. Moreover, in our view, New York’s licensing requirement remains an acceptable means of regulating the possession of firearms ... and will not contravene *Heller* so long as it is not enforced in an arbitrary and capricious manner”); *People v. Ferguson*, 21 Misc.3d 1120(A), 873 N.Y.S.2d 513 (Criminal Court, Queens County, 2008) (“... *Heller*, is distinguishable from the case at bar for several reasons. Firstly, at the time of his arrest, defendant was not in his home, but was in an airport. Secondly, the requirement that handguns be licensed in the State of New York is not tantamount to a total ban and, therefore, is not a ‘severe restriction’ as was the case in *Heller*. Lastly, the Court identified certain presumptively lawful regulatory measures which would survive a constitutional challenge including the carrying of firearms in ‘sensitive places.’ Licensing is an acceptable regulatory measure and an airport falls within the scope of a ‘sensitive place.’”).

In an extensive opinion, including a detailed recitation of the history of New York’s regulation of firearms, the Second Circuit Court of Appeals held that the Second Amendment was not violated by New York’s statutory

requirement that a person who wants to “have and carry concealed [a hand gun], without regard to employment or place of possession” must show that “proper cause” exists for the issuance of a license to do so [Penal Law § 400.00(2)(f)]. *Kachalsky v. County of Westchester*, 701 F.3d 81 (2d Cir. 2012).

Definitions

The definitions in Penal Law § 265.00 describe the various types of weapons which are regulated by this article, as well as certain terms utilized in the article regulating the licensing of firearms [Penal Law article 400]. Some of those definitions are discussed here; others are discussed in the sections dealing with the crimes in which they are used. The principal weapon regulated by this article is a firearm and thus it is discussed first, with the remaining terms thereafter in alphabetical order.

Firearm and Loaded Firearm

By definition, a “firearm” is limited to: a pistol, revolver, the so-called “sawed-off” shotgun or rifle, and an “assault weapon” [Penal Law § 265.00(3)]. The vast array of other types of rifles and shotguns are not included within that definition and thus are not a subject of the statutes which utilize the term “firearm” to define a crime. A “rifle” and a “shotgun” are separately-defined terms [Penal Law § 265.00(11) & (12)] and there are statutes which define crimes which pertain separately and solely to them.

The statutory definition of “firearm” does not require that the firearm be loaded. A separate term and definition are provided for a “loaded firearm” [Penal Law § 265.00(15)]. In addition to the common understanding that a firearm is loaded when it contains ammunition, by the statutory definition, a firearm is loaded when there is simultaneous possession of the firearm and ammunition, irrespective of whether the ammunition is in the firearm.

The statutory definition of “firearm” also does not specify that the firearm need be operable. By contrast, the definition of “loaded firearm” does require ammunition “which may be used to discharge” the firearm [Penal Law § 265.00(15)], and the definition of a “machine gun,” does require that the weapon, “loaded or unloaded,” be one “from which a number of shots or bullets may be rapidly or automatically discharged from a magazine with one continuous pull of the trigger....” Compare Penal Law § 10.00(12), defining a “deadly weapon” to mean a “loaded weapon from which a shot, readily capable of producing death or other serious physical injury, may be discharged....”; *People v. Shaffer*, 66 N.Y.2d 663, 495 N.Y.S.2d 965, 486 N.E.2d 823 (1985) (the “People failed to establish that the gun ... was a ‘deadly weapon’ ... that is, both operable and loaded with live ammunition”).

However, inherent to the common understanding of what constitutes a firearm and key to its danger is its operability. Hence, to establish that the weapon in issue is a “firearm” the courts have required proof of its operability, that is, that it is capable of discharging ammunition. See *People v. Longshore*, 86 N.Y.2d 851, 852, 633 N.Y.S.2d 475, 657 N.E.2d 496 (1995) (“Although the statute is silent on the point, it is now accepted that to establish criminal possession of a handgun the People must prove that the weapon is operable,” and *Longshore* applied that same requirement of operability to a rifle or shotgun).

A firearm that is found in a disassembled condition but is operable when assembled is an operable firearm without any further proof that the defendant was personally capable of rendering the disassembled firearm operable. *People v. Lugo*, 161 A.D.2d 122, 554 N.Y.S.2d 849 (1st Dept. 1990). See also *People v. Cavines*, 70 N.Y.2d 882, 883, 524 N.Y.S.2d 178, 518 N.E.2d 1170 (1987) (“... the fact that the gun malfunctioned [during the commission of a crime], standing alone, does not defeat the overwhelming inference that immediately prior

to the pulling of the trigger, the gun was capable of discharging the ammunition, particularly in view of the uncontradicted evidence that when subsequently test-fired, the gun and the bullets were found to be operable”).

In addition to the firearm being operable, the ammunition of a loaded firearm must be “live,” that is, capable of being discharged by the firearm. Penal Law § 265.00(15). See *People v. Johnson*, 56 A.D.3d 1191, 867 N.Y.S.2d 319 (4th Dept. 2008); *People v. Daniels*, 77 A.D.2d 745, 430 N.Y.S.2d 881 (3d Dept. 1980); *People v. Thomas*, 70 A.D.2d 570, 417 N.Y.S.2d 66 (1st Dept. 1979).

A “firearm” that is not operable may be the subject of a charge of attempted criminal possession of a weapon. *People v. Saunders*, 85 N.Y.2d 339, 624 N.Y.S.2d 568, 648 N.E.2d 1331 (1995).

Neither “pistol” nor “revolver” is defined by statute. They both, however, refer to a handgun. See Random House Webster's Unabridged Dictionary (1999) definition of “handgun” (“any firearm that can be held and fired with one hand; a revolver or a pistol”); definition of “pistol” (“a short firearm intended to be held and fired with one hand”) and definition of “revolver” (“a handgun having a revolving chambered cylinder for holding a number of cartridges, which may be discharged in succession without reloading”).

“Sawed-off” shotgun or rifle was first defined solely as a firearm of a “size which may be concealed upon the person.” That inherently imprecise definition proved inadequate. See *People v. Cortez*, 110 Misc.2d 652, 442 N.Y.S.2d 873 (Supreme Court, N.Y. County, 1981). The definition was amended in 1982 [c. 492] and that definition appeared to require that the shotgun or rifle have a barrel “and” an overall length of the specified measurement in order to be classified as a sawed-off shotgun or rifle, and that a weapon made from a shotgun or rifle would be so classified only if its overall length was less than that specified in the definition. *People v. Santiago*, 133 Misc.2d 161, 506 N.Y.S.2d 136 (Supreme Court, N.Y. County, 1986) was of the view that the Legislature intended that a shotgun or rifle, or a weapon made from either of them, should be classified as a “sawed-off” weapon depending upon the length of the barrel “or” overall length, and recommended clarifying legislation. See also *People v. Crivillaro*, 142 Misc.2d 527, 538 N.Y.S.2d 152 (Supreme Court, Bronx County, 1989). In 1988, the Legislature amended the definition to specify that a shotgun or rifle may be deemed a sawed-off weapon if the barrel length alone is less than the specified number of inches (18 for a shotgun, 16 for a rifle), and that any weapon made from a shotgun or rifle may be deemed a sawed-off weapon if the overall length is less than 26 inches [Penal Law § 265.00(3)(b), (c), and (d)]. L.1988, c. 264.

An “assault weapon,” which is separately defined in Penal Law § 265.00(22), was added to the definition of “firearm” in 2000 [c. 189]. By amending the definition of “firearm” to include an “assault weapon,” the “assault weapon” became the subject of such crimes as: “criminal possession of a weapon” in the fourth degree [Penal Law § 265.01(1), (3)], third degree [Penal Law § 265.02(1), (3), (5)], and second degree [Penal Law § 265.03]; “criminal sale of a firearm” in the second degree [Penal Law § 265.12] and first degree [Penal Law § 265.13]; “criminal sale of a firearm” with the aid of a minor [Penal Law § 265.14] and to a minor [Penal Law § 265.16]; and a couple of crimes defined in Penal Law § 265.10(3) and (6).

In addition to including an “assault weapon” in the definitions of crimes that use the term “firearm,” the legislation added some crimes which specifically name an “assault weapon.” The first of the amended crimes was “criminal possession of a weapon in the third degree,” a felony. It was amended to include a subdivision to prohibit the possession of an assault weapon [Penal Law § 265.02(7)], irrespective of whether it is loaded and irrespective of where the possession takes place. The second of the amended crimes was “manufacture, transport, disposition and defacement of weapons ...” [Penal Law § 265.10]. It was amended to forbid anyone to manufacture, transport, or dispose of any “assault weapon” [Penal Law § 265.10(1), (2) and (3) (first sentence)].

An “antique firearm,” which is separately defined in Penal Law § 265.00(14), is expressly excluded from the definition of “firearm.”

Antique Firearm

As noted in the discussion of the definition of “firearm,” an “antique firearm” is expressly excluded from the definition of “firearm” [Penal Law § 265.00(3)]. *See also* Penal Law § 265.00(22)(g)(i) exempting “antique firearm,” as defined by Federal law, from the definition of “assault rifle.” As a result of the exclusion of “antique firearm,” as defined by the instant statute, from the definition of “firearm,” any proscription related to an “antique firearm” requires a specific reference to that term. *See, e.g.* Penal Law § 265.01(4), making it a crime to possess an “antique firearm.”

The term “antique firearm” is separately defined by New York law to mean any “unloaded muzzle loading pistol or revolver with a matchlock, flintlock, percussion cap, or similar type of ignition system, or a pistol or revolver which uses fixed cartridges which are no longer available in the ordinary channels of commercial trade” [Penal Law § 265.00(14)]. It is critical to note that the definition requires that the defined weapon be “unloaded” in order for it to qualify as an “antique firearm”; a weapon which met the structural definition of an “antique firearm” but was loaded would constitute a “firearm” and be subject to the laws applicable thereto. *See People v. Wedgewood*, 106 A.D.2d 674, 483 N.Y.S.2d 440 (2d Dept. 1984); *People v. Mott*, 112 Misc.2d 833; 447 N.Y.S.2d 632 (Supreme Court, N.Y. County, 1982).

In adding the definition of “antique firearm” in 1974 [c. 986] and excluding it from the definition of “firearm,” the Legislature intended that “hobbyists would be permitted to collect ... trade, buy and sell these antique firearms without being subject to the requirements of licensing.” *People v. Mott*, 112 Misc.2d at 835, *supra*, quoting the Legislative Memorandum. In 2011, however, the Legislature changed its mind by amending the crime of “criminal possession of a firearm in the fourth degree” [Penal Law § 265.01(4)] to include as a crime, the possession of an “antique firearm.” [L.2011 c. 357]. The Legislative Memorandum to the companion bill (Assembly 8456) stated that “[m]odern muzzle loading rifles are essentially a modern single shot rifle. They look and operate very much like a sporting rifle and allow accurate shots at distances up to 200 yards ... [and] can be reloaded in seconds....” There is authority to issue a license to have, possess, collect and carry “antique pistols,” as that term is separately defined in Penal Law § 400.00(2)(g).

Assault Weapon

An “assault weapon” was added to the definition of “firearm” in 2000 [Penal Law § 265.00(3)] and at the same time, was separately defined [Penal Law § 265.00(22)]. L.2000, c. 189. In 2013, the NY SAFE Act amended and significantly revised the definition.

A principal difference between the former and present definition is that the former definition required the requisite firearm to have two military style features or characteristics, while the current definition requires only one. Thus, as the Governor explained: “Under the stricter definitions, semi-automatic pistols [see subdivision 22(c) and (f)] and rifles [see subdivision 22(a) and (f)] with detachable magazines and one military style feature will be considered assault weapons. Semi-automatic shotguns [see subdivision 22(b) and (f)] with one military style feature will also be considered assault weapons.” Governor's Press Release, “Governor Cuomo Signs NY Safe Act in Rochester,” January 16, 2013. Also included as an assault weapon is a “revolving cylinder shotgun” [subdivision 22(d)].

The definition contains eight paragraphs (a) to (h), several of which define different types of weapon which can be classified as an assault weapon; they are:

- (a) a semiautomatic rifle that has an ability to accept a detachable magazine and has at least one of the listed characteristics;
- (b) a semiautomatic shotgun that has at least one of the listed characteristics;
- (c) a semiautomatic pistol that has an ability to accept a detachable magazine and has at least one of the listed characteristics;
- (d) a revolving cylinder shotgun;
- (e) semiautomatic rifle, shotgun or pistol defined in the former Penal Law § 265.00(22)(e)(v) of the L.2000, c. 189 which had been lawfully possessed, pursuant to laws of 2000, c. 189, prior to September fourteenth, nineteen hundred ninety-four.

The term “semiautomatic” is separately defined in subdivision 21 of the instant section which in lay terms includes any repeating rifle, shotgun or pistol which, although requiring a separate pull of the trigger to fire each round, has the capacity of being fired to extract the spent shell and automatically load a cartridge.

There is a grandfathering provision, paragraphs (f) and (g), exempting certain weapons from the definition.

Assault weapons defined in subdivision (22)(e) or (f), possessed before January 16, 2013, had to be registered by April 15, 2014 [Penal Law § 400.00(16-a)]; except a weapon defined in subdivision (22)(g)(vi) “transferred into the state may be registered at any time, provided such weapons are registered within thirty days of their transfer into the state.” Once having registered, the registrant must “recertify” every five years thereafter or suffer revocation of the registration [Penal Law § 400.00(16-a)].

Owners of a grandfathered assault weapon or large capacity ammunition feeding device may only transfer same to a purchaser authorized to possess same or to an individual or entity outside of the state [subdivision 22(h)]. Governor's Press Release, *supra*. An individual who transfers a grandfathered weapon or large capacity ammunition device to an individual inside New York State or without complying with the other provisions of the statute [subdivision 22(h)], shall, except for a large capacity ammunition device transferred within one year of the effective date of the NY SAFE Act, be guilty of a class A misdemeanor [subdivision 22(h)].

Automatic knife

In 2007, legislation was passed to support and promote the establishment of a “cutlery and knife museum” in the Hudson Valley. L.2007, c. 510. As a result, the museum and its employees would need an exemption from the crime of possession of certain knives. Thus, the term “automatic knife” was created and defined to include a “stiletto, a switchblade knife, a gravity knife, a cane sword, a pilum ballistic knife, and a metal knuckle knife” [Penal Law § 265.00(5-c)], and an exemption from criminal liability was provided for the possession or ownership of automatic knives by a cutlery and knife museum, established pursuant to Education Law § 216-c, or by any employee of the museum when acting in furtherance of the business of the museum [Penal Law § 265.20(d)].

Billy

There is no statutory definition of “billy.” However, in *People v. Ocasio*, 28 N.Y.3d 178, 43 N.Y.S.3d 228, 65 N.E.3d 1263 (2016), the Court described a “billy” as “a cylindrical or rounded, rigid, club or baton with a handle grip which, from its appearance and inherent characteristics, is designed to be used as a striking weapon and not for other lawful purposes.” The Court further explained that it matters not whether the “billy” is comprised of wood, metal, or other synthetic material, or that the billy is collapsible or extendible.

Chuka stick

The “chuka stick” definition [Penal Law § 265.00(14)] was added by L.1974, c. 179. In urging the Governor to approve the legislation, the sponsor of the bill wrote: “The chuka stick is an instrument that may be purchased or easily assembled from two pieces of wood and a piece of thong, cord or chain. With a minimum amount of practice, this instrument may be effectively used as a garrote, bludgeon, thrusting or striking device. The chuka stick is designed primarily as a weapon and has no purpose other than to maim or, in some instances, kill.” Letter of Assemblyman Richard C. Ross to the Counsel to the Governor, Governor's Bill Jacket for the L.1974, c. 179.

Electronic dart gun

The “electronic dart gun” definition [Penal Law § 265.00(15-a)] was added in 1976. L.1976, c. 217. In urging the Governor to approve the legislation, the sponsor of the bill wrote: “There are a number of these devices being manufactured, the most popular of which is called a ‘Taser Public Defender.’ It is designed to look like a flashlight which can shoot two barbed darts a distance of 15 to 18 feet and deliver a 50,000 volt jolt of electricity effective through an inch of clothing. While the effect of the charge is to stun, knock out or paralyze a person and is temporary, it causes great pain and may well be lethal to a person in poor health.” Letter of Senator John D. Caemmerer to the Counsel to the Governor, Governor's Bill Jacket for the L.1976, c. 217.

Electronic stun gun

In 1990, the Legislature added the definition of an “electronic stun gun” [Penal Law § 265.00(15-c)]. L.1990, c. 264. That definition is like the definition of an “electronic dart gun.” Penal Law § 265.00(15-a). A principal difference is that the “electronic dart gun” requires that the electrical shock be passed by means of a dart or projectile. The Governor, who recommended the legislation, indicated that the “availability and use” of a weapon “which passes a high voltage electrical shock to a person by means of direct contact or without resort to a projectile” poses the same threat as an electronic dart gun. 1990 Governor's Approval Memorandum 31. Accordingly, for both weapons, possession per se is a crime. Penal Law §§ 265.01(1); 265.02(1).

There is a difference of judicial opinion on whether, in a prosecution for possession of an “electronic stun gun,” the People are required to prove that the defendant knew it was an “electronic stun gun.” Compare *People v. Small*, 157 Misc.2d 673, 598 N.Y.S.2d 431 (Supreme Court, New York County, 1993)(knowledge required) with *People v. Voltaire*, 18 Misc.3d 408, 413 n.1, 852 N.Y.S.2d 649 (Criminal Court, Kings County, 2007) (disagreeing with *Small* in a case in which the court decided that the defendant need not know that the knife possessed was a gravity knife) and *People v. Parrilla*, 27 N.Y.3d 400, 33 N.Y.S.3d 842, 53 N.E.3d 719 (2016) (in a prosecution for possession of a “gravity knife,” the People must prove that the defendant possessed a “knife,” but not that he or she knew that it met the definition of a “gravity knife”).

Gravity knife

The definition of “gravity knife” [Penal Law § 265.00(5)] requires that the knife's blade lock in place automatically; thus, a “butterfly knife,” which requires manual locking is not a gravity knife. *People v. Zuniga*, 303 A.D.2d 773, 759 N.Y.S.2d 86 (2d Dept. 2003). A local accusatory instrument which charges a defendant with possession of a gravity knife is jurisdictionally defective when it includes only a “conclusory statement that an object recovered from a defendant is a gravity knife,” without any explanation of how the object meets the statutory definition. *People v. Dreyden*, 15 N.Y.3d 100, 104, 905 N.Y.S.2d 542, 931 N.E.2d 526, 528 (2010).

In a prosecution for possession of a “gravity knife,” the People must prove that the defendant possessed a “knife,” but not that he or she knew that it met the definition of a “gravity knife.” *People v. Parrilla*, 27 N.Y.3d 400, 33 N.Y.S.3d 842, 53 N.E.3d 719 (2016). The Appellate Divisions have held that the People are required to prove that the “gravity knife” is operable [*People v. Smith*, 309 A.D.2d 608, 765 N.Y.S.2d 777 (1st Dept. 2003); *People v. Perez*, 123 A.D.2d 721, 506 N.Y.S.2d 961 (2d Dept. 1986)].

Kung Fu star

In 1982, the possession of a “Kung Fu star” [Penal Law § 265.00(15-b)] with intent to use it unlawfully against another was made a crime. L.1982, c. 840. In 1985, the manufacturing and transporting of a Kung Fu star was made a crime [Penal Law § 265.10]. L.1985, c. 61. In 1988, in recognition that Kung Fu stars may not be manufactured and, in the words of the Legislative Memorandum, that they “serve no legitimate purpose other than as a weapon,” the statute was again amended to make the per se possession of a Kung Fu star a crime [Penal Law § 265.01(2)]. L.1988, c. 220.

Large capacity ammunition feeding device

The concept of a “large capacity ammunition feeding device” [Penal Law § 265.00(23)] (hereinafter “large feeding device”) was introduced in 2000 [c. 189] and significantly amended in 2013 by the NY SAFE Act. [L.2013, c. 1, as amended by L.2013, c. 57]. Prior to the amendment, the definition excluded a large feeding device manufactured after September 30, 1994. That limitation was repealed; thus, those large feeding devices are included in the revised definition of a “large feeding device.” According to the Legislative Memorandum, the reason for doing so was “because it was impossible to tell the difference between magazines manufactured before or after [September 30, 1994].”

Under the revised definition, a large feeding device is one that “(a) has a capacity of, or that can be readily restored or converted to accept, more than ten rounds of ammunition; provided, however, that such term does not include an attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition or a large feeding device that is a curio or relic.”

The two alternate definitions initially enacted as subdivisions (b) and (c) were in a convoluted way repealed. The import of those alternate subdivisions was to have the definition of a device ultimately limited to one that had a capacity of seven rounds. But, after enactment, it was noted that the smallest manufactured device normally had a capacity of ten rounds. Kaplan and Hakim, “New York Governor Favors Easing Newly Passed Gun Law,” New York Times, March 20, 2013 (<http://www.nytimes.com/2013/03/21/nyregion/cuomo-seeks-to-ease-a-newly-passed-gun-restriction.html>). Thus, before subdivisions (b) and (c) took effect, the NY SAFE Act was itself amended to declare that “the effective date of the amendments adding paragraphs (b) and (c) to such subdivision shall be suspended and not effective.” L.2013, c. 57 § 4. There is no provision lifting the “suspension” and making the amendments effective on a future date. As a result, that unique Penal Law

language of “suspended and not effective” would appear to have the practical effect of repealing each of those subdivisions and was probably utilized for whatever perceived advantage there was in being able to say the provisions were suspended, rather than repealed. The repeal of subdivision (c) did not, however, appear to affect the “provided, however” language recited above which existed in the law prior to the addition of subdivision (c) and had chronologically followed the repealed language of subdivision (c).

The crimes for which the definition of a large feeding device is utilized include Penal Law § 265.00(22)(h), § 265.10, § 265.11, § 265.02(8), § 265.36, and § 265.37. The import of those statutes is as follows:

Penal Law § 265.00(22)(h)

A large feeding device that was legally possessed prior to the enactment date of the NY SAFE Act, January 15, 2013, may be transferred to a person authorized to possess same or to an individual or entity outside of New York, provided that such a transfer must be reported, within 72 hours, to the entity with whom the weapon is registered. A person who transfers a device to an individual inside New York state or without otherwise complying with the law's transfer requirements is guilty of a class A misdemeanor, unless the device, the possession of which is made illegal by the NY SAFE Act, was transferred before January 15, 2014 [Penal Law § 265.00(22)(h)].

Penal Law § 265.02(8)

Prior to, and after, the NY SAFE Act, a provision of the statute defining “criminal possession of a weapon in the third degree,” makes it a class D felony when a “person possesses a large capacity ammunition feeding device” [Penal Law § 265.02(8)]. The NY SAFE ACT, however, amended that subdivision to specify that “[f]or purposes of this subdivision,” a large feeding device shall “not” include either of the following two feeding devices:

[i] a feeding device lawfully possessed by such person before January 15, 2013 (the effective date of chapter one of the laws of 2013 “which amended this subdivision”), “that has a capacity of, or that can be readily restored or converted to accept more than seven but less than eleven rounds of ammunition.” Parenthetically, this exclusion from liability for this felony became covered by the generic definition of a large feeding device when that definition was amended to specify that a large feeding device is one that “has a capacity of, or that can be readily restored or converted to accept, more than ten rounds of ammunition.” [L.2013, c. 57 § 4; Penal Law § 265.00(23)].

[ii] a feeding device “that was manufactured before September [13, 1994], that has a capacity of, or that can be readily restored or converted to accept, more than ten rounds of ammunition.” The exclusion from liability for this felony is in recognition that prior to the NY SAFE Act, it was lawful to possess a feeding device manufactured before September 13, 1994. Notably, however, this exclusion from liability for this felony does not also require that the possessor lawfully possessed the feeding device prior to the effective date of the NY SAFE Act.

Penal Law § 265.10

As part of the 2000 laws [c. 189], Penal Law § 265.10 (“manufacture, transport, disposition and defacement of weapons and dangerous instruments and appliances”) was amended (1) to forbid the to manufacture, transport, or disposal of a “large capacity ammunition feeding device” [Penal Law § 265.10(1), (2) and (3) (first sentence)]; (2) to add a prohibition for the buying, receiving or disposing of a “large capacity ammunition feeding device” which has been defaced for a criminal purpose, which parallels the existing prohibition as it relates to a firearm [Penal Law § 265.10(3) (second sentence)]; and (3) to add a prohibition for “wilfully” defacing a “large capacity

ammunition feeding device,” which parallels the existing prohibition for wilfully defacing a firearm [Penal Law § 265.10(6)].

Penal Law § 265.11

Also, as part of the 2000 laws [c. 189], Penal Law § 265.11 (“criminal sale of a firearm in the third degree”) was amended to prohibit a person who is “not authorized” to possess a “firearm” from “unlawfully” selling or otherwise disposing of any firearm or “large capacity ammunition feeding device.” By contrast, one of the amendments to the crime of “manufacture, transport, disposition and defacement of weapons and dangerous instruments and appliances” made it a crime to “dispose of” [defined in Penal Law § 265.00(6)] a “large capacity ammunition feeding device” [Penal Law § 265.10(3) (sentence one)], without also requiring that the actor not be authorized to possess a firearm. Thus, unless exempted by Penal Law § 265.20, a person who “disposes of” such device (and does so, for example, by a sale of the device) commits a crime, irrespective of whether that person is authorized or not authorized to possess a “firearm.”

Penal Law § 265.36 and § 265.37

The NY SAFE Act added two non-felony offenses, apparently intending to include liability for a feeding device subject to the exceptions to the felony, though arguably not completely fulfilling that intent.

The first added offense was “unlawful possession of a large capacity ammunition feeding device” [Penal Law § 265.36], a class A misdemeanor. The statute makes it “unlawful for a person to knowingly possess a large capacity ammunition feeding device manufactured before September [13, 1994] and if such person lawfully possessed such large capacity feeding device before [January 15, 2013], that has a capacity of, or that can be readily restored or converted to accept, more than ten rounds of ammunition.” Penal Law § 265.36.

A safeguard for those who once lawfully possessed such feeding device is a provision excluding from liability for this crime a person “who has a reasonable belief that such device ... may lawfully be possessed,” and who, within 30 days of being notified by law enforcement or a licensing official that possession is unlawful, “surrenders or lawfully disposes of” the feeding device. Once so notified, there exists a reasonable, rebuttable presumption that the possessor knows that the feeding device cannot be lawfully possessed.

The second added offense was “unlawful possession of certain ammunition feeding devices” [Penal Law § 265.37]. This statute makes it “unlawful for a person to knowingly possess an ammunition feeding device where such device contains more than seven rounds of ammunition.” L.2013, c. 57. *But see New York State Rifle & Pistol Ass'n, Inc. v. Cuomo*, 804 F.3d 242, 248 (2d Cir. 2015) (“New York's seven-round load limit does not survive intermediate scrutiny in the absence of requisite record evidence and a substantial relationship between the statutory provision and important state safety interests”; accordingly, that provision is unconstitutional). However, there is an exemption from liability for Penal Law sections 265.01, 265.02, 265.03, 265.04, 265.05, 265.10, 265.11, 265.12, 265.13, 265.15 and 270.05 for the “possession and use” at certain specified “indoor or outdoor” firing ranges of a “magazine, belt, feed strip or similar device” that contains more than seven rounds of ammunition, albeit in a feeding device that does not have the capacity of more than ten rounds of ammunition [Penal Law § 265.20(7-f)].

Instead of placing the sentencing provisions applicable to this offense in the Penal Law articles dealing with sentences, the NY SAFE Act, unfortunately, as too many other statutes have done, further complicated the sentencing laws by setting forth the governing sentences for this offense in the statute defining the crime. If the large feeding device is “possessed within the home of the possessor,” a first offense is a violation, “subject

to” a fine of \$250; “each subsequent offense” is a class B misdemeanor, “subject to” a fine of \$250 and a term of imprisonment “up to three months.” If the large feeding device is not possessed within the home of the possessor, a first offense is a class B misdemeanor, “subject to” a fine of \$250 and a term of imprisonment “up to six months”; “each subsequent offense” is a class A misdemeanor. For the class A misdemeanor, no sentence is specified, and thus the normal sentence options will apply. For the specified sentences, it appears that the amount of the fine is the stated amount, there being no language indicating that the fine is “up to” the stated amount; on the other hand, the jail sentences utilize the “up to” language, making them discretionary within that range, which may therefore be from one day up to the stated period. What is mysterious about this type of specified sentences, which are placed outside the sentencing statutes, is whether they exclude any other option in the sentencing statutes which would normally be included in the stated classification.

Machine-gun

A “machine-gun” is not included in the definition of a “firearm.” Unlike the definition of a firearm, rifle or shotgun, the requirement of operability of a machine-gun appears subsumed in its definition, which requires that it be a weapon, “loaded or unloaded, from which a number of shots or bullets may be rapidly or automatically discharged from a magazine with one continuous pull of the trigger...” [Penal Law § 265.00(1)]. See *People v. Woods*, 202 Misc. 562, 564, 114 N.Y.S.2d 611, 613 (N.Y. Magis. Ct. 1952) (purported machine gun was missing two parts and was thus not capable of firing more than one shot at a time and was therefore not a “machine gun”).

To an extent, the definition is expanded in the definition of the crime of “criminal possession of a weapon in the third degree” which prohibits the possession of a machine-gun or any other weapon “simulating a machine-gun and which is adaptable for such use.” Penal Law § 265.02(2). See *People v. Excell*, 254 A.D.2d 369, 680 N.Y.S.2d 259 (2d Dept. 1998) (the court rejected the claim that because a “Uzi cannot be easily converted into a machine gun,” it was thus not adaptable for such use because there was no such statutory qualification).

Metal knuckles

There is no statutory definition of “metal knuckles.” However, in *People v. Aragon*, 28 N.Y.3d 125, 42 N.Y.S.3d 646, 65 N.E.3d 675 (2016), the Court described “metal knuckles” as a “metal object with multiple holes, through which an individual places his or her fingers so that a metal bar rests atop the individual's knuckles. That object is used as a weapon to cause increased pain when the person wearing it hits someone with a fist.”

Metal knuckle knife

In 1995, the Legislature added to the list of defined weapons the “metal knuckle knife” [Penal Law § 265.00(5-b)], and then added that weapon to the list of items which constitute a deadly weapon [Penal Law § 10.00(12)], to the list of items the possession or manufacture of which is per se a crime [Penal Law §§ 265.01(1), 265.10(1)], and to the list of items whose presence in an automobile or in a stolen vehicle may give rise to a presumption of possession of that weapon by everyone in the automobile or stolen vehicle [Penal Law § 265.15]. L.1995, c. 219. A “metal knuckle knife” can function as both a set of metal knuckles (possession of which is also a per se crime) and a knife. In the words of the Legislative Memorandum, the “possession and manufacture of weapons such as the metal knuckle knife serve only one purpose, ... to maim or take human life. Police searches of shops in the City of New York have discovered this particular weapon. ... In order to protect society, these weapons must be included within the definition of ‘deadly weapons’ found in the Penal Law.”

In 2008, the definition of “deadly weapon” in [Penal Law § 10.00\(12\)](#) and the instant definition of “metal knuckle knife” were each amended to include “plastic knuckles” because the Legislature determined that “plastic knuckles have just as much impact as the brass knuckles and are just as deadly.” Legislative Memorandum. L.2008, c. 257. Also, a number of statutes which prohibit the possession, manufacture and transportation of various deadly weapons were amended to include a prohibition on the possession of “plastic knuckles” [[Penal Law §§ 265.01\(1\); 265.10\(1\) and \(2\)](#)].

Pilum ballistic knife

The “pilum ballistic knife” definition [[Penal Law § 265.00\(5-a\)](#)] was added in 1986. L.1986, c. 328. One advertisement for the knife described it as approximately nine-and-one-half inches long, with a four-and-a-half inch blade. When a button inside the knife handle is pushed, a powerful spring inside the handle can eject the blade, propelling it to a distance of up to 30 feet with considerable force.


Rifle or shotgun

A sawed-off rifle or shotgun, that is, one with a barrel or overall length less than that prescribed in the statute defining a “firearm” [[Penal Law § 265.00\(3\)](#)], and a rifle or shotgun which qualifies as an “assault weapon” are, for the purposes of this article, a “firearm” and therefore subject to the prohibitions related thereto.

Otherwise, a rifle and a shotgun, as those terms are defined [[Penal Law § 265.00\(11\) and \(12\)](#)], are not included in the definition of “firearm,” and any prohibition related to either requires the specific use of the term “rifle” or “shotgun.” See, e.g. [Penal Law § 265.01\(4\)](#). In addition to meeting the terms of the definition, a rifle or shotgun must also be operable, that is, capable of discharging ammunition. *People v. Longshore*, 86 N.Y.2d 851, 633 N.Y.S.2d 475, 657 N.E.2d 496 (1995).

[Notes of Decisions \(142\)](#)

McKinney's Penal Law § 265.00, NY PENAL § 265.00
Current through L.2019, chapters 1 to 19.

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

McKinney's Consolidated Laws of New York Annotated
Penal Law (Refs & Annos)
Chapter 40. Of the Consolidated Laws (Refs & Annos)
Part Three. Specific Offenses
Title P. Offenses Against Public Safety
Article 265. Firearms and Other Dangerous Weapons (Refs & Annos)

McKinney's Penal Law § 265.02

§ 265.02 Criminal possession of a weapon in the third degree

Effective: March 16, 2013
[Currentness](#)

A person is guilty of criminal possession of a weapon in the third degree when:

- (1) Such person commits the crime of criminal possession of a weapon in the fourth degree as defined in [subdivision one, two, three or five of section 265.01](#), and has been previously convicted of any crime; or
- (2) Such person possesses any explosive or incendiary bomb, bombshell, firearm silencer, machine-gun or any other firearm or weapon simulating a machine-gun and which is adaptable for such use; or
- (3) Such person knowingly possesses a machine-gun, firearm, rifle or shotgun which has been defaced for the purpose of concealment or prevention of the detection of a crime or misrepresenting the identity of such machine-gun, firearm, rifle or shotgun; or
- (4) *Repealed by L.2006, c. 742, § 1, eff. Nov. 1, 2006.*
- (5) (i) Such person possesses three or more firearms; or (ii) such person possesses a firearm and has been previously convicted of a felony or a class A misdemeanor defined in this chapter within the five years immediately preceding the commission of the offense and such possession did not take place in the person's home or place of business; or
- (6) Such person knowingly possesses any disguised gun; or
- (7) Such person possesses an assault weapon; or
- (8) Such person possesses a large capacity ammunition feeding device. For purposes of this subdivision, a large capacity ammunition feeding device shall not include an ammunition feeding device lawfully possessed by such person before the effective date of the chapter of the laws of two thousand thirteen which amended this subdivision, that has a capacity

of, or that can be readily restored or converted to accept more than seven but less than eleven rounds of ammunition, or that was manufactured before September thirteenth, nineteen hundred ninety-four, that has a capacity of, or that can be readily restored or converted to accept, more than ten rounds of ammunition; or

(9) Such person possesses an unloaded firearm and also commits a drug trafficking felony as defined in [subdivision twenty-one of section 10.00](#) of this chapter as part of the same criminal transaction; or

(10) Such person possesses an unloaded firearm and also commits any violent felony offense as defined in [subdivision one of section 70.02](#) of this chapter as part of the same criminal transaction.

Criminal possession of a weapon in the third degree is a class D felony.

Credits

(Added L.1974, c. 1041, § 3. Amended L.1980, c. 233, § 7; L.1981, c. 175, § 4; [L.1987, c. 695, § 1](#); [L.1998, c. 378, § 3, eff. Nov. 1, 1998](#); [L.2000, c. 189, § 11, eff. Nov. 1, 2000](#); [L.2005, c. 764, § 2, eff. Dec. 21, 2005](#); [L.2006, c. 742, § 1, eff. Nov. 1, 2006](#); [L.2013, c. 1, § 41-b, eff. March 16, 2013](#).)

Editors' Notes

PRACTICE COMMENTARIES

by William C. Donnino

See Practice Commentary to [Penal Law § 265.01](#).

[Notes of Decisions \(552\)](#)

McKinney's Penal Law § 265.02, NY PENAL § 265.02
Current through L.2019, chapters 1 to 19.

EXHIBIT 8

H. R. 3355

One Hundred Third Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Tuesday,
the twenty-fifth day of January, one thousand nine hundred and ninety-four*

An Act

To control and prevent crime.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the “Violent Crime Control and Law Enforcement Act of 1994”.

SEC. 2. TABLE OF CONTENTS.

The following is the table of contents for this Act:

- Sec. 1. Short title.
- Sec. 2. Table of contents.

TITLE I—PUBLIC SAFETY AND POLICING

- Sec. 10001. Short title.
- Sec. 10002. Purposes.
- Sec. 10003. Community policing; “Cops on the Beat”.

TITLE II—PRISONS

Subtitle A—Violent Offender Incarceration and Truth in Sentencing Incentive Grants

- Sec. 20101. Grants for correctional facilities.
- Sec. 20102. Truth in sentencing incentive grants.
- Sec. 20103. Violent offender incarceration grants.
- Sec. 20104. Matching requirement.
- Sec. 20105. Rules and regulations.
- Sec. 20106. Technical assistance and training.
- Sec. 20107. Evaluation.
- Sec. 20108. Definitions.
- Sec. 20109. Authorization of appropriations.

Subtitle B—Punishment for Young Offenders

- Sec. 20201. Certain punishment for young offenders.

Subtitle C—Alien Incarceration

- Sec. 20301. Incarceration of undocumented criminal aliens.

Subtitle D—Miscellaneous Provisions

- Sec. 20401. Prisoner’s place of imprisonment.
- Sec. 20402. Prison impact assessments.
- Sec. 20403. Sentences to account for costs to the Government of imprisonment, release, and probation.
- Sec. 20404. Application to prisoners to which prior law applies.
- Sec. 20405. Crediting of “good time”.
- Sec. 20406. Task force on prison construction standardization and techniques.
- Sec. 20407. Efficiency in law enforcement and corrections.
- Sec. 20408. Amendments to the Department of Education Organization Act and the National Literacy Act of 1991.
- Sec. 20409. Appropriate remedies for prison overcrowding.
- Sec. 20410. Congressional approval of any expansion at Lorton and congressional hearings on future needs.

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- Sec. 20411. Awards of Pell Grants to prisoners prohibited.
- Sec. 20412. Education requirement for early release.
- Sec. 20413. Conversion of closed military installations into Federal prison facilities.
- Sec. 20414. Post-conviction release drug testing—Federal offenders.
- Sec. 20415. Reporting of cash received by criminal court clerks.
- Sec. 20416. Civil rights of institutionalized persons.
- Sec. 20417. Notification of release of prisoners.
- Sec. 20418. Correctional job training and placement.

TITLE III—CRIME PREVENTION

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- Sec. 30101. Ounce of Prevention Council.
- Sec. 30102. Ounce of prevention grant program.
- Sec. 30103. Definition.
- Sec. 30104. Authorization of appropriations.

Subtitle B—Local Crime Prevention Block Grant Program

- Sec. 30201. Payments to local governments.
- Sec. 30202. Authorization of appropriations.
- Sec. 30203. Qualification for payment.
- Sec. 30204. Allocation and distribution of funds.
- Sec. 30205. Utilization of private sector.
- Sec. 30206. Public participation.
- Sec. 30207. Administrative provisions.
- Sec. 30208. Definitions.

Subtitle C—Model Intensive Grant Programs

- Sec. 30301. Grant authorization.
- Sec. 30302. Uses of funds.
- Sec. 30303. Program requirements.
- Sec. 30304. Applications.
- Sec. 30305. Reports.
- Sec. 30306. Definitions.
- Sec. 30307. Authorization of appropriations.

Subtitle D—Family and Community Endeavor Schools Grant Program

- Sec. 30401. Community schools youth services and supervision grant program.
- Sec. 30402. Family and community endeavor schools grant program.
- Sec. 30403. Authorization of appropriations.

Subtitle G—Assistance for Delinquent and At-Risk Youth

- Sec. 30701. Grant authority.
- Sec. 30702. Authorization of appropriations.

Subtitle H—Police Recruitment

- Sec. 30801. Grant authority.
- Sec. 30802. Authorization of appropriations.

Subtitle J—Local Partnership Act

- Sec. 31001. Establishment of payment program.
- Sec. 31002. Technical amendment.

Subtitle K—National Community Economic Partnership

- Sec. 31101. Short title.

CHAPTER 1—COMMUNITY ECONOMIC PARTNERSHIP INVESTMENT FUNDS

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- Sec. 31112. Provision of assistance.
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- Sec. 31704. Allocation of funds; limitations on grants.
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- Sec. 31707. Authorization of appropriations.
- Sec. 31708. Definitions.

Subtitle S—Family Unity Demonstration Project

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- Sec. 31902. Purpose.
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- Sec. 40131. Grants for capital improvements to prevent crime in public transportation.

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CHAPTER 4—SHELTER GRANTS

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- Sec. 40291. Research agenda.
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- Sec. 40303. Attorney's fees.
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- Sec. 60006. Death penalty for civil rights murders.
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- Sec. 60008. New offense for the indiscriminate use of weapons to further drug conspiracies.
- Sec. 60009. Foreign murder of United States nationals.
- Sec. 60010. Death penalty for rape and child molestation murders.
- Sec. 60011. Death penalty for sexual exploitation of children.
- Sec. 60012. Murder by escaped prisoners.
- Sec. 60013. Death penalty for gun murders during Federal crimes of violence and drug trafficking crimes.
- Sec. 60014. Homicides and attempted homicides involving firearms in Federal facilities.
- Sec. 60015. Death penalty for the murder of State or local officials assisting Federal law enforcement officials and State correctional officers.
- Sec. 60016. Protection of court officers and jurors.
- Sec. 60017. Prohibition of retaliatory killings of witnesses, victims, and informants.
- Sec. 60018. Death penalty for murder of Federal witnesses.
- Sec. 60019. Offenses of violence against maritime navigation or fixed platforms.
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- Sec. 60022. Terrorist Death Penalty Act.

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- Sec. 60023. Weapons of mass destruction.
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- Sec. 60026. Appointment of Counsel.

TITLE VII—MANDATORY LIFE IMPRISONMENT FOR PERSONS CONVICTED OF CERTAIN FELONIES

- Sec. 70001. Mandatory life imprisonment for persons convicted of certain felonies.
- Sec. 70002. Limited grant of authority to Bureau of Prisons.

TITLE VIII—APPLICABILITY OF MANDATORY MINIMUM PENALTIES IN CERTAIN CASES

- Sec. 80001. Limitation on applicability of mandatory minimum penalties in certain cases.

TITLE IX—DRUG CONTROL

Subtitle A—Enhanced Penalties and General Provisions

- Sec. 90101. Enhancement of penalties for drug trafficking in prisons.
- Sec. 90102. Increased penalties for drug-dealing in “drug-free” zones.
- Sec. 90103. Enhanced penalties for illegal drug use in Federal prisons and for smuggling drugs into Federal prisons.
- Sec. 90104. Clarification of narcotic or other dangerous drugs under RICO.
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- Sec. 90106. Advertising.
- Sec. 90107. Violent crime and drug emergency areas.

Subtitle B—National Narcotics Leadership Act Amendments

- Sec. 90201. Implementation of National Drug Control Strategy.
- Sec. 90202. Report on reprogramming; office personnel restriction.
- Sec. 90203. National Drug Control Strategy outcome measures.
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- Sec. 90205. Special Forfeiture Fund amendments.
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- Sec. 90207. Adequate staffing of the Office of National Drug Control Policy.
- Sec. 90208. Termination of Office of National Drug Control Policy.

TITLE X—DRUNK DRIVING PROVISIONS

- Sec. 100001. Short title.
- Sec. 100002. State laws applied in areas of Federal jurisdiction.
- Sec. 100003. Driving while intoxicated prosecution program.

TITLE XI—FIREARMS

Subtitle A—Assault Weapons

- Sec. 110101. Short title.
- Sec. 110102. Restriction on manufacture, transfer, and possession of certain semi-automatic assault weapons.
- Sec. 110103. Ban of large capacity ammunition feeding devices.
- Sec. 110104. Study by Attorney General.
- Sec. 110105. Effective date.
- Sec. 110106. Appendix A to section 922 of title 18.

Subtitle B—Youth Handgun Safety

- Sec. 110201. Prohibition of the possession of a handgun or ammunition by, or the private transfer of a handgun or ammunition to, a juvenile.

Subtitle C—Licensure

- Sec. 110301. Firearms licensure and registration to require a photograph and fingerprints.
- Sec. 110302. Compliance with State and local law as a condition to license.
- Sec. 110303. Action on firearms license application.
- Sec. 110304. Inspection of firearms licensees’ inventory and records.
- Sec. 110305. Reports of theft or loss of firearms.
- Sec. 110306. Responses to requests for information.
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Subtitle D—Domestic Violence

- Sec. 110401. Prohibition against disposal of firearms to, or receipt of firearms by, persons who have committed domestic abuse.

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- Sec. 110501. Enhanced penalty for use of a semiautomatic firearm during a crime of violence or a drug trafficking crime.
- Sec. 110502. Enhanced penalty for second offense of using an explosive to commit a felony.
- Sec. 110503. Smuggling firearms in aid of drug trafficking.
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- Sec. 110505. Revocation of supervised release after imprisonment.
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- Sec. 110507. Increased penalty for knowingly making false, material Statement in connection with the acquisition of a firearm from a licensed dealer.
- Sec. 110508. Possession of explosives by felons and others.
- Sec. 110509. Summary destruction of explosives subject to forfeiture.
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- Sec. 110511. Prohibition against transactions involving stolen firearms which have moved in interstate or foreign commerce.
- Sec. 110512. Using a firearm in the commission of counterfeiting or forgery.
- Sec. 110513. Enhanced penalties for firearms possession by violent felons and serious drug offenders.
- Sec. 110514. Receipt of firearms by nonresident.
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- Sec. 110516. Disposing of explosives to prohibited persons.
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TITLE XII—TERRORISM

- Sec. 120001. Extension of the statute of limitation for certain terrorism offenses.
- Sec. 120002. Jurisdiction over crimes against United States nationals on certain foreign ships.
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TITLE XIII—CRIMINAL ALIENS AND IMMIGRATION ENFORCEMENT

- Sec. 130001. Enhancement of penalties for failing to depart, or reentering, after final order of deportation.
- Sec. 130002. Criminal alien tracking center.
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- Sec. 130004. Deportation procedures for certain criminal aliens who are not permanent residents.
- Sec. 130005. Expeditious deportation for denied asylum applicants.
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- Sec. 130007. Expanded special deportation proceedings.
- Sec. 130008. Authority to accept certain assistance.
- Sec. 130009. Passport and visa offenses penalties improvement.
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TITLE XIV—YOUTH VIOLENCE

- Sec. 140001. Prosecution as adults of certain juveniles for crimes of violence.
- Sec. 140002. Commencement of juvenile proceeding.
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- Sec. 140004. Bindover system for certain violent juveniles.
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- Sec. 140006. Increased penalties for employing children to distribute drugs near schools and playgrounds.
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- Sec. 150001. Criminal street gangs.
- Sec. 150002. Adult prosecution of serious juvenile offenders.
- Sec. 150003. Addition of anti-gang Byrne grant funding objective.
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- Sec. 150008. Gang investigation coordination and information collection.
- Sec. 150009. Multijurisdictional gang task forces.

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- Sec. 160001. Penalties for international trafficking in child pornography.

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- Sec. 170101. Establishment of program.
 - Subtitle B—Assaults Against Children
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- Sec. 170301. Short title.
- Sec. 170302. Purpose.
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TITLE XVIII—RURAL CRIME

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- Sec. 180101. Authorizations for rural law enforcement agencies.
- Sec. 180102. Rural crime and drug enforcement task forces.
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Subtitle B—Drug Free Truck Stops and Safety Rest Areas

- Sec. 180201. Drug free truck stops and safety rest areas.

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- Sec. 180301. Funding for rural areas.

TITLE XIX—FEDERAL LAW ENFORCEMENT

- Sec. 190001. Federal judiciary and Federal law enforcement.

TITLE XX—POLICE CORPS AND LAW ENFORCEMENT OFFICERS TRAINING AND EDUCATION

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- Sec. 200101. Short title.
- Sec. 200102. Purposes.
- Sec. 200103. Definitions.
- Sec. 200104. Establishment of office of the police corps and law enforcement education.
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TITLE XXI—STATE AND LOCAL LAW ENFORCEMENT

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- Sec. 210101. Extension of Byrne Grant funding.

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Sec. 210201. Law enforcement family support.

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Sec. 210301. Short title.

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Subtitle D—Police Pattern or Practice

Sec. 210401. Cause of action.

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Sec. 210501. Improved training and technical automation.

Subtitle F—Other State and Local Aid

Sec. 210601. Reauthorization of Office of Justice Programs.

Sec. 210602. Federal assistance to ease the increased burdens on State court systems resulting from enactment of this Act.

Sec. 210603. Availability of violent crime reduction trust fund to fund activities authorized by the Brady Handgun Violence Prevention Act and the National Child Protection Act of 1993.

TITLE XXII—MOTOR VEHICLE THEFT PREVENTION

Sec. 220001. Short title.

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TITLE XXIII—VICTIMS OF CRIME

Subtitle A—Victims of Crime

Sec. 230101. Victim's right of allocution in sentencing.

Sec. 230102. Sense of the Senate concerning the right of a victim of a violent crime or sexual abuse to speak at an offender's sentencing hearing and any parole hearing.

Subtitle B—Crime Victims' Fund

Sec. 230201. Allocation of funds for costs and grants.

Sec. 230202. Relationship of crime victim compensation to certain Federal programs.

Sec. 230203. Administrative costs for crime victim compensation.

Sec. 230204. Grants for demonstration projects.

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TITLE XXIV—PROTECTIONS FOR THE ELDERLY

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TITLE XXV—SENIOR CITIZENS AGAINST MARKETING SCAMS

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- Sec. 310001. Creation of Violent Crime Reduction Trust Fund.
- Sec. 310002. Conforming reduction in discretionary spending limits.
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TITLE XXXII—MISCELLANEOUS

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- Sec. 320101. Increased penalties for assault.
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- Sec. 320201. Extension of protection of civil rights statutes.

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- Sec. 320301. Audit requirement for State and local law enforcement agencies receiving Federal asset forfeiture funds.
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- Sec. 320401. Coordination of substance abuse treatment and prevention programs.

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- Sec. 320501. Clarifying amendment regarding scope of prohibition against gambling on ships in international waters.

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- Sec. 320601. Receiving the proceeds of extortion or kidnapping.

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- Sec. 320605. Federal Deposit Insurance Act amendment.
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- Sec. 320608. Definition of “savings and loan association” for purposes of the offense of bank robbery and related offenses.
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- Sec. 320912. Definition of livestock.
- Sec. 320913. Asset forfeiture.
- Sec. 320914. Clarification of definition of a “court of the United States” to include the district courts for Guam, the Northern Mariana Islands, and the Virgin Islands.
- Sec. 320915. Law enforcement personnel.
- Sec. 320916. Authority to investigate violent crimes against travelers.
- Sec. 320917. Extension of statute of limitations for arson.
- Sec. 320918. Sense of Congress concerning child custody and visitation rights.
- Sec. 320919. Edward Byrne Memorial Formula Grant Program.
- Sec. 320920. Sense of the Senate regarding Law Day, U.S.A.
- Sec. 320921. First time domestic violence offender rehabilitation program.
- Sec. 320922. Display of flags at halfstaff.
- Sec. 320923. Financial institution fraud.
- Sec. 320924. Definition of parent for the purposes of the offense of kidnapping.
- Sec. 320926. Hate Crime Statistics Act.
- Sec. 320927. Exemption from Brady background check requirement of return of handgun to owner.
- Sec. 320928. Amendment of the National Child Protection Act of 1993.
- Sec. 320929. Tennessee Valley Authority law enforcement personnel.
- Sec. 320932. Assistant United States attorney residency.
- Sec. 320933. Labels on products.
- Sec. 320934. Non-dischargeability of payment of restitution order.
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TITLE XXXIII—TECHNICAL CORRECTIONS

- Sec. 330001. Amendments relating to Federal financial assistance for law enforcement.
- Sec. 330002. General title 18 corrections.
- Sec. 330003. Corrections of erroneous cross references and misdesignations.
- Sec. 330004. Repeal of obsolete provisions in title 18.

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- Sec. 330005. Correction of drafting error in the Foreign Corrupt Practices Act.
- Sec. 330006. Elimination of redundant penalty provision in 18 U.S.C. 1116.
- Sec. 330007. Elimination of redundant penalty.
- Sec. 330008. Corrections of misspellings and grammatical errors.
- Sec. 330009. Other technical amendments.
- Sec. 330010. Correction of errors found during codification.
- Sec. 330011. Problems related to execution of prior amendments.
- Sec. 330012. Amendment to section 1956 of title 18 to eliminate duplicate predicate crimes.
- Sec. 330013. Amendments to part V of title 18.
- Sec. 330014. Update of cross reference.
- Sec. 330015. Correction of error in amendatory language.
- Sec. 330016. Correction of misleading and outmoded fine amounts in offenses under title 18.
- Sec. 330017. Technical corrections to title 31 crimes.
- Sec. 330018. Repeal of superfluous statute of limitation and transfer of child abuse statute of limitation.
- Sec. 330019. Technical errors in section 1956.
- Sec. 330020. Technical error.
- Sec. 330021. Conforming spelling of variants of “kidnap”.
- Sec. 330022. Margin error.
- Sec. 330023. Technical corrections relating to section 248 of title 18, United States Code.
- Sec. 330024. Technical amendments necessitated by the enactment of the Domestic Chemical Diversion Control Act of 1993.
- Sec. 330025. Victims of Crime Act.

TITLE I—PUBLIC SAFETY AND POLICING

SEC. 10001. SHORT TITLE.

This title may be cited as the “Public Safety Partnership and Community Policing Act of 1994”.

SEC. 10002. PURPOSES.

The purposes of this title are to—

(1) substantially increase the number of law enforcement officers interacting directly with members of the community (“cops on the beat”);

(2) provide additional and more effective training to law enforcement officers to enhance their problem solving, service, and other skills needed in interacting with members of the community;

(3) encourage the development and implementation of innovative programs to permit members of the community to assist State, Indian tribal government, and local law enforcement agencies in the prevention of crime in the community; and

(4) encourage the development of new technologies to assist State, Indian tribal government, and local law enforcement agencies in reorienting the emphasis of their activities from reacting to crime to preventing crime,

by establishing a program of grants and assistance in furtherance of these objectives, including the authorization for a period of 6 years of grants for the hiring and rehiring of additional career law enforcement officers.

SEC. 10003. COMMUNITY POLICING; “COPS ON THE BEAT”.

(a) IN GENERAL.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended—

(1) by redesignating part Q as part R;

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TITLE X—DRUNK DRIVING PROVISIONS

SEC. 100001. SHORT TITLE.

This title may be cited as the “Drunk Driving Child Protection Act of 1994”.

SEC. 100002. STATE LAWS APPLIED IN AREAS OF FEDERAL JURISDICTION.

Section 13(b) of title 18, United States Code, is amended—

(1) by striking “For purposes” and inserting “(1) Subject to paragraph (2) and for purposes”; and

(2) by adding at the end the following new paragraph:

“(2)(A) In addition to any term of imprisonment provided for operating a motor vehicle under the influence of a drug or alcohol imposed under the law of a State, territory, possession, or district, the punishment for such an offense under this section shall include an additional term of imprisonment of not more than 1 year, or if serious bodily injury of a minor is caused, not more than 5 years, or if death of a minor is caused, not more than 10 years, and an additional fine of not more than \$1,000, or both, if—

“(i) a minor (other than the offender) was present in the motor vehicle when the offense was committed; and

“(ii) the law of the State, territory, possession, or district in which the offense occurred does not provide an additional term of imprisonment under the circumstances described in clause (i).

“(B) For the purposes of subparagraph (A), the term ‘minor’ means a person less than 18 years of age.”.

SEC. 100003. DRIVING WHILE INTOXICATED PROSECUTION PROGRAM.

Section 501(b) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3751) is amended—

(1) by striking “and” at the end of paragraph (20);

(2) by striking the period at the end of paragraph (21) and inserting “; and”; and

(3) by adding at the end the following new paragraph:

“(22) programs for the prosecution of driving while intoxicated charges and the enforcement of other laws relating to alcohol use and the operation of motor vehicles.”.

TITLE XI—FIREARMS

Subtitle A—Assault Weapons

SEC. 110101. SHORT TITLE.

This subtitle may be cited as the “Public Safety and Recreational Firearms Use Protection Act”.

SEC. 110102. RESTRICTION ON MANUFACTURE, TRANSFER, AND POSSESSION OF CERTAIN SEMIAUTOMATIC ASSAULT WEAPONS.

(a) RESTRICTION.—Section 922 of title 18, United States Code, is amended by adding at the end the following new subsection:

“(v)(1) It shall be unlawful for a person to manufacture, transfer, or possess a semiautomatic assault weapon.

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“(2) Paragraph (1) shall not apply to the possession or transfer of any semiautomatic assault weapon otherwise lawfully possessed under Federal law on the date of the enactment of this subsection.

“(3) Paragraph (1) shall not apply to—

“(A) any of the firearms, or replicas or duplicates of the firearms, specified in Appendix A to this section, as such firearms were manufactured on October 1, 1993;

“(B) any firearm that—

“(i) is manually operated by bolt, pump, lever, or slide action;

“(ii) has been rendered permanently inoperable; or

“(iii) is an antique firearm;

“(C) any semiautomatic rifle that cannot accept a detachable magazine that holds more than 5 rounds of ammunition; or

“(D) any semiautomatic shotgun that cannot hold more than 5 rounds of ammunition in a fixed or detachable magazine. The fact that a firearm is not listed in Appendix A shall not be construed to mean that paragraph (1) applies to such firearm. No firearm exempted by this subsection may be deleted from Appendix A so long as this subsection is in effect.

“(4) Paragraph (1) shall not apply to—

“(A) the manufacture for, transfer to, or possession by the United States or a department or agency of the United States or a State or a department, agency, or political subdivision of a State, or a transfer to or possession by a law enforcement officer employed by such an entity for purposes of law enforcement (whether on or off duty);

“(B) the transfer to a licensee under title I of the Atomic Energy Act of 1954 for purposes of establishing and maintaining an on-site physical protection system and security organization required by Federal law, or possession by an employee or contractor of such licensee on-site for such purposes or off-site for purposes of licensee-authorized training or transportation of nuclear materials;

“(C) the possession, by an individual who is retired from service with a law enforcement agency and is not otherwise prohibited from receiving a firearm, of a semiautomatic assault weapon transferred to the individual by the agency upon such retirement; or

“(D) the manufacture, transfer, or possession of a semiautomatic assault weapon by a licensed manufacturer or licensed importer for the purposes of testing or experimentation authorized by the Secretary.”.

(b) DEFINITION OF SEMIAUTOMATIC ASSAULT WEAPON.—Section 921(a) of title 18, United States Code, is amended by adding at the end the following new paragraph:

“(30) The term ‘semiautomatic assault weapon’ means—

“(A) any of the firearms, or copies or duplicates of the firearms in any caliber, known as—

“(i) Norinco, Mitchell, and Poly Technologies Avtomat Kalashnikovs (all models);

“(ii) Action Arms Israeli Military Industries UZI and Galil;

“(iii) Beretta Ar70 (SC-70);

“(iv) Colt AR-15;

“(v) Fabrique National FN/FAL, FN/LAR, and FNC;

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- “(vi) SWD M-10, M-11, M-11/9, and M-12;
- “(vii) Steyr AUG;
- “(viii) INTRATEC TEC-9, TEC-DC9 and TEC-22; and
- “(ix) revolving cylinder shotguns, such as (or similar to) the Street Sweeper and Striker 12;
- “(B) a semiautomatic rifle that has an ability to accept a detachable magazine and has at least 2 of—
 - “(i) a folding or telescoping stock;
 - “(ii) a pistol grip that protrudes conspicuously beneath the action of the weapon;
 - “(iii) a bayonet mount;
 - “(iv) a flash suppressor or threaded barrel designed to accommodate a flash suppressor; and
 - “(v) a grenade launcher;
- “(C) a semiautomatic pistol that has an ability to accept a detachable magazine and has at least 2 of—
 - “(i) an ammunition magazine that attaches to the pistol outside of the pistol grip;
 - “(ii) a threaded barrel capable of accepting a barrel extender, flash suppressor, forward handgrip, or silencer;
 - “(iii) a shroud that is attached to, or partially or completely encircles, the barrel and that permits the shooter to hold the firearm with the nontrigger hand without being burned;
 - “(iv) a manufactured weight of 50 ounces or more when the pistol is unloaded; and
 - “(v) a semiautomatic version of an automatic firearm;
- and
- “(D) a semiautomatic shotgun that has at least 2 of—
 - “(i) a folding or telescoping stock;
 - “(ii) a pistol grip that protrudes conspicuously beneath the action of the weapon;
 - “(iii) a fixed magazine capacity in excess of 5 rounds; and
 - “(iv) an ability to accept a detachable magazine.”.

(c) PENALTIES.—

(1) VIOLATION OF SECTION 922(v).—Section 924(a)(1)(B) of such title is amended by striking “or (q) of section 922” and inserting “(r), or (v) of section 922”.

(2) USE OR POSSESSION DURING CRIME OF VIOLENCE OR DRUG TRAFFICKING CRIME.—Section 924(c)(1) of such title is amended in the first sentence by inserting “, or semiautomatic assault weapon,” after “short-barreled shotgun.”.

(d) IDENTIFICATION MARKINGS FOR SEMIAUTOMATIC ASSAULT WEAPONS.—Section 923(i) of such title is amended by adding at the end the following: “The serial number of any semiautomatic assault weapon manufactured after the date of the enactment of this sentence shall clearly show the date on which the weapon was manufactured.”.

SEC. 110103. BAN OF LARGE CAPACITY AMMUNITION FEEDING DEVICES.

(a) PROHIBITION.—Section 922 of title 18, United States Code, as amended by section 110102(a), is amended by adding at the end the following new subsection:

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“(w)(1) Except as provided in paragraph (2), it shall be unlawful for a person to transfer or possess a large capacity ammunition feeding device.

“(2) Paragraph (1) shall not apply to the possession or transfer of any large capacity ammunition feeding device otherwise lawfully possessed on or before the date of the enactment of this subsection.

“(3) This subsection shall not apply to—

“(A) the manufacture for, transfer to, or possession by the United States or a department or agency of the United States or a State or a department, agency, or political subdivision of a State, or a transfer to or possession by a law enforcement officer employed by such an entity for purposes of law enforcement (whether on or off duty);

“(B) the transfer to a licensee under title I of the Atomic Energy Act of 1954 for purposes of establishing and maintaining an on-site physical protection system and security organization required by Federal law, or possession by an employee or contractor of such licensee on-site for such purposes or off-site for purposes of licensee-authorized training or transportation of nuclear materials;

“(C) the possession, by an individual who is retired from service with a law enforcement agency and is not otherwise prohibited from receiving ammunition, of a large capacity ammunition feeding device transferred to the individual by the agency upon such retirement; or

“(D) the manufacture, transfer, or possession of any large capacity ammunition feeding device by a licensed manufacturer or licensed importer for the purposes of testing or experimentation authorized by the Secretary.”.

“(4) If a person charged with violating paragraph (1) asserts that paragraph (1) does not apply to such person because of paragraph (2) or (3), the Government shall have the burden of proof to show that such paragraph (1) applies to such person. The lack of a serial number as described in section 923(i) of title 18, United States Code, shall be a presumption that the large capacity ammunition feeding device is not subject to the prohibition of possession in paragraph (1).”.

(b) DEFINITION OF LARGE CAPACITY AMMUNITION FEEDING DEVICE.—Section 921(a) of title 18, United States Code, as amended by section 110102(b), is amended by adding at the end the following new paragraph:

“(31) The term ‘large capacity ammunition feeding device’—

“(A) means a magazine, belt, drum, feed strip, or similar device manufactured after the date of enactment of the Violent Crime Control and Law Enforcement Act of 1994 that has a capacity of, or that can be readily restored or converted to accept, more than 10 rounds of ammunition; but

“(B) does not include an attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition.”.

(c) PENALTY.—Section 924(a)(1)(B) of title 18, United States Code, as amended by section 110102(c)(1), is amended by striking “or (v)” and inserting “(v), or (w)”.

(d) IDENTIFICATION MARKINGS FOR LARGE CAPACITY AMMUNITION FEEDING DEVICES.—Section 923(i) of title 18, United States Code, as amended by section 110102(d) of this Act, is amended by adding at the end the following: “A large capacity ammunition

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feeding device manufactured after the date of the enactment of this sentence shall be identified by a serial number that clearly shows that the device was manufactured or imported after the effective date of this subsection, and such other identification as the Secretary may by regulation prescribe.”.

SEC. 110104. STUDY BY ATTORNEY GENERAL.

(a) **STUDY.**—The Attorney General shall investigate and study the effect of this subtitle and the amendments made by this subtitle, and in particular shall determine their impact, if any, on violent and drug trafficking crime. The study shall be conducted over a period of 18 months, commencing 12 months after the date of enactment of this Act.

(b) **REPORT.**—Not later than 30 months after the date of enactment of this Act, the Attorney General shall prepare and submit to the Congress a report setting forth in detail the findings and determinations made in the study under subsection (a).

SEC. 110105. EFFECTIVE DATE.

This subtitle and the amendments made by this subtitle—

(1) shall take effect on the date of the enactment of this Act; and

(2) are repealed effective as of the date that is 10 years after that date.

SEC. 110106. APPENDIX A TO SECTION 922 OF TITLE 18.

Section 922 of title 18, United States Code, is amended by adding at the end the following appendix:

“APPENDIX A

Centerfire Rifles—Autoloaders

Browning BAR Mark II Safari Semi-Auto Rifle
Browning BAR Mark II Safari Magnum Rifle
Browning High-Power Rifle
Heckler & Koch Model 300 Rifle
Iver Johnson M–1 Carbine
Iver Johnson 50th Anniversary M–1 Carbine
Marlin Model 9 Camp Carbine
Marlin Model 45 Carbine
Remington Nylon 66 Auto-Loading Rifle
Remington Model 7400 Auto Rifle
Remington Model 7400 Rifle
Remington Model 7400 Special Purpose Auto Rifle
Ruger Mini-14 Autoloading Rifle (w/o folding stock)
Ruger Mini Thirty Rifle

Centerfire Rifles—Lever & Slide

Browning Model 81 BLR Lever-Action Rifle
Browning Model 81 Long Action BLR
Browning Model 1886 Lever-Action Carbine
Browning Model 1886 High Grade Carbine
Cimarron 1860 Henry Replica
Cimarron 1866 Winchester Replicas
Cimarron 1873 Short Rifle
Cimarron 1873 Sporting Rifle
Cimarron 1873 30” Express Rifle
Dixie Engraved 1873 Rifle
E.M.F. 1866 Yellowboy Lever Actions
E.M.F. 1860 Henry Rifle
E.M.F. Model 73 Lever-Action Rifle
Marlin Model 336CS Lever-Action Carbine
Marlin Model 30AS Lever-Action Carbine
Marlin Model 444SS Lever-Action Sporter
Marlin Model 1894S Lever-Action Carbine

CERTIFICATE OF SERVICE
IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

Case Name: *Rupp, et al. v. Becerra*
Case No.: 8:17-cv-00746-JLS-JDE

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 180 East Ocean Boulevard, Suite 200, Long Beach, California 90802.

I am not a party to the above-entitled action. I have caused service of:

**REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

on the following party by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

Xavier Becerra
Attorney General of California
Peter H. Chang
Deputy Attorney General
E-mail: peter.chang@doj.ca.gov
John D. Echeverria
Deputy Attorney General
E-mail: john.echeverria@doj.ca.gov
455 Golden Gate Ave., Suite 11000
San Francisco, CA 94102

I declare under penalty of perjury that the foregoing is true and correct.

Executed March 25, 2019.

/s/Laura Palmerin
Laura Palmerin

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cmichel@michellawyers.com
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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

STEVEN RUPP, et al.,

Plaintiffs,

vs.

XAVIER BECERRA, in his official
capacity as Attorney General of the
State of California,

Defendant.

Case No.: 8:17-cv-00746-JLS-JDE

**DECLARATION OF SEAN A.
BRADY IN SUPPORT OF
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT;
EXHIBITS 1-8**

Hearing Date: May 31, 2019
Hearing Time: 10:30 a.m.
Courtroom: 10A
Judge: Josephine L. Staton

[Filed concurrently with Notice of
Motion for Summary Judgment,
Memorandum of Points and Authorities,
Statement of Uncontroverted Facts and
Conclusions of Law, Request for
Judicial Notice, Declarations of Steven
Rupp, Steven Dember, Cheryl Johnson,
Christopher Seifert, Alfonso Valencia,
Troy Willis, Michael Jones, Dennis
Martin, and Richard Travis]

DECLARATION OF SEAN A. BRADY

I, Sean A. Brady, am an attorney at the law firm Michel & Associates, P.C., attorneys of record for Plaintiffs in this action. I am licensed to practice law before the United States Court for the Central District of California. I am also admitted to practice before the Eastern, Northern, and Southern Districts of California, the courts of the state of California, and the Ninth Circuit Court of Appeals. I have personal knowledge of the facts set forth herein and, if called and sworn as a witness, I could and would testify competently to the truth of the matters set forth herein.

1. On October 25, 2018, Plaintiffs served Defendant with Plaintiffs' Initial Disclosure of Expert Witnesses in this matter. Three exhibits were attached to Plaintiffs' disclosure: (1) the Expert Report of Mr. J. Buford Boone III; (2) the Expert Report of Professor William English; and (3) the Expert Report of Mr. Stephen Helsley. A true and correct copy of Mr. Boone's expert report, as appended to Plaintiffs' Disclosure of Expert Witnesses, is attached hereto as **Exhibit 1**. A true and correct copy of Mr. English's expert report, as appended to Plaintiffs' Disclosure of Expert Witnesses, is attached hereto as **Exhibit 2**. A true and correct copy of Mr. Helsley's expert report, as appended to Plaintiffs' Disclosure of Expert Witnesses, is attached hereto as **Exhibit 3**.

2. On October 25, 2018, Defendant served Plaintiffs with the Expert Report of Detective Michael Mersereau and the Expert Report of Mr. Blake Graham. A true and correct copy of Detective Mersereau's expert report, is attached hereto as **Exhibit 4**. A true and correct copy of Mr. Graham's expert report, is attached hereto as **Exhibit 5**.

3. On December 4, 2018, I deposed Defendant's expert witness, Michael Mersereau. Attached hereto as **Exhibit 6** is a true and correct copy of experts from the deposition transcript of Michael Mersereau.

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4. On December 19, 2018, I deposed Defendant's expert witness, Blake Graham. Attached hereto as **Exhibit 7** is a true and correct copy of excerpts from the deposition transcript of Blake Graham.

5. On September 14, 2018, Defendant served Plaintiffs a Response to Plaintiff Christopher Seifert's Request for Admissions, Set One. Attached hereto as **Exhibit 8** is a true and correct copy of excerpts from the Response.

6. On September 14, 2018, Defendant served Plaintiffs a Response to Plaintiff Christopher Seifert's Interrogatories, Set One. Attached hereto as **Exhibit 9** is a true and correct copy of excerpts from the Response.

7. On November 15, 2018, Defendant served Plaintiffs a Second Supplemental Response to Plaintiff Troy Willis's Interrogatories, Set One. Attached hereto as **Exhibit 10** is a true and correct copy of excerpts from the Response.

8. A true and correct copy of Jerry Lee *2018 Standard Catalog of Firearms, The Collector's Price & Reference Guide* is attached as **Exhibit 11**.

9. A true and correct copy of Patrick Sweeney, *The Gun Digest Book of The AR-15*, (2005) is attached as **Exhibit 12**.

10. A true and correct copy of an AR ad on Guns & Ammo, April 2001 Issue is attached as **Exhibit 13**.

11. A true and correct copy of *New Industry Statistics Underscore Popularity of "America's Rifle" – 16,069,000!?*, NRAHQ via Ammoland Inc., (2018), https://www.ammoland.com/2018/09/new-industry-statistics-underscore-popularity-of-americas-rifle/?utm_source=Ammoland+Subscribers&utm_campaign=6bc8efca25-RSS_EMAIL_CAMPAIGN&utm_medium=email&utm_term=0_6f6fac3eaa-6bc8efca25-20582661#axzz5SGKnCoj8 (last visited Mar. 25, 2019) is attached as **Exhibit 14**.

12. A true and correct copy of Chris Eger, *NSSF: AR-15/AK Numbers Top 16 Million*, Guns.com, (2018), <https://www.guns.com/news/2018/09/17/nssf-ar-15-ak-numbers-top-16-million> (last visited Mar. 25, 2019) is attached as **Exhibit 15**.

13. A true and correct copy of, *M1 Carbine*, Civilian Marksmanship Program, http://thecmp.org/cmp_sales/rifle_sales/m1-carbine/ (last visited March 25, 2019) is attached as **Exhibit 16**.

14. A true and correct copy of Alex Yablon, *How Many Assault Weapons Do Americans Own?*, The Trace, (2018), <https://www.thetrace.org/2018/09/how-many-assault-weapons-in-the-us/> (last visited Mar. 25, 2019) is attached as **Exhibit 17**.

15. A true and correct copy of David Heath, Elise Hansen, AJ Willingham, *How An 'Ugly,' Unwanted Weapon Became The Most Popular Rifle In America*, CNN, (2017), <https://www.cnn.com/2017/12/14/health/ar15-rifle-history-trnd/index.html> (last visited Mar. 25, 2019) is attached as **Exhibit 18**.

16. A true and correct copy of *Why the AR-15 Is America's Rifle*, NRP, (2018), <https://www.npr.org/2018/02/15/586172062/why-the-ar-15-is-americas-rifle> (last visited Mar. 25, 2019) is attached as **Exhibit 19**.

17. A true and correct copy of Jon Schuppe, *America's Rifle: Why So Many People Love the AR-15*, NBC News, (2017), <https://www.nbcnews.com/news/us-news/america-s-rifle-why-so-many-people-love-ar-15-n831171> (last visited Mar. 25, 2019) is attached as **Exhibit 20**.

18. A true and correct copy of *Firearms Retailer Survey Report: Trend Data 2008-2016*, National Shooting Sports Foundation, Inc. ("NSSF") Report (2017) is attached as **Exhibit 21**.

19. A true and correct copy of *Sport Shooting Participation in the United States in 2016*, NSSF (2017) is attached as **Exhibit 22**.

20. A true and correct copy of *Modern Sporting Rifle (MSR) Comprehensive Consumer Report 2013*, NSSF (2017) is attached as **Exhibit 23**.

21. A true and correct copy of *2015-2016 Industry Reference Guide: A Compilation of Firearm and Ammunition Industry Data*, NSSF (2017) is attached as **Exhibit 24**.

22. A true and correct copy of Christopher S. Koper, *Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets and Gun Violence, 1994-2003*, National Institute of Justice, United States Department of Justice, (2004) <https://www.ncjrs.gov/pdffiles1/nij/grants/204431.pdf> (last visited Mar. 25, 2019) is attached as **Exhibit 25**.

23. A true and correct copy of Duncan Long, *The AR-15/M16 A Practical Guide*, (1985) is attached as **Exhibit 26**.

24. A true and correct copy of the Bureau of Alcohol, Tobacco, and Firearms Weapon Selection Presentation is attached as **Exhibit 27**.

25. A true and correct copy of *The AR For Home Defense: One Expert's Opinion*, NRA American Rifleman, (2015), <https://www.americanrifleman.org/articles/2015/5/26/the-ar-for-home-defense-one-experts-opinion> (last visited Mar. 25, 2019) is attached as **Exhibit 28**.

26. A true and correct copy of Jim Wilson, *AR-15 Rifles for Home Defense? Yes!*, NRA Family, (2017), <https://www.nrafamily.org/articles/2017/6/27/ar-15-rifles-for-home-defense-yes/> (last visited Mar. 25, 2019) is attached as **Exhibit 29**.

27. A true and correct copy o, Bartt Brenton, *5 Reasons to Hunt With An AR15*, Brenton AR Hunting Rifles, <https://www.brentonusa.com/5-reasons-to-hunt-with-an-ar-15/> (last visited March 25, 2019) is attached as **Exhibit 30**.

28. A true and correct copy of Jacki Billings, *Why Hunters Are Trading In Traditional Hunting Rifles For the AR-15*, Guns.com, (2017), <https://www.guns.com/news/2017/11/17/why-hunters-are-trading-in-traditional-hunting-rifles-for-the-ar-15> (last visited March 25, 2019) is attached as **Exhibit 31**.

29. A true and correct copy of Richard Mann, (2016), *ARs for Deer Hunting: The Modern Answer to an Age Old Tradition*, NRA Blog, <https://www.nrablog.com/articles/2016/11/ars-for-deer-hunting-the-modern-answer-to-an-age-old-tradition/> (last visited March 25, 2019) is attached as **Exhibit 32**.

30. A true and correct copy of Adam C., *Turning The AR-15 Into a Great Hunting Rifle*, OffTheGridNews, <https://www.offthegridnews.com/survival-hunting/turning-the-ar-15-into-a-great-hunting-rifle/> (last visited March 25, 2019) is attached as **Exhibit 33**.

31. A true and correct copy of Allyson L. Holbrook, Melanie C. Green, Jon A Krosnick, *Telephone Versus Face-to-Face Interviewing of National Probability Samples with Long Questionnaires, Comparisons of Respondent Satisficing and Social Desirability Response Bias*, Public Opinion Quarterly (2003) is attached as **Exhibit 34**.

32. A true and correct copy of Jens Ludwig, PhD, Philip J. Cook, Tom W. Smith, *The Gender Gap in Reporting Household Gun Ownership*, American Journal of Public Health (1998) is attached as **Exhibit 35**.

33. A true and correct copy of Ivar Krumpal, *Determinants of Social Desirability Bias in Sensitive Surveys: A Literature Review*, Springer Science+Business Media (2011) is attached as **Exhibit 36**.

34. A true and correct copy of Ann P. Rafferty, PhD, John C. Thrush, Patricia K. Smith, Harry B. McGee, *Validity of a Household Gun Question in a Telephone Survey*, Public Health Reports (1995) is attached as **Exhibit 37**.

35. A true and correct copy of Adam Winkler, *Why Banning Assault Rifles Won't Reduce Gun Violence*, The Los Angeles Times, (2015), (<https://www.latimes.com/opinion/op-ed/la-oe-winkler-folly-of-assault-weapon-ban-20151211-story.html>) (last visited March 25, 2019) is attached as **Exhibit 38**.

36. A true and correct copy of *2017 Crime in the United States: Expanded Homicide Data Table 8*, Federal Bureau of Investigation, <https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/tables/expanded-homicide-data-table-8.xls> (last visited March 25, 2019) is attached as **Exhibit 39**.

37. A true and correct copy of David B. Kopel, *Rational Basis Analysis of "Assault Weapon" Prohibition*, 20 J. Of Contemp. L. 381-417 (1994),

1 <http://www.constitution.org/2ll/2ndschol/62rati.pdf> (last visited March 25, 2019) is
2 attached as **Exhibit 40**.

3 38. Cramer, Clayton E., *Assault Weapon Bans: Can They Survive Rational*
4 *Basis Scrutiny?* (April 13, 2016). University of Akron ConLawNOW, Forthcoming.
5 <https://ssrn.com/abstract=2764549> or <https://ssrn.com/abstract=2764549> (last visited
6 March 25, 2019) is attached as **Exhibit 41**.

7 39. A true and correct copy of Listing # 4842 on the Civilian
8 Marksmanship Program website, *Inland M1A1 Carbine 6630815*,
9 [http://cmpauction.thecmp.org/detail.asp?id=4842&n=Inland-M1A1-Carbine-](http://cmpauction.thecmp.org/detail.asp?id=4842&n=Inland-M1A1-Carbine-6630815)
10 [6630815](http://cmpauction.thecmp.org/detail.asp?id=4842&n=Inland-M1A1-Carbine-6630815) (last visited March 25, 2019) is attached as **Exhibit 42**.

11 40. A true and correct copy of *About the CMP*, <http://thecmp.org/about/>
12 (last visited March 25, 2019) is attached as **Exhibit 43**.

13 41. A true and correct copy of *Pistol Grips*, Brownells,
14 <https://www.brownells.com/rifle-parts/grip-parts/pistol-grips/index.htm> (last visited
15 March 25, 2019) is attached as **Exhibit 44**.

16 42. A true and correct copy of *Adjustable Rifle Stocks*, Brownells,
17 [https://www.brownells.com/rifle-parts/stock-parts/rifle-](https://www.brownells.com/rifle-parts/stock-parts/rifle-stocks/index.htm?avs%7cStyle_1=Adjustable)
18 [stocks/index.htm?avs%7cStyle_1=Adjustable](https://www.brownells.com/rifle-parts/stock-parts/rifle-stocks/index.htm?avs%7cStyle_1=Adjustable) (last visited March 25, 2019) is
19 attached as **Exhibit 45**.

20 43. A true and correct copy of *Flash Hiders*, Brownells,
21 <https://www.brownells.com/rifle-parts/muzzle-devices/flash-hiders/index.htm> (last
22 visited March 25, 2019) is attached as **Exhibit 46**.

23 44. A true and correct copy of Oral Argument Transcript, *District of*
24 *Columbia*, 554 U.S. 570 (No. 07-290) is attached as **Exhibit 47**.

25 45. A true and correct copy of Jane Gross, *California Becomes the First*
26 *State to Vote Curbs on Assault Rifles*, N.Y. Times (Mar. 14, 1989),
27 [https://www.nytimes.com/1989/03/14/us/california-becomes-the-first-state-to-vote-](https://www.nytimes.com/1989/03/14/us/california-becomes-the-first-state-to-vote-curbs-on-assault-rifles.html?mtref=www.google)
28 [curbs-on-assault-rifles.html?mtref=www.google](https://www.nytimes.com/1989/03/14/us/california-becomes-the-first-state-to-vote-curbs-on-assault-rifles.html?mtref=www.google).

1 [com&gwh=09CE7AA50D749C3FEFE643FDB436516A&gwt=pay](https://www.fbi.gov/open-records/09CE7AA50D749C3FEFE643FDB436516A&gwt=pay) is attached as
2 **Exhibit 48.**

3 I declare under penalty of perjury that the foregoing is true and correct.
4 Executed within the United States on March 25, 2019.

5
6 /s/Sean A. Brady

7 Sean A. Brady

8 Declarant
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EXHIBIT 1

Expert Witness Report of J. Buford Boone III

Rupp, et al. v. Becerra

United States District Court

Central District of California, Southern Division

Case No.: 8:17-cv-00746-JLS-JDE

October 25, 2018

ASSIGNMENT

I have been asked by counsel for the plaintiffs in the above described matter to provide my opinion on the suitability of semiautomatic, centerfire rifles with detachable magazines, having angular pistol grips, flash suppressors, and adjustable stocks for home defense. This report sets forth my qualifications and foundation for my opinions. I offer these opinions to a reasonable degree of firearm, ballistic, law enforcement, and scientific certainty and am willing and able to testify consistently with the contents of this report.

COMPENSATION

I am being compensated for my time in this case at the rate of \$700 per hour. My compensation is not contingent on the results of my analysis or the substance of my testimony.

BACKGROUND AND QUALIFICATIONS:

I am currently the sole member of Boone Ballistics, LLC and a retired Supervisory Special Agent (SSA) of the Federal Bureau of Investigation (FBI). I was the primary SSA with oversight of the FBI Ballistic Research Facility (BRF) from April 15, 1997 – August 31, 2012.

As the Member of Boone Ballistics, LLC, I have been employed as an expert witness in civil and criminal cases. Additionally, I have been employed as a consultant in civil and criminal cases. I teach internal, external and terminal ballistics, including selection of ammunition and weapons for efficiently incapacitating an aggressive human adversary. I have lectured on the applicability of the Hague Convention of 1899 to the selection of ammunition for use by the U.S. Military. I conduct time of flight testing to better document small arms projectile flight as it applies to the use of a Ballistic Coefficient to predict projectile impact at long distances.

Prior to my first full-time law enforcement employment, I served as a reserve police officer or Deputy Sheriff with Tuscaloosa County, Alabama, Upson County, Georgia, Las Animas County, Colorado and Trinidad Colorado.

Approximately May of 1988 I was hired as a Police Officer with the Tuscaloosa, Alabama, Police Department. I was subsequently offered a position as a Special Agent of the Federal Bureau of Investigation (FBI) in July of 1988. I began employment with the FBI on 07/25/1988. I was graduated from the FBI Academy on 10/21/1988. My first duty station was New Haven, Connecticut.

I have maintained an interest in firearms all my adult life. I have shot competitively. My firearms scores at the FBI Academy were sufficiently high to allow me to attempt the "Possible" Club. I was successful on my first attempt. To shoot a "Possible", Agents must fire a perfect score on a very difficult course. Though there were in excess of 10,000 Agents in 1988, my "Possible" was approximately number 1,198 in FBI history.

Upon arrival in New Haven, I was assigned to the Reactive Squad conducting background, bank robbery and fugitive investigations. I later served as the Fugitive Coordinator for the New Haven Division. I was named "Detective of the Month" by the Bronx Homicide Task Force for the capture of an America's Most Wanted fugitive.

I successfully completed FBI Firearms Instructor School in July of 1989. This qualified me to teach firearms to Field Agents.

I was transferred to the Organized Crime/Narcotics Squad in July of 1990. I primarily participated in investigations of drug gangs. These investigations typically involved significant amounts of surveillance, electronic monitoring and the service of multiple search warrants. I also participated in organized crime investigations. I have participated in multiple arrests in urban and suburban areas.

I was named the Principal Firearms Instructor (PFI) of the New Haven Division in November of 1992. I maintained that position until I transferred to the Firearms Training Unit at the FBI Academy, Quantico, Virginia.

As PFI, I oversaw all firearm and defensive tactics training of the 90+ Agents in the New Haven Division of the FBI. I coordinated training sessions for all firearms issued to general Agents. This included revolvers, pistols, carbines and shotguns. It also included coordination of deadly force training with the Principal Legal Advisor. During my time as the PFI, the FBI transitioned from revolvers to semi-automatic pistols. The training for this transition was my responsibility for New Haven Division Agents.

In September of 1989 I was admitted to the FBI New Haven Special Weapons and Tactics (SWAT) Team as a Sniper/Observer. I successfully passed both the two week Sniper/Observer and the two week Basic SWAT courses at the FBI Academy. I served operationally on the New Haven SWAT Team until my transfer to the FBI Firearms Training Unit at the FBI Academy, Quantico, Virginia.

In March of 1996, I was promoted to a position as a Term GS-14 Firearms Instructor at the Firearms Training Unit (FTU), FBI Academy, Quantico, Va. During this assignment, I performed line and PFI instruction of Agent trainees. I provided or oversaw line and combat instruction in handguns, carbines and shotguns. I also provided judgmental instruction utilizing Firearms Training Simulator (FATS) equipment. The FATS training was used primarily to teach Agents when the use of deadly force was appropriate, and when it was not.

I was transferred to the Ballistic Research Facility (BRF) of the FTU on April 15, 1997. I maintained my position at the BRF for more than 15 years, retiring on August 31, 2012. I

received a permanent promotion to Supervisory Special Agent in September of 1997.

The BRF has responsibility for testing and evaluating all ammunition used operationally by the FBI. The BRF was created following a 1986 shootout wherein a subject was fatally injured by FBI projectiles but continued fighting and ultimately killing two Agents after receiving the “fatal” wound. A thorough investigation revealed the primary cause of the failure to rapidly incapacitate was the projectiles lack of sufficient penetration in the subject’s body. It stopped short of the heart.

This investigation spawned research into the mechanics of wound ballistics. Ultimately, the research led to the creation of a scientifically repeatable method of comparing the potential effectiveness of individual cartridges. The resultant test has been referred to as the “FBI Method”. The BRF published test findings available upon official request of Law Enforcement and Military agencies. The BRF became the most trusted source of ballistic information in the Law Enforcement and Military community.

As SSA of the BRF, my responsibility was to oversee all aspects of the research. I was the only full-time person at the BRF until a support person (non-Agent) was assigned as an Engineering Technician, Ballistics (ETB), in the last quarter of 1998. I was the Supervisor and rating official of the ETB.

As SSA, I performed or directed all functions of the BRF. I hand loaded cartridges, put test firearms together, hand-fired firearms for testing, built tissue simulant blocks, conducted penetration testing and reported on same. I created a relational database to store data and report test results. I operated sophisticated ballistic testing and photographic equipment. I was frequently sought out to train others in the use of this equipment.

I was the primary author of specifications for ammunition procurements for the FBI. This included ammunition used for training as well as for operational use, commonly referred to as “Service” ammunition.

I was the primary author of the FBI Body Armor Test Protocol.

I directed the creation of a procurement of 5.56mm NATO ammunition using piezoelectric conformal transducers for pressure testing.

The BRF served as the primary source of ballistic information regarding ammunition and firearms for all FBI Agents. Field Agents routinely referred local and state partners to me for ballistic information and advice.

During my service at the BRF, a strong liaison was formed with the Department of Defense (DOD). The BRF performed testing for and consultation with the DOD on many occasions. My expertise has been, and continues to be, sought out and relied upon by the Special Operations Community. During my service at the BRF, the Department of Defense Law of War Chair established protocol that all new DOD small arms munitions required testing and evaluation by the FBI BRF prior to legal authorization being granted for their use.

I have been a participant in a number of government sponsored Integrated Product Teams researching ballistics, including:

- Joint Services Wound Ballistics
- Lead Free Ammunition
- Protective Armor
- Armor Piercing Ammunition development

In 2002, I traveled to Darligen, Switzerland, at the specific request of the Department of State, to represent the United States in discussions of wound ballistics.

I have provided numerous live-fire terminal ballistic demonstrations to local, state and federal law enforcement officers as well as to all branches of the United States Military.

I have conducted international presentations on wound ballistics, ammunition selection, weapon selection, sniper operations and body armor.

I have briefed the Secretary of the Army and provided, at his request, my professional opinion of a 5.56mm NATO cartridge intended to replace the M855.

I have functioned as the primary instructor of 52 Basic Law Enforcement Sniper/Observer schools. Approximately 978 students have successfully completed this course under my instruction.

I consistently received high performance ratings in the FBI. I received the highest possible, "Outstanding", each of the last 4 years of my service. I have received numerous letters of commendation and performance awards.

I was the 2008 recipient of the National Defense Industrial Association Joint Armaments Committee's Gunnery Sergeant Carlos Hathcock Award.

Publications I authored during my FBI employment and restricted to official law enforcement or government request:

- Review of Accuracy 1st Training
- Weapon Selection – Revision III
- Ammunition Selection 2007
- TSWG MURG Briefing Accuracy Expectations
- AIM III TSWG Briefing 3/16/2010
- Wound Ballistics
- B2 Sniper Rifle Cleaning Method

Publication I authored during my FBI employment that is publicly available:

- FBI Body Armor Test Protocol

OPINIONS AND ANALYSIS:

It is my opinion, for the reasons explained in detail below, that semiautomatic, centerfire rifles with detachable magazines, particularly those based on the AR-15 platform—i.e., having a pistol grip, flash suppressor, and adjustable stock and using appropriate ammunition—are well suited for use in home defense.

For purposes of this report, rifles similar to the AR-15, despite their manufacturer or model variation, will be referred to as “AR-15” rifles. This is for ease of reference. To be clear, it is not my opinion that only actual AR-15 rifles are the only semiautomatic, centerfire rifles with detachable magazines that are useful for self-defense.

Self Defense

Defensive shooting is shooting to stop a threat. It is not “shooting to kill”. While it is reasonable to believe that the use of a firearm might result in death, death is not certain. Nor is it the goal. Stopping the attack is the goal. Death, if it occurs, is an unintended by-product of the encounter. All FBI firearms training I received stressed that the application of deadly force must stop once the threat is eliminated.

Firearms, when used for defensive purposes, are actually used to compel an attacker to stop the attack. There is no logical method of calculating how many cartridges will be required to stop an attacker. Nor can it be known ahead of time how quickly shots will need to be made to stop an attacker. Similar attacks may require vastly different numbers of shots, as there is no reliable method of accurately estimating how determined the attacker will be, how he will react to being shot, or whether shot placement or penetrating trauma will be effective.

Wound Ballistics

Centerfire cartridges consist of a casing, usually brass but sometimes other materials (steel, aluminum or polymer), to contain the primer, propellant and projectile. The projectile is propelled forward of the firearm and is the only component responsible for tissue damage in all but very close (contact) shots. “Bullet” is a synonym for “Projectile”. Wound ballistics is a component of terminal ballistics and refers to a projectile’s interaction with tissue.

Contrary to the many Hollywood depictions, there is no particular cartridge that can be relied on to cause immediate incapacitation of an attacker, regardless of the situation. Firearms should not be counted on to stop aggressive human beings in the manner depicted in entertainment media. Though real life can, and sometimes does, mimic fantasy, it is not predictable. The reality is that there are no “magic bullets”.

Aggressive human actions can only be stopped by two methods, physical or psychological (or a combination of the two). Simply put, humans stop either because they consciously want to or their body ceases to be able to support action.

The most important salient characteristic of any cartridge's ability to be effective is the construction of its projectile. Assuming similar barrel properties, the projectile performs similarly, regardless of the type of firearm used to launch it. Comparing the terminal effectiveness of cartridges without specifying the projectile used is similar to attempting to compare vehicles simply by the number of doors they have. For example, while it may be reasonable to say a 4 door sedan accommodates more adults than a 2 door coupe, it is not reasonable to say that 2 door coupes are faster than 4 door sedans.

For a firearm to be effective in stopping a threat at a physiological level, the projectile it launches must sufficiently penetrate the subject's body. The expected range of penetration is critical in deciding the appropriate firearm/ammunition to use. Wound ballistic research conducted by the FBI (Handgun Wounding Factors and Effectiveness, Urey W. Patrick, 1989) has determined that the most desirable range of penetration is 12" – 18" in human tissue. As a person's physiology does not change according to what he is hiding behind or where he is encountered, this penetration range is appropriate for the majority of incidents of human aggression, regardless of where they occur.

Many projectiles deform when impacting tissue with sufficient velocity. As velocity decays with distance, most projectiles will experience some expansion when impacting at distances commonly associated with home defense. This deformation is typically referred to as expansion. Expansion increases surface area. Increased surface area results in increased resistance from tissue and, all other things being equal, decreased penetration. Fragmentation, the breaking apart of the projectile into multiple pieces, is best characterized as "hyper expansion". Fragmentation also typically results in decreased penetration.

It is not uncommon for the penetration performance of a projectile to be influenced by intermediate barriers, i.e., an object between the firearm and the target. Those without a firm foundation in ballistics would understandably believe an intermediate barrier would necessarily decrease the penetration potential of a projectile. There are many instances, however, wherein a projectile's penetration has actually been increased due to its reaction to an intermediate barrier. In these cases, the intermediate barrier acts to retard or completely prevent the projectile from expanding. Some hollow point handgun projectiles are particularly known for this type of behavior when encountering intermediate barriers typically found in home construction, such as drywall and plywood.

"Over-Penetration" is a term typically used to explain the situation where a projectile fully perforates the intended target and continues on, thereby posing a threat to unintended persons. Fast moving, light handgun projectiles are believed by many to lessen the possibility of "over-penetration" in defensive situations. While the logic appears sound, the results may be opposite of intentions. For example, a test I participated in at the BRF showed a particular 115 grain +P+ 9mm bullet—a loading typical of the light and fast projectile category commonly used with good, but misguided, intentions in handguns in-home self-defense—averaged approximately 11" in bare tissue simulant but approximately 29" in the same simulant *after* going through $\frac{3}{4}$ " plywood. The projectile's penetration performance actually increased as a result of going through an intermediate barrier that is commonly found in residential walls. In other words, these handgun rounds underperform regardless of

circumstances, as they either under penetrate or over-penetrate.

Law Enforcement

The United States Department of Justice, in a memorandum dated October 17, 1995, issued a Policy Statement on the use of deadly force:

“Permissible Uses. Law enforcement officers and correctional officers of the Department of Justice may use deadly force only when necessary, that is, when the officer has a reasonable belief that the subject of such force poses an imminent danger of death or serious physical injury to the officer or to another person.”

<https://www.justice.gov/archives/ag/attorney-general-october-17-1995-memorandum-resolution-14-attachment-0>

United States law enforcement officers, outside of training, therefore, discharge firearms solely in defense of self and others. It is reasonable to assume this is the case for all levels of law enforcement in the country. Law enforcement officers found to have discharged a firearm at another person in other than defensive use are typically charged in criminal court, as seen in the recent case in Chicago with an officer convicted of murder for an on-duty shooting:

https://www.washingtonpost.com/news/post-nation/wp/2018/10/05/chicago-police-officer-jason-van-dyke-convicted-of-second-degree-murder-for-killing-laquan-mcdonald/?utm_term=.6c328dd28d8a

The unit of the Federal Bureau of Investigation (FBI) with responsibility for purchasing and approving all firearms for operational use is called the Defensive Systems Unit (DSU). FBI Agents receive training on the use of AR-15 rifles during New Agent Training. AR-15 rifles are issued to some Agents and, to the best of my knowledge, continue to be on the list of approved personally owned firearms for all Agents. I can recall FBI Agents using AR-15 rifles in the 1990s.

Therefore, it must be inferred that the FBI believes the AR-15 is an appropriate firearm for defensive purposes. And, the FBI is not alone. Based on my experience, the AR-15 platform rifle is the most common rifle in use by American law enforcement today and has been for many years.

To successfully survive a violent encounter, the FBI teaches its agents to fire until the threat is eliminated. There is no minimum or maximum amount of shots per subject. It is as simple as realizing the aggressor is in total control of the situation. If shooting must occur, it will stop as soon as the aggressor stops his aggressive actions. Such a policy is the foundation of truly “defensive” use of a firearm.

The physiological makeup of a human-being-attacker is identical for attacks upon law enforcement officers and citizens protecting themselves. Therefore, the mechanism(s) required to immediately incapacitate aggressive human attackers must also be identical by

definition.

There are no projectiles, cartridges, or firearms that are more appropriate for stopping aggressive human actions against law enforcement officers than they are for a citizen protecting his home. The projectile is incapable of discriminating its terminal performance by classifying the person or type of firearm responsible for launching it. The AR-15 platform rifle is, therefore, useful for self-defense for law enforcement and non-law enforcement alike.

Handguns vs. Long Arms

Firearms come in many shapes and sizes. The cartridge used in the firearm reasonably places limits on the size of the firearm. Weapons that are designed to be held against the shoulder are commonly referred to as “Long Arms”. Typical examples are rifles and shotguns.

My training and experience in wound ballistics has shown me that handguns are the most convenient but least effective choice for self-defense. They are commonly used simply because their size renders them more concealable than a shoulder fired weapon. If the optimum choices are used in ammunition selection, handguns are typically far less terminally effective than rifles or shotguns. In addition, handguns are much more difficult to accurately fire than rifles or shotguns.

The Sporting Arms and Ammunition Manufacturers' Institute (SAAMI) is an association of the nation's leading manufacturers of firearms, ammunition and components. SAAMI was founded in 1926 at the request of the federal government and tasked with:

- Creating and publishing industry standards for safety, interchangeability, reliability and quality;
- Coordinating technical data; and
- Promoting safe and responsible firearms use.

SAAMI publishes ammunition standards in four classifications:

- Centerfire Pistol and Revolver
- Centerfire Rifle
- Rimfire
- Shotshell

<https://saami.org/technical-information/ansi-saami-standards/>

It is not uncommon to find a shoulder-fired weapon chambered for “Pistol and Revolver” cartridges, such as the HK94, Ruger PC Carbine, Marlin 1894 and others. It is also not uncommon to find a hand held firearm chambered for “Centerfire Rifle” cartridges, such as the Heizer PAR1, Magnum Research Big Frame Revolver, Thompson Center Encore, and others. Generally speaking, and based on testing I conducted while employed by the FBI, the effectiveness of a “Pistol or Revolver” cartridge fired from a shoulder arm is not substantially improved in stopping a threat at a physiological level. In contrast, the effectiveness of a

“Rifle” cartridge fired from a short barreled handgun is frequently diminished, sometimes by a large margin.

While “Rifle” cartridges are typically more effective than handgun cartridges in stopping a threat at a physiological level, it is possible to reverse this order by choosing a poorly constructed rifle cartridge and a well-constructed pistol cartridge. An example would be attempting to stop the driver of a vehicle by engaging through the windshield with a light, fast, fragile .223 vs. the FBI 9mm Luger “Service” ammunition. This, however, is the exception, not the norm.

My observations of handguns, particularly pistols, shows they are typically more sensitive than long guns to shooter technique. Many pistols require a great deal of support (resistance) to operate reliably. One of the most common explanations for pistol malfunctions is “limp-wristing”. This refers to shooters not locking their wrists, which is proper technique. This can induce malfunctions, as the pistols are designed so that the slide moves back and forth on top of the frame. If the frame is also allowed to move rearward, the slide frequently does not travel its full distance and can fail to properly eject a spent cartridge casing or pick up a fresh cartridge from the magazine. Modern, gas operated, semi-automatic rifles, on the other hand, are not so sensitive to technique. When using the proper ammunition, such rifles will usually function normally when fired with only one hand.

Additionally, I have observed that semi-automatic handguns are typically more sensitive to the addition of safety equipment, such as an attached flashlight to aid in target identification or a laser to aid in aiming. I have assisted with testing and documentation of these failures and I have additionally received numerous reports of pistols failing to function when fitted with these devices. I am unaware of any report of an AR-15 style rifle that failed to function, due to a properly mounted flashlight or laser.

There is little need, beyond perhaps storage, to conceal a weapon in a home-defense situation. The mere presence of a weapon may be sufficient to cause the aggressor to go away. The goal in a self-defense situation, after all, is to compel the aggressor to stop and leave. Larger firearms are typically more intimidating than small firearms.

AR15 rifles, because of their commonality in both real life and the entertainment industry, are readily recognizable as effective defensive firearms. It is reasonable to believe that a criminal would be more intimidated by a homeowner with an AR-15 than the same homeowner with a small frame 5-shot revolver that the criminal may not even see, due to its compact size. I have personally witnessed the immediate surrender of a known violent subject who later explained his actions as directly attributable to the imposing nature of the firearm I pointed at him.

Observations from 23 years as an FBI Firearms Instructor have shown that rifles and shotguns are easier to fire accurately than handguns. While I recall numerous failed qualification attempts by agents with handguns, there were less with shotguns and a failure with the carbine or rifle was rare.

This is particularly notable in that both shotgun and carbine courses required shots at 50 yards while the pistol qualification course only required shots at 25 yards.

Because rifles and shotguns are typically easier to employ accurately, fire cartridges that possess the potential to be most effective, and are more intimidating than handguns, it is my opinion that they are among the most logical and effective choice for home defense. This is particularly the case for semiautomatic, centerfire rifles with detachable magazines having pistol grips, flash suppressors, and/or adjustable stocks, as together they offer the most terminally effective weapon which can be easily operated with a single hand, loaded or unloaded (made safe) quickly, and adapted to multiple size users. Flash suppressors dissipate the bright light created by the burning of residual propellant once the projectile exits the muzzle. This dissipation of light reduces the level of light exposure experienced by the shooter and can shorten the recovery time of vision in a dark environment. This shorter recovery time enables a more rapid evaluation of the remaining threat and need, or lack thereof, to continue the application of force.

While shotguns have great potential for effectiveness, they are limited by the large amount of recoil they generate and the small number of cartridges (shells) they contain. Most shotguns utilized for home defense will have a capacity of between 2 and 8 rounds with the most common number being 5. Shotgun ammunition that is more reliably effective for self-defense, typically buckshot or slugs, has a great deal of recoil and, therefore, can be more difficult to master than a 5.56mm carbine, which is very low on the recoil scale for rifles. It is desirable to keep recoil as low as possible inasmuch as recoil can cause the firearm, and shooter's view, to stray from the target. Greater recoil equates to longer time required to evaluate the situation and refocus on the threat. The NRA Firearms Fact Book, Third Edition, page 219, shows recoil tables for rifles, handguns and shotguns. This table shows a .223 Remington load having 3.7 ft.-lbs. of recoil energy vs. 12 gauge shotgun varying from 18.2 – 55.4 ft.-lbs.

Additionally, buckshot and slugs can be counted on to penetrate deeper than desired, practically guaranteeing pass-through shots in a home defense situation.

Though buckshot is believed by many to have little chance of pass-through, testing I participated in at the BRF showed that close shots (10') with buckshot have resulted in deeper tissue simulant penetration than lead slugs. The empirical data, therefore, show that buckshot is more likely to "over penetrate" than the projectiles of many other cartridges typically chosen for home defense.

Another consideration in the use of a shotgun is the shooter's responsibility for multiple projectiles with each press of the trigger. If 00 buckshot is used in a 2 3/4" 12 gauge shotgun, multiple (between 8 and 12) .32" lead balls are expelled with each shot—as opposed to only one projectile from a rifle. These projectiles spread as distance increases. During qualifications I witnessed, it was not uncommon for an agent to have one or more 00 buck pellets outside the scoring area of the FBI target. The 00 buckshot portion of the FBI Shotgun Qualification Course is fired at 21 feet.

In 1988, general FBI Agents had the option of two shoulder weapons, H&K MP5-SF and

Remington 870. The MP5-SF is a semi-automatic carbine that fires 9mm Luger ammunition. This is ammunition commonly used in handguns. Advantages of the MP5 over a handgun are that it is easier to shoot accurately, has a 30 round magazine and a more intimidating appearance. The Remington 870 shotgun used either 00 buckshot or a rifled lead slug. The issued 870 magazine held four (4) rounds. While there were AR-15 rifles available at that time, they were normally used only by SWAT Agents or Firearms Instructors. The FBI later made MP10 carbines available to general Agents. These carbines utilized 30 round magazines and had a selector that included an option for “two round burst” (two shots with one trigger press).

The FBI began making AR-15 rifles more readily available following a procurement action conducted jointly with the DEA. The contract was awarded to Rock River, Colt, and Sig Sauer in approximately December of 2003. Though the FBI does not officially “endorse” any particular firearm that I am aware of, there could be no better endorsement than awarding a firearm a contract and making it a general issue item.

The FBI has since begun to phase out the MP5. General policy has been to not repair broken MP5s, thereby removing them through attrition. This can only be interpreted as the FBI believing that an AR-15 rifle is better suited to their defensive needs than a carbine firing a handgun cartridge, even one with select-fire capability.

FBI agents routinely use AR-15 rifles in arrest situations occurring in and around common housing structures. The FBI presentation I authored entitled “Weapon Selection” specifically demonstrates the appropriateness of using an AR-15 rifle for close quarters encounters. FBI training included the use of AR-15 rifles while entering and securing buildings. FBI promotional literature shows Agents using AR-15 rifles. Based on my experience training law enforcement officers, it is my opinion that the AR-15 can be considered the “weapon of choice” for not only the FBI, but the majority of U.S. Law Enforcement.

While shotguns continue to be available to FBI Agents, my experience was that their popularity decreased first as MP5s became readily available and more so as AR-15 rifles were made more readily available.

Based on my observations that the shotgun is not popular in a federal law enforcement agency with high physical fitness standards, it is reasonable to believe that it is not the best overall choice for the average citizen.

The AR-15 rifle has characteristics that make it particularly suitable for defensive purposes:

- It is relatively lightweight
- It is available with a telescoping/adjustable stock
- It has a vertical pistol grip;
- It is semi-automatic and can be fired with one hand;
- It can be chambered in a variety of cartridges so the user can choose one that is an ideal combination of effective while having relatively mild recoil; and
- It utilizes magazines of varying capacities, depending on the need.

Being lightweight, having low recoil, and being adjustable in size, the AR-15 style rifle can easily be mastered by persons of any stature.

A telescoping/adjustable stock enables the firearm to be quickly adjusted to fit people of different statures. Additionally, because it allows for a more compact overall size, it enhances the user's ability to maneuver in the tight spaces of a home.

The vertical pistol grip design is easier to operate with one hand than less-pronounced pistol grips, such as those found on the M1 Garand. This is because it places the hand in a location where the user can manipulate the rifle's primary controls, including the trigger and selector (safety). This can also be of particular benefit when needing to use one hand to hold a flashlight or call 911. Pump, lever and bolt action firearms typically require two hands to function if more than one shot is required.

The most common chambering, 5.56mm NATO/.223 Remington, has proven effective in stopping human aggression when the proper projectile is chosen. Additionally, its relatively mild recoil renders it easily mastered by persons of slight stature. It is recognized that there are differences between 5.56mm NATO and .223 Remington. For purposes of this discussion, however, the two should be considered substantially identical.

Finally, the ability to vary its magazine capacity allows the shooter to choose his or her optimal combination of sufficient ammunition and weight.

Dated: October 25, 2018

A handwritten signature in black ink, appearing to read "J. Buford Boone III". The signature is fluid and cursive, with a stylized "J" and a long, sweeping underline.

J. Buford Boone III
Boone Ballistics, LLC
Member
P.O. Box 2370
Tuscaloosa, AL 35403

EXHIBIT 2

Expert Witness Report of William English, PhD

Rupp, et al. v. Becerra

United States District Court

Central District of California, Southern Division

Case No.: 8:17-cv-00746-JLS-JDE

October 25, 2018

ASSIGNMENT

I have been asked by counsel for the plaintiffs in the above described matter to provide my opinion on the ownership and use rate by the law-abiding American public of semiautomatic, centerfire rifles with detachable magazines, having pistol grips, flash suppressors, and/or adjustable stocks. This report sets forth my qualifications and foundation for my opinions on that question, which I offer to a reasonable degree of scientific certainty. I am willing and able to testify as to the contents of this report.

COMPENSATION

I am not being compensated for my work on this case other than reimbursement for any reasonably necessary travel costs I might incur as a direct result of that work.

BACKGROUND AND QUALIFICATIONS

I am currently employed as an Assistant Professor of Strategy, Economics, Ethics, and Public Policy at the McDonough School of Business at Georgetown University, a position I have held since 2016. Prior to that I was employed at Harvard University for five years, first as a research fellow and later as the research director of the Edmond J Safra Center for Ethics. I also served as research associate with the Harvard Initiative for Learning and Teaching and as the executive director of The Abigail Adams Institute, an educational non-profit located in Cambridge, MA from 2014-2016. Before coming to Harvard I held a one-year postdoctoral research fellowship at Brown University with the Political Theory Project. I received my PhD in Political Science from Duke University in 2010 and an MSt in ethics from Oxford University in 2004. In 2003, I graduated Duke University with a Bachelors of Science in Economics and a Bachelors of Arts in Mathematics. For two summers I was employed as a laboratory technician with the Office of Law Enforcement Standards at the National Institute of Standards and Technology, where I assisted with the revision of standards for body armor and autoloading pistols for police officers issued by the National Institute of Justice. Throughout high school and college I was involved with competitive shooting sports and I have followed developments in the firearms industry and recreational shooting sports closely for over 20 years.

My scholarly research has focused on empirical methods in the social sciences, behavioral economics, and regulatory policy. I am in the process of conducting research on the impact of various firearms laws within the United States. I have authored or co-authored the following publications:

- "Varieties of Citizenship and the Moral Foundations of Politics" in *The Ethics of Citizenship in the 21st Century*, David Thunder (Eds): Springer International Publishing, 2017 DOI:10.1007/978-3-319-50415-5
- "Paying People to Make Healthy Choices" eLS, John Wiley & Sons Ltd, February, 2017.
- "Two Cheers for Nudging" *Georgetown Journal of Law and Public Policy*, Vol. 14, 2016: 829.
- "The Logic of Gift: Inspiring Behavior in Organizations Beyond the Limits of Duty and Exchange" *Business Ethics Quarterly*. April 2016: Vol 26 (2), 159180. (with Tomas Baviera and Manuel Guillen)
- "The Demographic Challenge to Entitlements: A Comment, Criticism, and Caveat" in *Science, Virtue, and the Future of Humanity*, Peter Augustine Lawler and Marc D. Guerra (Eds), Lexington Books: 2015.
- "Economic and Ideological Corruptions of the Regulatory State" *Society*, May/June, 2014: Volume 51, Issue 3.
- "Institutional Corruption and the Crisis of Liberal Democracy" Edmond J. Safra Working Papers, No. 15. June, 2013.
- "Locke, Hegel, and the Economy" *Society*, October, 2013: Volume 50, Issue 6.
- "Corruption in Bioethics" *Compendium of Global Bioethics*. Edited by ten-Have and Gordijn. Springer, 2013. (with Jennifer Miller).
- "Genopolitics and the Science of Genetics" *American Political Science Review*. April 2013: Vol 107 (2), 382-395. (with Evan Charney)
- "Why Genes Don't Predict Voting Behavior: when it comes to complex behaviors, gene variants don't count for much" *Scientific American*. Nov 2012 (with Evan Charney).
- "Candidate Genes and Political Behavior" *American Political Science Review*. February 2012: Vol 106(1), 1-34. (with Evan Charney)
- "Demystifying Trust: Experimental Evidence from Thailand and Cambodia." *Journal of Theoretical Politics*. April 2012 vol. 24 no. 2 172-209.
- "The Ethics of Competition" in the Harvard Ethics Center Research in Action Blog. <http://ethics.harvard.edu/blog/william-english-ethics-competition> August, 2012.
- "Still Awaiting Redemption" review of Redeeming Economics: Rediscovering the Missing Element by John D. Mueller in *The Intercollegiate Review*, Spring 2011 (p.57-60).
- "Can Neuroscience Tell Us Anything About Virtue?" review of The Social Animal: The Hidden Sources of Love, Character, and Achievement by David Books in *Public Discourse*, Sept 23, 2011.

- "Unlocking the Secrets of Human Biology: Implications for Diplomacy, Security, and War" in Rose McDermott and Peter K. Hatemi, eds. H-Diplo ISSF Roundtable on "Biology and Security", *H-Diplo ISSF Roundtable Reviews* Volume I, Number 2 (April 2010) (p. 6-34).
- "Illiberal Arguments" review of James Kalb's *The Tyranny of Liberalism* (part of a larger symposium) in *First Principles* May 13, 2009.
- "The Compartmentalization of Moral Inspiration," Proceedings of the 36th St. Gallen Symposium, Switzerland: St. Gallen Press, 2006. (p. 103-107).

OPINIONS AND ANALYSIS:

Because the National Shooting Sports Foundation (NSSF)—which is a nationwide firearms industry trade association that produces reports and conducts surveys on which I rely, in part, in formulating my opinions herein—uses the term "Modern Sporting Rifle" or "MSR" to describe a range of semiautomatic rifles, most of which are based on the AR-15 and AK-47 designs—both of which virtually always are equipped with a vertical pistol grip and often have a flash suppressor and/or an adjustable stock—I use that term throughout this report in analyzing that general category of rifles but use more specific language when analyzing a more specific category of rifle.

A semiautomatic firearm, also known as a self-loading firearm, uses the energy produced by firing a cartridge to cycle a gun's action and reload the firearm each time the trigger is pulled and released. Note that when the trigger of a semiautomatic firearm is pulled, the gun fires once and only once, and the trigger must be released and pulled again in order to fire the reloaded gun. Modern sporting rifles are typically able to accept a detachable magazine and often have modular components allowing them to be customized for a variety of applications. Although the most common calibers for the AR-15 and AK-47 have traditionally been .223 Remington/ 5.56 NATO and 7.62×39mm respectively, modern sporting rifles are available in a range of calibers. For the purpose of this report, modern sporting rifles will often be referred to as "AR style rifles," because the AR platform is the most prevalent design in the United States.

AR-15's have been available to the public for over 50 years. Early details regarding the firearm were reported in an article entitled "The Armalite AR-15 Rifle" in the June 1959 issue of *The American Rifleman*, one of the most widely circulated firearms magazines. The article noted that a "Firing trial by several members of The Rifleman staff showed the AR-15 to be easy, pleasant, and accurate to shoot." Three years later, in May of 1962, *The American Rifleman*, published an extensive review of the first Colt AR-15 rifle, concluding: "In every instance the AR-15 has functioned well and there is no doubt it is a fine little weapon."

In 2010, a survey of 2,547 hunters and shooters conducted by the NSSF found that 18.1% of respondents owned an AR-platform modern sporting rifle. By 2012, a subsequent NSSF survey of 5,342 hunters and shooters found that this percentage had increased to 26.3%. The most recent and largest survey conducted in 2015 of 6,521 hunters and shooters found that 47.1%

respondents owned an AR platform modern sporting rifle, suggesting that roughly one of every two active hunters and shooters now owns an AR style rifle.

For its “Modern Sporting Rifle (MSR) Comprehensive Consumer Report 2013,” the NSSF conducted a survey of 21,942 owners of MSRs. This survey found that owners consider accuracy and reliability to be the most important characteristics of these rifles. Many also cited low recoil, light weight, ergonomics, and ease of shooting as reasons for their purchase. Recreational target shooting was the most prevalent reason cited for owning a MSR, followed by home defense. Additional reasons for owning these firearms include, but are not limited to, hunting, pest control, competitive shooting sports, and gun collecting.

A large number of Americans participate in shooting sports. A nationally representative survey of 24,143 respondents conducted by The Outdoor Foundation for the “2017 Outdoor Participation Report” estimates that in 2016 about 14 million people participated in rifle target shooting, about 16 million participated in handgun target shooting, about 5 million participated in trap/skeet shooting, and about 5 million participated in sport/clays shooting. In aggregate, these numbers compare favorably to those who participate in golf (~24 million), basketball (~22 million), baseball (~14), or soccer (~17 million). An independent telephone survey of 3,050 respondents conducted by the NSSF in 2016 estimated that 49.4 million individuals participated in any target shooting or shooting sports in 2016. That same report also estimated that about 14 million people used modern sporting rifles for target shooting at some point that year.

The “2017 Edition Firearms Retailer Survey Report” published by the NSSF found that of 226 firearms retailers surveyed from across the United States, 92.9% sell new AR’s/modern sporting rifles. Moreover, modern sporting rifles were reported to be the most popular selling long gun, accounting for 17.9% of overall gun sales, while traditional rifles accounted for 11.3% and shotguns for 11.5%.

The precise number of MSRs in circulation is difficult to know with certainty because, while rifle sales are tracked by the Bureau of Alcohol, Tobacco, Firearms and Explosives (BATF), the type of rifle sold is not. However, by drawing on publicly available government records, industry reports, and survey responses we can estimate general levels of ownership with some degree of confidence. One of the best examples of this approach can be found in a research paper co-authored by Nick Clossman and Chris Long entitled “A Business Case Analysis of the M4/AR-15 Market,” which was published in September of 2015 as a Joint Applied Project of the Naval Postgraduate School. In what follows, I describe their methodology, estimates, and conclusions.

Clossman and Long first examine the Annual Firearms Manufacturing and Exportation Report (AFMER) compiled by the BATF to obtain records regarding how many rifles were manufactured each year (note that AFMER does **not** include firearms produced for the U.S. military). The AFMER also reports how many rifles were manufactured by each individual company. Clossman and Long examined every reporting company to determine which ones primarily or exclusively manufacture AR-15’s. Because many large companies, such as Ruger and Remington, manufacture various types of rifles in addition to AR-15’s, these companies

were excluded, as were any small manufacturers who made fewer than 100 rifles per year or who primarily manufactured other modern sporting rifle variants such as AK-47's, AR-15 style lower receivers, or AR-15 style pistols. Following this approach, Clossman and Long conclude that between 2004 and 2013 approximately 4.6 million AR-15s were manufactured in the U.S.

This methodology means that Clossman and Long's estimates are conservative and likely to significantly underestimate the total number of AR style rifles that entered into circulation during this period. For example, although excluded from the count, large companies such as Ruger—one of only a few publicly traded firearm manufacturers in the country—and Remington both manufacture AR style rifles. Indeed, Remington's 2016 annual report suggests that the company is one of the largest commercial producers of these rifles. Also excluded from Clossman and Long's estimates are sales of so-called "80% lowers," which are blocks of metal or polymer in the basic size and shape of an AR-15 style lower receiver that are not fully machined and thus do not qualify as "firearms" as defined by the BATF. Individuals may legally purchase and finish machining these parts on their own in order to produce a fully functional AR style rifle for personal use. Although sales numbers are hard to come by, a simple internet search reveals that there are many companies that sell "80% lowers" and some have reported that they sell over 30,000 per year.

There are two further caveats regarding Clossman and Long's estimates that deserve mention, although the net effect is likely to again incline their estimates to be conservative. First, the AFMER data that Clossman and Long draw on includes AR style rifles that are sold to law enforcement agencies. Although the precise number of law enforcement sales are not recorded, we can estimate an upper bound for these sales. According to the FBI/US Bureau of Justice Statistics "Crime in the United States 2017" report, there are 422,869 full time law enforcement officers in the United States. Since not every officer is issued an AR style rifle, we expect that the number possessed by law enforcement agencies will be less, and perhaps far less, than 422,869. Second, Clossman and Long estimate that between 2004-2013 an average of about 8,750 AR style rifles were exported per year. Thus, both law enforcement sales and exports should decrease the estimate of AR style rifles in circulation amongst the general public. However, Clossman and Long do not account for modern sporting rifles that were imported during this period (AFMER reports do not include imports). According to other BATF records, the number of rifles imported each year of this period greatly exceeded the number of rifles exported, sometimes by an order of magnitude. For example, in 2013 the BATF reported that 131,718 rifles were exported from the United States, while 1,507,776 were imported (military import licenses accounted for a small fraction, 319 total in 2013). If the ratios of modern sporting rifles imported are similar to the ratios exported, we would expect another ~170,000 modern sporting rifles to have entered the U.S. market in 2013 alone. Between 2004 and 2013 aggregate imports of modern sporting rifles are likely to have more than offset both exports and domestic law enforcement sales.

Finally, it is important to note that Clossman and Long's data further suggests that the number of AR-15's manufactured per year have increased significantly in recent years, going from an estimated 88,730 rifles in 2004 to 1,182,609 in 2013. Industry reports appear to corroborate

these growth estimates. For example, Remington Outdoor Company Inc.'s 2016 annual report notes, "We believe we are one of the largest producers of commercial MSRs, a category that has grown at a 14.9% CAGR from 2010 through 2014." Based on AFMER reports of the total number of rifles sold, Clossman and Long estimate that by 2013 AR-15 rifles accounted for 19% of all guns manufactured in the United States and 29% of all rifles manufactured in the United States. Note that the 19% estimate corresponds closely to the 17.9% estimate mentioned above that was derived independently from the 2017 Firearms Retailer Survey Report published by the NSSF.

Even if production remained flat at 2013 levels, one would expect that from 2014-2018 another ~4.7 million would have entered circulation, in addition to the 4.6 million estimated from 2004-2013, plus how ever many entered circulation between 1960-2004. This leads to a plausible minimum estimate of over 9 million AR style rifles in aggregate circulation in 2018. However, the number could be even higher if production and sales have continued to grow since 2013. Indeed, if one looks at the number of background checks conducted for firearm sales, which are logged by the FBI in the National Instant Criminal Background Check System, and corrects for the number that correspond to a firearm's transfer rather than a permit check, which NSSF does in their "NSSF-Adjusted NICS" data, there were approximately 14,244,000 firearms sold nationwide in 2015. If modern sporting rifles do constitute 17.9-19% of overall sales, then annual sales may be as high as 2,549,676 to 2,706,360 rifles in recent years. This would lead to an estimate of around 15 million AR style rifles in circulation by the end of 2018.

Based on the statistics, research, and estimates listed above, it is my opinion that semiautomatic, centerfire rifles with detachable magazines and a pistol grip, flash suppressor, and/or adjustable stock, such as the AR-15 design, are commonly owned and used by millions of law-abiding Americans for a variety of lawful purposes. Moreover, it is my opinion that the lawful use and ownership of these rifles has increased in commonality over the years.

 10/25/18

William E. English

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EXHIBIT 3

Expert Witness Report of Stephen Helsley

Rupp, et al. v. Becerra

United States District Court

Central District of California, Southern Division

Case No.: 8:17-cv-00746-JLS-JDE

October 25, 2018

I. ASSIGNMENT

Counsel for plaintiffs in *Rupp, et al. v. Becerra* (Case No. 8:17-cv-00746-JLS-JDE) have asked me to provide opinion on the historical existence and prevalence of semiautomatic, centerfire rifles with detachable magazines, as well as the features that such rifles commonly have. Counsel has also asked that I provide opinion on the purposes for the development of such rifles and characteristics. This report sets forth my qualifications, opinions, and scholarly foundation for those opinions.

II. BACKGROUND & QUALIFICATIONS

I am a retired peace officer from the California Department of Justice (DOJ). The bulk of that career was in drug enforcement. The last three positions I held were Chief of the Bureau of Narcotic Enforcement, Chief of the Bureau of Forensic Services and finally Assistant Director of the Division of Law Enforcement. As Assistant Director, I was responsible for the department's criminal, civil and controlled substance investigations as well as law enforcement training, intelligence gathering and our forensic laboratory system. In my executive level positions, I had occasion to review special agent-involved shootings and a wide range of homicides involving firearms. I have qualified as an expert in both criminal and civil matters. I was the department's principal firearms instructor for many years and am an FBI certified range master. I also participated in the firearm training that was part of the FBI National Academy Program in Quantico, Virginia. Additionally, I am a member of the American Society of Arms Collectors and a technical advisor to the Association of Firearm and Tool Mark Examiners. I have co-authored five books on firearms and have authored or co-authored more than fifty firearm-related articles for US and Russian journals. For the past twenty-four years, I was first a state liaison and, then later, a consultant to the National Rifle Association. Throughout my adult life I have been an active participant in handgun, rifle and shotgun competitions. I have also been a firearm collector and ammunition reloader since the early 1960s. Finally, I am a collector of firearm related books – of which I have thousands. Included in my book collection are approximately 50 different issues of *Gun Digest*. It is a standard resource that is widely used by gun dealers and buyers alike. *Gun Digest* has traditionally provided a comprehensive overview of the firearms and related items available to retail buyers.

A. Published Articles

In the past ten years, I have written or contributed to the following published articles and opinion editorials:

1. Articles

- *Of Birmingham and Belgium*, Double Gun Journal, vol. 18, iss. 2 (2007).
- *The .470 Nitro Express*, Sports Afield (June/July 2007).
- *Readings on the Roots of the .410*, Shooting Sportsman, Nov./Dec. 2007.
- *Hunting in Wales*, Hunting and Fishing (Russia), Dec. 2007.
- *A Pair for a Pair of Friends*, Shooting Sportsman, March/April 2008.
- *A Welsh Fantasy*, Shooting Sportsman, July/Aug. 2008.
- *A Maine Gun Goes Home*, Shooting Sportsman, Sept./Oct. 2008.
- *The Pin Fire Comes Home*, Libby Camps Newsletter, Winter 2008.
- *John Rigby & Co.*, Hunting and Fishing (Russia), July 2008.
- *The All-American Double Rifle*, Safari, Sept./Oct. 2008.
- *Eastern Oregon Odyssey*, Shooting Sportsman, Nov./Dec. 2008.
- *Rigby Marks 275th Anniversary*, Safari, Nov./Dec. 2009.
- *Finding Papa's Guns*, Shooting Sportsman, March/April 2010.
- *The Searcy Stalking Rifle*, Safari, May/June 2010.
- *The Ruggs Riders*, Shooting Sportsman, July/Aug. 2010.
- *Searcy Brings Back the Rising-Bite*, Shooting Sportsman, Sept./Oct. 2010.
- *John Rigby & Co.*, African Hunting Gazette, Fall 2010.
- *The Ageless .416 Rigby*, Safari, Nov./Dec. 2012.
- *J. P. Clabrough*, Shooting Sportsman, March/April 2015.
- *The Mystery of Hemingway's Guns*, Friends and Neighbors, Summer 2015.
- *The Enigma of Hemingway's Guns*, Master Gun (Russia), Sept. 2015.
- *The Mystery of Hemingway's Guns*, CRPA Firing Line, Sept./Oct. 2015.
- *Pistols at Dawn*, CRPA Firing Line, Jan./Feb. 2016.
- *The Silver Star*, CRPA Firing Line, Jan./Feb. 2016.
- *Women Guns & Politics*, CRPA Firing Line, March/April 2016.
- *Hunting the Big Mouse*, CRPA Firing Line, Sept./Oct. 2016.
- *Do Guns Make Heroes? The Congressional Medal of Honor*, CRPA Firing Line, Nov./Dec. 2016.
- *Thumbs-Up Guns*, Shooting Sportsman, Jan./Feb. 2017.
- *Is Your Gun Safely Stored? (Part 1)*, Friends and Neighbors, Summer 2017.
- *History of William Powell and His Patents*, Master Gun (Russia), Aug. 2017.
- *Guns from San Francisco and Birmingham*, Master Gun (Russia), Oct. 2017.
- *Is Your Gun Safely Stored? (Part 2)*, Friends and Neighbors, Autumn 2017.

2. Opinion Editorials

- *It's About Time: State has Eroded Gun Owner's Rights*, Sac. Bee (July 4, 2010).
- *Nevada Views: Is Gun Registration Worth Cost?*, Nev. Rev. J. (Sept. 16, 2012).
- *Gun Roundup Program Has Too Many Flaws*, Sac. Bee (May 3, 2013).

B. Expert Witness History

In the past four years, I have not testified at trial as an expert witness but have been deposed as an expert witness in *Duncan, et al. v. Becerra, et al.*, United States District Court (S.D. Cal.), Case No: 3:17-cv-01017-BEN-JLB.

III. OPINIONS & ANALYSIS

1. *Semiautomatic, centerfire rifles having a detachable magazine are, and have been for over a century, ubiquitous, as have been their similar-functioning predecessors historically.*

A semiautomatic firearm is one that will discharge a new round with each trigger pull, until the device feeding ammunition into the firearm's chamber is empty, or there is a malfunction. Its purpose is to provide the shooter multiple shots without having to reload. A detachable magazine is an ammunition feeding device that can be readily removed from its insertion point on a firearm, usually by the user's depressing a button or lever with a finger. Its purpose is to facilitate the shooter's ability to load or reload a firearm.

Multi-shot rifles have been available for centuries.

In the late-15th Century, Leonardo Da Vinci designed a 33-shot weapon. In the late 17th Century, Michele Lorenzoni designed a practical repeating flintlock rifle. A modified 18th Century version of Lorenzoni's design, with a 12-shot capacity, is displayed at the NRA's National Firearms Museum. In May 1777, the Continental Congress ordered 100 eight-shot shoulder arms with detachable magazines from Philadelphia gun maker Joseph Belton (who claimed a 16-round version was also available). The order was subsequently cancelled because of a pricing issue. John Adams and John Hancock were involved in the squabble that followed the cancellation and Benjamin Franklin had corresponded with George Washington the previous year about one of Belton's designs.

The founding fathers, thus, did not have to imagine multi-shot arms with a detachable magazine—not only did such arms already exist but the Founders were aware of them and wanted them.

Then and now, having a firearm capable of firing more ammunition without reloading and able to be reloaded quickly is both comforting and potentially life-saving, if the firearm is to be used for self-defense.

The road to the modern semiautomatic detachable magazine firearm required a series of technical innovations. First came with the discovery by Dr. Alexander Forsyth c.1800 that fulminate of mercury could be used as a way to ignite a powder charge. In the early 1800s, the percussion cap using Dr. Forsyth's mixture was developed (many claim credit for it), which spelled the end of the flintlock era and made firearms far less susceptible to ignition failures caused by rain or moisture. By 1860, the percussion cap had evolved into a primer that could be inserted into the center of a drawn brass cartridge case. By the late-1860s, the modern self-contained cartridge had arrived. Next came the detachable magazine in 1879 from American inventor, James Paris Lee. In the 1880s, American inventor Hiram Maxim began developing self-loading (i.e., semiautomatic) firearm designs. Rifles at that time relied on some mechanical effort by the shooter to load a successive round into the firing chamber, such as manipulating the bolt, or lever. At that point, only black powder was available – a powder that produces a substantial amount of fouling and is not well suited to semiautomatic firearms. Help would come from French inventor Paul Vieille in the mid-1880s with his development of *poudre blanche* or smokeless powder. By weight, this new powder generated three times the energy of black powder and produced higher velocities. This in-turn resulted in the final piece necessary for the “semiautomatic/detachable magazine” rifle: the metal jacketed bullet—a bullet that could withstand higher velocities than bullets made only of lead.

These advances resulted in the rapid development of both semi and fully automatic firearms. Winchester introduced its first semiautomatic, detachable magazine rifle in 1905. Additional models were introduced in 1907 and 1910. Remington introduced its own version in 1908. In preparation for a major offensive in the Spring of 1919 (which never occurred because the war ended in November 1918), the United States had converted over 100,000 bolt action Springfield M1903 rifles to 40-shot, detachable magazine semiautomatics.

After WWI, the United States began development of a semiautomatic to serve as its main battle rifle. The result was the M1 Garand – a semiautomatic but not equipped with a detachable magazine that would serve with distinction in WWII and Korea. The U.S. military also used two semi auto rifles in WW2 - the M1 carbine and the Model 60 Reising. Two of the other major combatants also had

semiautomatic/detachable magazines – Russia’s M38 and M40 Tokarev and Germany’s Gewehre 41 and 43.

After WWII more military semiautomatic/detachable magazine rifles were adopted by various countries, including the Swede AG42, Egypt’s Hakim and Rashid, the Czechoslovakian M52 and later the M52/56, French M44, 49 and 49/56—all of which (including the German and Russian rifles previously described) would later be sold to civilian buyers in the United States.

New commercial models also became available, including the Remington M760, the Winchester M100, and M1 carbines by Plainfield and Universal. The resumption of M1 carbine production was most likely driven by U.S. Government sales through the Director of Civilian Marksmanship (DCM). Created in 1916, one of its functions was the sale of surplus military rifles and handguns via the National Rifle Association to civilian buyers. Over Six million M1 carbines were produced between 1942 and 1945. In the early 1960s, they became widely available both on the surplus market and through the DCM. Those purchased from the DCM generally cost \$20 and were shipped directly to the buyer’s home – no licensed dealer or background check required. It was nothing short of a government endorsement of semiautomatic rifles with detachable magazines for civilian use. The DCM was subsequently quasi-privatized and replaced by the Civilian Marksmanship Program in 1996. M1 carbines are still occasionally available. M1 carbines with issued wood stocks are “benign happy face rifles.” Change the stock (in California) to an original folding paratrooper version and you have an “evil assault weapon.” Same rifle different configuration.

Here, it is important to understand the nature of the so-called “assault weapon.” Politically, the meaning of the term is, to quote Humpty Dumpty, “When I use a word – it means just what I choose it to mean – nothing more nor less.” It is not based on function but rather on appearance, country of origin or other irrelevant criteria. It is a description that sounds like “assault rifle,” which is a term used for select-fire (capable of both semi and full automatic fire), general purpose, medium power rifles. In layman’s terms the “assault rifle” is a “machinegun.” The “assault weapon,” by contrast, may look like an “assault rifle” but fires only one round with each pull of the trigger, like all other semiautomatic and other types of firearms. The two terms have, by design, been conflated by the media and gun control proponents alike. To quote Josh Sugarman, the Executive Director of the Violence Policy Center: “The weapons’ menacing looks, coupled with the public’s confusion over fully automatic machine guns versus semi-automatic assault weapons—anything that looks like a machine gun is assumed to be a machine gun—can only increase the chance of public support for restrictions on these weapons.”

The second wave of surplus rifle imports began c.1987 with the express authorization of the U.S. government. All of the previously described rifles were once again available. And, there was one new important player that was not widely available before then: the SKS. The SKS is a semiautomatic rifle with a fixed ten round magazine (that is easily and frequently converted to detachable). SKSs from China, Russia, Albania, Yugoslavia and other countries were imported to the U.S. in large numbers. Also part of the import mix were semiautomatic/detachable magazine versions of the AK-47. As the result of the large numbers of those rifles imported in the early -1990s, they became so popular that that they now produced in the United States.

Before WWI, American arms buyers generally favored lever action designs. After millions of men had been trained in the use of bolt-action rifles, they gradually became the standard. The next wars (WWII, Korea, Viet Nam and those in Iraq and Afghanistan) all involved self-loading detachable magazine arms – and for the last 50 plus years, variants of the AR-15. It's interesting that the AR-15 has become known as the “modern sporting rifle.” Given that its first review in the *American Rifleman* appeared in the June 1959 issue – 60 years ago –it might better be called ‘America’s Venerable Sporting Rifle.’ AR’s and other domestic and imported semiautomatic/detachable magazine rifles like the Ruger Mini-14, the Springfield M1A, or various Heckler & Koch models are ubiquitous. If you compete in rifle matches (e.g., “three gun” rifle, pistol and shotgun), regional, state or national level (as tens of thousands do) you most likely will use an AR-15 type rifle. The “world series” of U.S. rifle competition is held annually at Camp Perry, Ohio and there you will find literally thousands of AR rifles in use.

2. *None of the features that California prohibits on semi-automatic, centerfire rifles with non-fixed magazines—a “pistol grip” (or “forward pistol grip”), a “thumbhole stock,” a “flash suppressor,” and an adjustable (“telescoping”) stock—has anything to do with the rifle’s rate of fire, power, or capacity to accept ammunition. Nor are any of them dangerous per se or when used in conjunction with any of the other features. Each of these features is designed to both independently, and in conjunction with other features, make a rifle more user friendly and thus safer to operate—whether for target practice or in the critically important moments where self-defense is necessary.*

The hallmark of state and federal assault weapon regulation has been a focus, not on the firearm’s operating system (semiautomatic loading), or it’s chambering (what ammunition it uses), but rather on the accessories attached to it. If the operating system is the engine/ transmission/ driveshaft/ differential of a car – the “pistol grip” is nothing more than an adjustable steering wheel, the adjustable stock is a rudimentary adjustable seat, and the “flash suppressor” is a modern exhaust

system or a windshield wiper. All improve the shooting/driving experience while having nothing to do with the basic, mechanical function of the firearm or vehicle.

A. The Pistol Grip

The pistol grip of a rifle or shotgun is the area immediately behind the trigger. It is designed for grasping by the shooter's 'strong hand' and protrudes below the receiver and trigger mechanism of the firearm at various lengths and angles depending on the intended use of the firearm. A 'full pistol grip' helps absorb recoil and positions the hand (trigger finger) for optimum trigger control. Many shotguns, especially those with two barrels and two triggers, have a 'straight hand' grip. This configuration allows the shooting hand (trigger finger) to slide slightly rearward in recoil to be better positioned for use of the second trigger. Virtually all modern bolt-action, pump-action and semi-automatic rifles and shotguns have stocks with pistol grips.

When a pistol grip was first fashioned as part of a gunstock has been lost to history. Over the past two centuries the grip, in its various configurations (metal, wood, plastic, etc.), has been described as Prince of Wales, half, semi, full, scroll guard, scant and—most recently by the California legislature—"conspicuously protruding." Likely the first with a 'conspicuously protruding' pistol grip—though it was not called that at the time—was on a flintlock c.1813 Baker Cavalry Rifle used by the British military. With the confluence of understanding regarding conical bullet design and the rifling twist rate needed to achieve the proper rotational rate, accurate long-range (1,000 yard) shooting became practical. As a result, rifles intended for sporting use quickly incorporated a full pistol grip. This allowed, particularly when firing from the prone position, for a steadier grip and the better trigger control necessary for precision accuracy. Long-range competition began in England c.1860 with the first international match being held at the Creedmoor range in New York in 1874 between teams from the United States and Ireland. The rifles (Rigby, Remington, and Sharps) were all fitted with full pistol grip stocks. The first patent for a 'pistol-grip' stock was likely No.1559 of 1877 (England) awarded to Alexander Henry and Daniel Fraser.

Since the first government-made military muskets/rifles were produced at a U.S. armory in 1795, until WWI, virtually all had 'straight hand' (no pistol grip) stocks. Exceptions were the M1819 Hall that had a version of a scroll guard grip and specialized rifles with 'screw-on' grips designed primarily for target competition in the 1870s and 1880s. The Civil War demonstrated the efficacy of magazine fed rifles (Henry) and precision long range shooting (Berdan Sharpshooters) but those lessons were quickly discounted with costs being a major issue. The battle at the Little Big Horn was another reminder but, as the military was poorly funded, marksmanship

training and improved rifles were a low priority. It's worth noting that the stock blanks necessary for a full pistol grip stock are larger and slightly more expensive, which, as in the case of magazine fed rifles, may have worked against their adoption.

The U.S. was not alone in its commitment to the past. By the last decade of 19th Century, most military rifle stocks were 'straight hand.' Then, c.1890, what could be described as a 'scant' pistol grip, appeared on the Mannlicher, Enfield and Mauser rifles from England and Europe. When the U.S. entered WWI, its M1903 Springfield rifle had a straight hand stock. However, the primary US battle rifle of that war was the M1917 Enfield, a design 'borrowed' from the 'Brits' with its scant pistol grip. Springfield introduced a full pistol grip c.1921 for national and international match rifles. With our entry into WWII, Springfield M1903 rifle production resumed. The importance of marksmanship had been accepted but initially, the stock blanks available would only allow for scant pistol grips. Newly adopted rifles – M1 Garand, M1 Carbine and the M1941 Johnson - all had full pistol grip stocks. When the M1 Garand was replaced in the late 1950s by the M14, those too had full pistol grips.

In the late 1950s, with the development of the AR-15, the traditional wood stock was replaced by a multi piece 'plastic' or "synthetic" stock. Instead of being carved from a wood blank, the plastic AR pistol grip was attached with a screw. As with pistol grips before it, the AR grip has no role in the mechanical functioning of the firearm. As with older rifle designs, the AR grip simply places the shooting hand in the optimal position to operate the firearm's trigger, magazine release, and safety-mechanism. An AR type rifle can still be fired without a pistol grip installed, but would leave the user's hand in a non-optimal and less safe position to operate the rifle. For example, the "MonsterMan" style grip (roughly comparable to a Prince of Wales or semi-pistol grip)—that does not allow the user's strong-hand to wrap around it beneath the firearm's action—is not prohibited by California law.

At one point in the pistol grip's regulatory machinations its "conspicuous protrusion" was a critical factor. It is an 'inconvenient truth' that all full pistol grips, including that on the 1813 Baker flintlock 'protrude' below the trigger guard of a rifle or shotgun. Like the AR grip, if a grip is of proper design and fit, it facilitates the safe operation of the firearm. Proper use of a rifle or shotgun requires the use of both hands. The 'strong hand' grasps the pistol grip and actuates the trigger. The strong hand and shoulder absorb much of the recoil impulse, and generally the more vertical the pistol grip, the more effective the strong-hand can manage recoil. The 'weak hand' is critical for muzzle control and accurate aimed fire (for which purposes some users find helpful a "forward pistol grip").

Pistol grips (which includes “thumbhole stocks,” as they are functionally equivalent) are, and always have been, nothing more than a part that, if well designed, allows for safe and comfortable operation of a firearm - while serving no role in its mechanical function. A detachable pistol grip can be installed (with some gunsmithing) on rifles for which it wasn’t designed (including non-semi-automatics). Doing so may affect the user’s experience with the rifle—either negatively or positively—but does nothing to change the firearm’s rate of fire, ammunition capacity, or power. In some cases, a “protruding pistol grip” is an accommodation for a shooter with a disability. Perhaps the most famous example is Germany’s Kaiser Wilhelm whose deformed left arm required him to use a specially configured firearm. The Luger Pistol Fred A. Datig, Borden Publishing Co. LA 1962 pg.81.

B. Adjustable Stocks

Proper stock length is based on arm and neck length, chest muscle development, fullness of face, hand size and finger length. Clothing and the type of sights used must also be considered. What is referred to as ‘length of pull’ (LOP) is the distance between the center of the trigger and the center of the back surface (butt plate) of the stock. It’s not hard to imagine that Shaquille O’Neil and Danny DeVito have different LOPs, and require different stock lengths.

Most mass-produced rifles and shotguns are equipped with a stock that will fit the ‘average’ user – whoever that is. Some firearms come with factory stocks that are designed to allow the user to adjust the LOP. Those not so-designed can be adjusted by cutting off the end of the butt stock or adding extensions to it. Custom gunmakers can fashion a stock to exactly meet a user’s wishes - but that can be very costly. Further complicating stock fit is that the proper LOP for a person wearing a t-shirt might be unusable if that same person was cold weather hunting while wearing a bulky coat. A user-adjustable telescoping stock is simply an acknowledgement that people come in different sizes. The issue of proper LOP is as old as firearms themselves. The British military bolt-action of the early 20th Century - the Short Magazine Lee Enfield - had a four part wood stock with a butt stock secured by a massive through bolt. To address the need for various LOPs, - three different (and easily replaceable) lengths of butt stocks were available. The Lee-Enfield Rifle, Major E.G.B Reynolds, ARCO Publishing, NY 1962 pg.88. If a rifle’s stock is too long, the rifle cannot be shouldered and is thus virtually unusable.

Many AR type rifles are equipped with telescopic sights. Such sights generally have an eye relief requirement of 3 to 4 inches. “Eye relief” is the distance the eye must be from the rear glass element of the sight. Shooting position can impact achieving the proper ‘eye relief’. For instance, it is easier to place your face in a more forward position on the stock when firing from the prone (laying down)

position than if in the standing position. The design of the AR rifle platform is ideally suited for a user-adjusted (telescoping) stock that allows the user to adjust the LOP whenever conditions dictate.

To some, adjustable stocks have become associated with “lethality” of the firearm they are attached to. That is simply baseless. Such stocks have a relatively short adjustment range—usually 3-4 inches—so there is little, if any, change in the user’s ability to conceal an AR with a telescoping stock. Such stocks can be compared to adjustable car-seats. Adjustment allows the user a range of several inches from which to choose a comfortable and safe driving position but has nothing to do with the power, speed or basic functioning of the vehicle. In fact, some of the most adjustable stocks will be found on rifles and shotguns used at the highest level of competition, e.g., the Olympic games. *See* Exhibit “A” attached hereto. Such competition stocks will also be found with “conspicuously protruding pistol grips” and “thumbholes.”

C. Flash Suppressors

Flash suppressors are intended to reduce the visible signature in low-light conditions – thus protecting, to some degree, the shooter’s “night vision,” i.e., prevent pupils from dilating. “Flash suppressors” do not hide the flash from those in the direct line of fire. In the cosmos of regulated firearm accessories, only the bayonet lug is more irrelevant than the “flash suppressor,” as far as addressing the alleged threats from rifles with “assault weapon” features. The science of why a muzzle flash is generated when a rifle is fired is very complex. Simply put, it results from the heated gas expelled from the muzzle and the combination of barrel length/ bullet weight and type/amount of powder. Generally speaking, with the same ammunition, longer barrels will produce less “flash” than shorter ones – with or without a flash suppressor. Muzzle flash, with or without a flash suppressor, can be difficult to see in daylight conditions. I am unaware of any studies identifying “flash suppressors” as a relevant element in any firearm-related crime, or a single anecdote in which they played a role in making a crime worse than it otherwise would have been.

The flash suppressor is similar in appearance to its ‘cousin’ – the “muzzle break.” Both are attached to the muzzle end of the barrel, are generally two to three inches in length, are roughly double the diameter of the barrel and have slots and/or holes to release the gas created by firing a cartridge. The “muzzle break” is primarily designed to reduce the recoil impulse. Distinguishing between a “flash suppressor” and a “muzzle break” can be difficult. This has been made even more difficult by the commercial availability of combination devices that serve to both reduce recoil and flash.

Finally, there are “compensators,” devices that are similar in appearance to “flash suppressors” and “muzzle brakes” but that serve to redirect noise and concussion away from the shooter. While it may cause some minimal reduction in flash, their *raison d’être* is to increase shooter comfort by reducing perceived recoil.

Just when, or if, a “muzzle brake” or “compensator” morphs into a “flash suppressor” requires the ‘wisdom of Solomon’, or sophisticated testing equipment, as each may perform some of the function of the other, more precise legal definitions might also be helpful. As with other rifle accessories or ‘do-dads’, the presence of a “muzzle break,” “flash suppressor” or “compensator” has no relevance to a firearm’s “rate of fire and capacity for firepower” or chambering.

3. *Semiautomatic, centerfire rifles having a detachable magazine and the features described above have been commonly chosen by the American public for lawful purposes such as self-defense for decades*

Semiautomatic, centerfire rifles with detachable magazines have been in safe and effective use by civilians in this country for over a century. Over the past six decades, semiautomatic, centerfire rifles with the above described “features” have enjoyed significant evolution and a tremendous growth in popularity. Perhaps the best examples are rifles built on the AR-15/AR-10 platforms (the “platform” is the lower receiver group). An owner can configure his AR to use .22 rimfire ammunition for training a new shooter, as a 7lb rifle for hunting in steep difficult terrain and easier handling in self-defense, or as a 12lb single-shot rifle for 1000-yard target competition. Multiple configurations are possible because the AR is comprised of three readily detachable groups of parts – the stock, lower receiver, and upper receiver. It’s a functionality that is similar to Nikon or Hasselblad film camera systems where film backs, motor drives and lenses could be quickly substituted as the photographer’s needs changed. As the result of important design changes, better ammunition, and the flexibility given by the proliferation of ‘after market’ parts’ (the 2015-2016 Brownells catalog devotes 99 pages to AR parts), ARs have become the Modern Sporting Rifle of the United States.

Two other factors have resulted in the extraordinary popularity of the AR – the rust resistant materials used in its construction and the .223 Remington (5.56x45mm) cartridge for which most are chambered. The AR is ideally suited to the harshest conditions and is extremely reliable. It is the cartridge for which most are chambered that is most likely the key to its appeal. The .223 Remington cartridge is available in a number of load configurations but one of the most common is a 55 grain bullet at 3200 feet per second from a 20” barrel. It is more powerful than the vast majority of handgun cartridges but is on the low end for rifle cartridges. According to TWOAMENDMENTS.com (rifle recoil table) the recoil of a .223

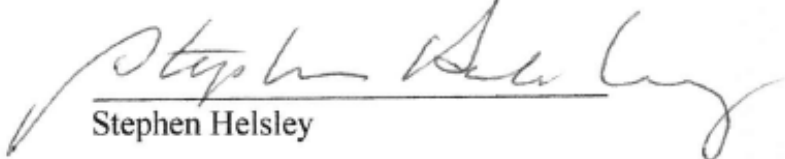
Remington using a 55-grain bullet is 3.2 foot-pounds in an 8lb rifle. In comparison, a .30-06 (180 grain at 2700fps)—which is a standard deer hunting cartridge—generates 20.3 foot pounds of recoil in a similar weight rifle. Adding weight to the stock or a muzzle brake will further reduce felt recoil. This is very important when training new shooters as the combination of recoil and the noise of the muzzle blast can cause accuracy destroying “flinching.”

AR-platform rifles serve a variety of functions, including target shooting, hunting, collecting, and self-defense. The AR is a particularly excellent choice for self-defense when coupled with the appropriate ammunition because of its accuracy, light recoil, ergonomic-design, and, most importantly, that it can be configured to the user’s needs. Each of the features described above is common, if not standard, on AR-platform rifles because they are intended to provide at least one of those benefits. One would be hard-pressed to find an AR-platform rifle without a “conspicuously protruding” pistol grip affixed.

IV. CONCLUSION

The assertion pushed by “assault weapon” ban advocates is that rifles falling under that invented term—which can be any rifle the legislature wants—are only good for quickly killing lots of people. It is simply based on ignorance and ignores the reality of the widespread use of these rifles over decades for various lawful purposes. AR platform rifles and other semiautomatic/detachable magazine rifles will be found not only at rifle ranges but in rancher’s pick-up trucks, slung over hunters’ shoulders, and strategically placed for home defense. These rifles have endured “the slings and arrows” of their detractors for decades. They are however what American shooters want. A 1920s Cadillac Motor Car advertisement explains it best. “That which is good or great will make itself known no matter how loud the glamour of denial. That which deserves to live, lives.”

Dated: October 25, 2018


Stephen Helsley

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December 18th, 2013

Fully Adjustable, 'Customizable' Smallbore Match Rifles

Report based on Lars Dalseide story in [NRAblog](#).

If you watched the position and prone shooters at the 2012 London Olympic Games, you couldn't help but notice the exotic rifles competitors were shooting. There were wood stocks, metal stocks, off the shelf rifles and customized specials. Why are there are so many different design features and stock types? To answer this question, the NRAblog's editors called on Jessie McClain of the NRA Competitive Shooting Division.

"The customized rifles, like the Anschütz you showed me, can make a real difference in a shooter's performance," explained McClain. "I went from a decent shooter to making the varsity shooting team my freshman year because of the rifle." As Jessie explained, one new feature out there is the adjustable stock, which she called the Porsche of the shooting world. Fully adjustable from the butt plate to the cheek piece to the hand stop and risers and bolt knobs, this component is fully customizable to the athlete ... which can be a huge advantage. "Every person is different ... a customizable rifle fits anyone. A rifle team can purchase four of these and field a shooting team for years."

Not for Novices

The one warning she did have is that these are not for the novice shooter. Get a couple of years of shooting under your belt and then think about moving on to a customized rifle. That way, you can learn the basics before investing in the high dollar equipment. "You wouldn't give your 16 year old a Ferrari for his first car, would you?"

The Modern Anschütz Position Rifle

Smallbore match rifle makers are using modern materials in response to the need for greater adjustability (and enhanced accuracy). One of the popular new designs is the Anschütz model 1913 position rifle with a "1918 ALU Precise" brushed aluminum stock. This looks like it has been crafted in an aircraft plant.



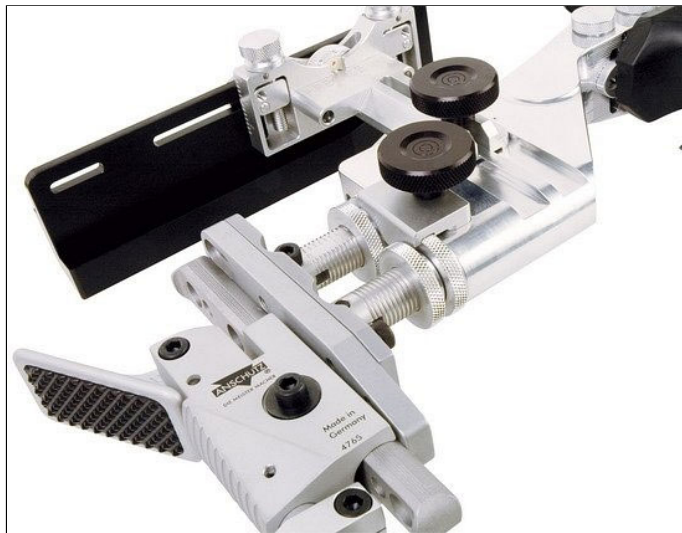
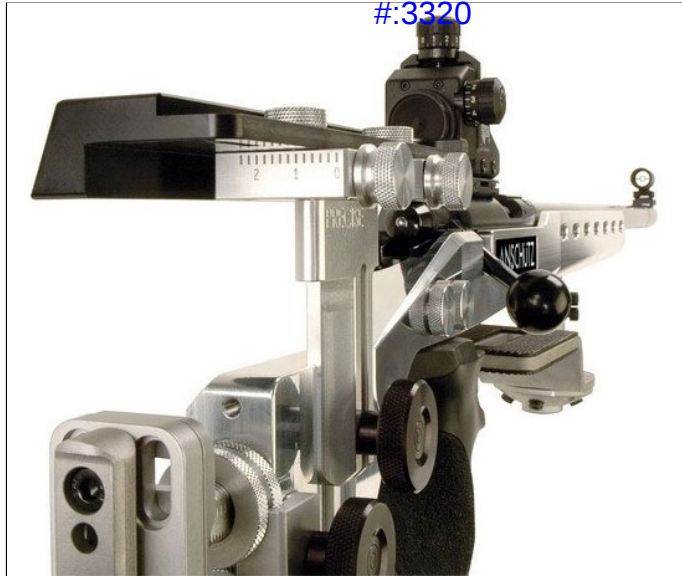
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Story by Lars Dalseide, courtesy the [NRA Blog](#).

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Ergosign®



EvoComp

The fully adjustable
modular stock system

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Ergonomics and Design "Made by Wilfried Nill"

Wilfried Nill (born 1965 in Tübingen)

- Active in sport shooting (air/sport pistol, shotguns in large caliber, skeet) since 1975
- Working in the Karl Nill company since 1978
 - in the production sector until 1987
 - in the sector of product development and design since 1987
 - technical manager and associate from 1987 to 2000
 - managing partner since 2000 (continuation of the family-owned enterprise in 2nd generation)
- Foundation of Ergosign in 1998



Decades of experience as an active sport shooter, the development and fabrication of ergonomic grips for pistols and revolvers and of many accessories as well as the involved mechanical understanding for production processes and their transformation with CAD/CAM and CNC technologies are the basis for the realization of innovative products.

Many well-known manufacturers of firearms (like Heckler & Koch, Hämmerli, Walther, Sig Sauer) were able to successfully realize numerous projects in direct cooperation with Wilfried Nill.

Wilfried Nill – a life for sport shooting.

EvoComp – a story of success

Owing to his personal enthusiasm for clay target shooting, Wilfried Nill set himself the goal of designing an ergonomically perfect fitting shotgun stock in 2005 yet. The result of this experience and development is presented to you in detail on the following pages.

National and international top shooters have very quickly recognized the advantages of the modular stocks and are convinced by the improved control of the shotguns provided by ergonomic optimization and individual possibilities of adjustment. On pages 15 and 16 we are presenting you a short list of references.

The worldwide success since the introduction of the Ergosign EvoComp stock system in summer 2009 is speaking for itself. The current peak of EvoComp during the Olympic Games 2012 in London with four medals could set lasting trends (see below).

With the Ergosign EvoComp, Wilfried Nill is continuing the estimated family tradition in order to support our customers by offering them the optimal connection between man and sporting tool.

EvoComp – Advantages of the modular stock system

Ergonomic grips in different sizes for left and right handed shooters

One significant advantage compared to conventional stocks lies in the anatomical moulding of the pistol grip, which gives the stock an absolutely unique, comfortable and secure hold. Due to its optimal ergonomic design, the position of the trigger finger (with respect to the trigger) remains constant, thus reducing the recoil effects tremendously.

Individual adjustability to body/anatomy and shooting position

A basic requirement for a steady mount position and therefore successful shooting is a personalized adjustment of the stock depending on the shooter's anatomy and shooting stance. These preferences change with time and can be corrected with ease by resetting the stock.

Modular construction allows the interchangeability of all components

All stock parts can be tuned to different requirements if changes occur. If you are going to switch guns, you will only need to purchase a new grip (and maybe a different comb, if using a different rib height) which your authorized dealer will gladly install for you.

The gross weight is only 850 grams [30 oz.] for the standard version.
All settings are reproducible via scales on the system.

Olympia 2012, Skeet



Gold: Vincent Hancock (USA)

Olympia 2012, Double Trap



Gold: Peter R. Wilson (GBR)

Silver: Håkan Dahlby (SWE)

Bronze: Vasily Mosin (RUS)

World Records

Vincent Hancock (USA), Skeet, 2015 in Acapulco (MEX)

Tim Kneale (GBR), Double Trap, 2014 in Munich (GER)

Peter R. Wilson (GBR), Double Trap, 2012 in Tucson (USA)

Further peak results under www.ergosign.com

EvoComp – the basis for success



Ergonomic grips with beavertail, small thumb rest and slight palm swell

With finger grooves and Rhomlas®-surface structure in four different sizes (XL, L, M and S) or without finger grooves in the sizes L and S, with stippled surface as an individual custom-made fabrication according to a hand outline sketch or after a personal orthopaedic adjustment: all our grips are produced for personal fitting to all different kinds of possible hand shapes.

Please find our detailed description on page 12.



Drop of the butt plate

Depending on the length of the shooter's neck and the mounting position, the level of the butt plate can be individually adjusted within a range of approx. 40 mm [1.575 in] to approx. 60 mm [2.285 in] (for a middle section 4°). By mounting a higher clamping collar between the comb and the middle section (see page 10) the height of the butt plate rises proportionally.



Pitch adjustment

The pitch is fully adjustable by approx. 90°- 82°. Once it has been fitted correctly, the gun will remain in exactly the same position after a shot. This greatly increases the hit ratio on the second shot of the target pair.

Pitch adjusting plate +4°

An extended pitch adjustment of +4° is optional. For shooters with an upright shooting position and a big chest measurement the pitch can be additionally extended by 4° (can be recommended for a heightened middle section under 0° and for the TR version).



Cast

For up to 9 mm by adjusting the butt plate. Additionally the butt plate is rotatable by $\pm 10^\circ$.

Cast + 4 mm

For shooters with a short neck or a big chest measurement the additional cast of about 7-13 mm (standard 3-9 mm) optimizes the adjustment to the body – to reach a higher comfort.

EvoComp – the basis for success



Comb

The correct position of the head to the rib is essential for a precise point of impact. For this reason, the standard comb of 33 mm can be fully adjusted in height (drop) from approx. 42/46 to 36/36 (with a comb of 38 mm from approx. 37/41 to 28/28) and approx. 4 mm in width (cast +1 to +5 mm).

Picture: Beretta DT11 with grip in size L, comb R33, butt plate in grenadille,
Drop of butt plate approx. 40 mm to 60 mm, middle section 4°

Stock length

Having a range of adjustment from approx. 340 mm to approx. 390 mm, it is simple to fit the stock with the telescopic tube to the individual body size. Additionally, a shorter version for smaller shooters or for shooters with short arms of approx. 320 to 360 mm as well as a long version for very tall shooters with an adjustment range of approx. 360 to 430 mm are available.

Which stock configuration is the ideal one for me?

1. Which of the following anatomic conditions do apply for me?

- a) An average neck and shoulder anatomy
- b) A long neck with a low gun position
- c) A long neck with a high gun position
- d) A short neck with a low gun position
- e) A short neck with a high gun position



2. Which posture is usually the best for me?

- a) Body and head slightly leaning forward (recommended)
- b) A body leaning forward keeping the head a little further to the front
- c) A body standing upright keeping the head almost vertical



3. What is the position to place the shotgun at my shoulder?

- a) Below the collarbone: more drop of the butt plate is necessary ► more upcoil at the muzzle
- b) Above the collarbone on the muscle at your shoulder: less drop of the butt plate ► less upcoil at the muzzle

It also depends from the preferred stock length and posture whether 3.a) or 3.b) is recommendable for the shooter.

4. Higher ribs

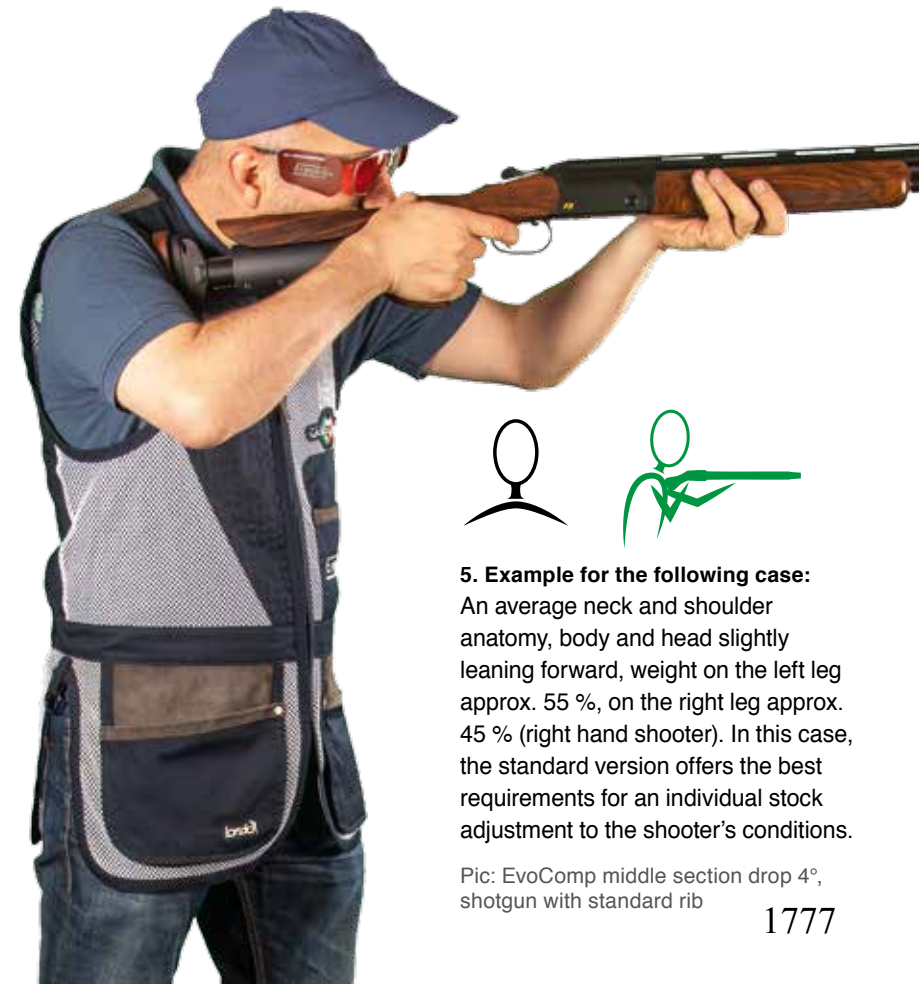
Meanwhile, most gun manufacturers also produce shotguns with heightened ribs, which help to offer you a more relaxed shooting position and a reduced upper recoil after the shot, depending on the anatomic conditions.

- a) 10/15mm higher: possible for all disciplines and favorable for shooters of categories 1.a) -d) and 2.b).
- b) 20/25 mm higher: recommendable for all trap, double trap and DTL shooters, especially for 1.b) and 2.c).
- c) 30/35 mm higher: for trap, double trap and DTL shooters from the categories 1.b) and 2.c)

On the basis of all the factors listed under points 1-4, the drop of the butt plate in relation to the top edge of the rib will result. Within the different stock configurations, the shooter can use the adjusting range of the drop of the butt plate (see picture: height/drop of butt plate on page 4). The smaller the drop between the top edge of the butt plate and the principal axis of

the barrels is, the less is the upper recoil of the shotgun with a correctly adjusted pitch. The drop of the comb always refers to the position of the upper edge of the

rib and also depends from the distance between eye and cheek-bone and from the requested upshot.



5. Example for the following case:

An average neck and shoulder anatomy, body and head slightly leaning forward, weight on the left leg approx. 55 %, on the right leg approx. 45 % (right hand shooter). In this case, the standard version offers the best requirements for an individual stock adjustment to the shooter's conditions.

Pic: EvoComp middle section drop 4°, shotgun with standard rib

Summary:

When ordering a shotgun or a new stock system, the shooter should seek analysis and advice from a professional shooting instructor or gun fitter with own shooting experience, who is knowledgeable

on innovative shotguns/stocks. The completed questionnaire is one of the most important factors (see page 14). Moreover, photos from different perspectives – with your shotgun in shooting

position – can be of additional assistance to find the best fitting stock configuration. Not only the balance of your shotgun but also your anatomy and preferred shooting position are of great importance for the

configuration of your stock system. Most shooters prefer the posture from our first example. We keep the most popular and common shotguns available and will be pleased to help you with our advice.



6. Example for the following case:

A long neck with a high shooting position and a body leaning forward keeping the head a little further.

Pic: EvoComp middle section drop 1° + 10 mm clamping collar, Shotgun with 10-15 mm heightened rib



7. Example for the following case:

A body standing upright keeping the head almost vertical.

Pic: EvoComp middle section drop 4° + 20 mm clamping collar, Shotgun with 20-25 mm heightened rib

Without Pic: EvoComp middle section drop 4° + 30 mm clamping collar, Shotgun with 30-35 mm heightened rib

Standard version

The standard version of our stocks comprises the following configuration:

- Grip with finger grooves, Rhomlas® surface structure in the sizes XL/L/M/S for right hand or left hand shooters
- Stock length adjustment of approx. 340-390 mm
- Drop of butt plate approx. 40-60 mm middle section 4°
- Adjustable comb R33 (36/36 – 42/46 mm) for skeet/sporting
- Alternatively comb R38 (28/28 – 37/41 mm) for trap or for a very small distance between cheek-bone and eye
- Fully adjustable stock ending with a butt plate made of walnut wood and a partial rubber pad, alternatively with a butt plate made of elastomere (for trap or sporting)
- Grip and comb made of walnut
- Aluminium parts with black coloured or titanium coloured (only middle section) coating

Picture: Perazzi MX8 with grip in size XL, comb R38, butt plate for sporting



Skeleton version

Compared to the standard version the middle section of the stock is skeletal. This provides the stock with an even more technical appearance and reduces its weight by approx. 15 grams. The skeleton version is available for a stock length of 340-390 mm and 360-430 mm.

Picture: Renato Gamba Daytona with a grip in size L, comb R33, butt plate in walnut



Shortened version of 20 mm

For smaller shooters or for shooters with short arms a shortened version is additionally available with an adjustment range of 320 to approx. 360 mm in length. This version can only be delivered with aluminium parts in black colour (not in skeleton). Moreover, the combs are 20 mm shorter.

Picture: Beretta 682 Gold E with grip in size S, comb RS33, butt plate in grenadille



20 mm extended version

For tall shooters or shooters with long arms we can offer an extended version with an adjusting range of 370 to approx. 450 mm length. This version is only available with black aluminium parts (in skeleton) and can be supplied as an option for all stock configurations.

Picture: Caesar Guerini Invictus, grip size L, comb R38, butt plate in elastomere (for trap)





Clamping collar +10 mm for heightened ribs of approx. 10-15 mm

By mounting a heightened clamping collar of approx. 10 mm between the middle section and the comb the drop of the comb can be adapted to the heightened rib (e.g. Perazzi MX2000/3, MX10, Beretta X-Trap, Caesar Guerini etc.).

Picture: Beretta DT10 with grip in size M, comb R38, clamping collar +10, butt plate in elastomere (for trap)



Clamping collar +30 mm for heightened ribs of approx. 30-35 mm

See left descriptions, clamping collar however 30 mm higher.

Picture: Krieghoff K-80 with sighting rib, double trap special, grip in size L, comb R38, clamping collar +30, butt plate in elastomere (for trap)



Clamping collar +20 mm for heightened ribs of approx. 20-25 mm

Our clamping collars offer the best possible flexibility in adjustment for shotguns which need a modified drop (even after the additional mounting of heightened ribs). Further differences in height can be balanced through the possibility of choosing heightened combs with its range of adjustment.

Picture: Blaser F3 with special barrel rib or e.g. F3 Super Trap, grip in size M, comb R38, clamping collar +20, butt plate in elastomere (for trap)



Version TR 1°

This version is particularly recommendable for shooters who have a short neck and a high gun position. The drop is adjustable from approx. 35-55 mm. The comb has been drawn for approx. 5 mm forwards, the drop is parallel to the rib at the front/at the back. Pitch 93° to 85° (Special version +4° is adjustable from approx. 93° to 81°).

Picture: Beretta 692, grip size L, comb R38 OCTR, butt plate in elastomere (trap)



Version TR +10 1°

In comparison to the previous system (TR 1°) the drop of the butt plate is adjusted by approx. 10 mm in height. This configuration can be used as a base for the MX2000/3 (and other shotguns with a heightened rib of 10-15 mm) in connection with a +10 mm clamping collar for a 20-25 mm heightened rib or with a +20 mm clamping collar for a 30-55 mm heightened rib.

Picture: MX2000/3 with grip in size L, middle section in skeleton, comb R38 OCTR10, butt plate in elastomere (for trap)



Special version Perazzi MX2005 + 20 0°

On the request of various double trap top shooters, we have developed further stock configurations with removable trigger group for the Perazzi production series. In this special version the complete back stock part is raised to the level of the barrel rib on MX2005, so that the drop is correspondingly adjusted. The result is that the recoil of the shotgun is straighter to the shoulder and that the muzzle jump is considerably more influenced by the pitch adjustment (in comparison to stocks in standard version).

Picture: MX2005 with orthopaedic grip, comb R43 OC, butt plate in elastomere (for trap)



Special version Perazzi MX2008 +30 0°

See bottom left description, but adapted to the MX2008.

Picture: MX2008 with orthopaedic grip, comb R43 OC, butt plate in elastomere (for trap)



Recoil reducer

Resulting from many years of development and numerous tests a hydraulic system dampens the back stock through a cylinder against the shooting direction. By an adjusting screw the damping can be regulated according to munitions, barrel length and choke drillings as well as the body measurements which influence the recoil. Thus the shooter will get the requested feedback.



Rhomlas®-surface structure

Another high point of the development is the integration of Rhomlas® surface structure which is well-proven for many years and is appreciated by international top shooters. With much attention to detail, non-slip segments are incorporated at crucial points in a complex process. A dynamic design – but “Ergosign” is also created for practical use.



Ergonomic grip without finger grooves

The version without finger grooves is exactly the right choice, if the shotgun is used by multiple shooters (for example as a training-, rental- or club gun) or if a plain moulding is preferred. This grip is available with Rhomlas® surface in the sizes L and S.



Individual grips – fabricated according to your hand outline sketch

Shooters whose hands highly differ from the standard measurement (for instance very short/thick or very long/slim hands) have the possibility to order individual grips fabricated according to an exact hand outline sketch for an additional fee. Thus the shooter gets individually fabricated grips with stippled surface in the palm area which are specially adjusted to his shooting hand.



Orthopaedic grip customized according to a plastic moulding

During a personal fitting appointment an exact wood/plastic moulding is made from the shooter's hand by using a grip blank. All the contour elements of the grip are adjusted in detail to the shooter's hand and his shooting position. The result is a grip which fits “like a glove” and which always guarantees the same hand position on the stock. Thus the exact consistent position and steady distance to the trigger can be guaranteed.



Butt plates

The correct butt plate for each discipline:

- Walnut (standard), ideal for Skeet & Sporting, 50 grams [1.75 oz.]
- Grenadille (option), ideal for Skeet & Sporting, 95 grams [3.35 oz.]
- Elastomere (alternatively), ideal for Trap/Double Trap/ American Skeet, 110 grams [3.88 oz.]

Further versions under www.ergosign.com

Heightened combs & clamping collars

For shotguns with heightened ribs our different combs and clamping collars (the holder between middle section and comb) allow one to raise the standard ratio of the drop in proportion to the rib. For widely varying head positions we offer the possibility of lengthening the comb. Combs are available with a height of 33, 38, 43 and 48 mm, the corresponding clamping collars are available with a height of +10, +20 and +30 mm. For combs R33 the height adjustment pins are 14/17 mm high (for R38 17/20 mm). Additionally height adjustment pins of 23 mm are available.

Balancer

The balancer offers the possibility to balance the weight of the shotgun (approx. 68 to 240 grams). The longer the size of the barrel, the more weight is needed on the stock.



Wood qualities

All wooden parts can be ordered in the following wood qualities for an additional fee according to the fore end: selected wood, burl wood, selected burl wood, top burl wood and bird's eye burl wood.

Colour of the aluminium parts

Aluminium parts in the standard version are supplied with black coloured coating. For stocks in standard length of 340 – 390 mm the aluminium can alternatively be supplied with titanium coloured coating parts (only the middle section).

Accessories

Each stock system is supplied with:

- A tin of special hard oil for wood preservation
- A towel
- Mounting instructions and tools (without picture)



Construction

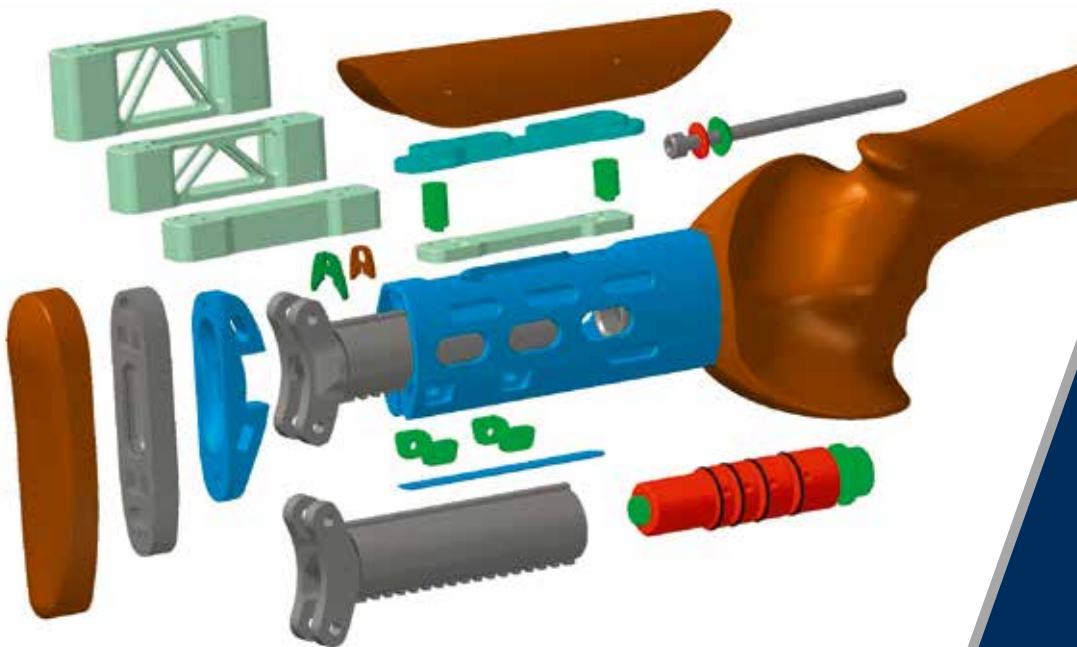
What is hidden in a fully adjustable stock system? The modular construction of the patented system is identified on the basis of the exploded drawing, whose detailed design serves as simplification for orders of accessories and spare parts (e. g. higher clamping collar for high ribs, balancer, screws etc.).

Further information

You may find our answers to frequent questions about the EvoComp in the sector "FAQ" under www.ergosign.com.

Available for:

- Beretta: DT10, DT11, 682/686, 692
On request: ASE Gold, ASE 90
- Blaser: F3, F3 SuperSport
- Krieghoff: K-32, K-80, K-80 Pro Sporter
On request: K-80 Trap Special, K-80 Doppeltrap Special
- Perazzi: MX8, MX2000, MX2000/3, MX2005, MX2008
- Renato Gamba: Daytona K2, Carrera, Star Cup
- Caesar Guerini: Invictus, Temper, Tempio, Challenger, Summit, Summit Black



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in three steps to your
individual quotation

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Young professionals are waiting in their starting blocks

Many young shooters are already recognizing the advantages of our developments and are successfully using them at championships around the world for victories and titles. Here is a small excerpt:

"I am and always will be eternally grateful to everyone at Ergosign Evocomp for helping me and my competitors to be the best we can be."
(Peter R. Wilson, Olympic champion and James Dedman's coach)

"My son and me have used EvoComp Ergosign stocks for four years and we think we have made the right choice. Our results have increased and are more stable now, thanks to comfortable position of our hands and exactly adjusted stocks. We have made the right choice. Thanks for collaboration with Nill company."
(Vitaly Fokeev, top shooter and Kirill Fokeev's Dad)

"We put the Ergosign stock on her gun in mid February 2015 and we saw an improvement in her score right away, her average went from a 17 to a 20 within one week after installing. The EvoComp is the perfect stock for youth shooting athletes, because it can be adjusted as the athlete grows and that adjustment may be needed 3 to 4 times a year depending on how fast they grow. This has proven to have been a great investment for us!"
(Dave Bechtold, Heidi Bechtold's Dad)



James Dedman (GBR), Double Trap



Felix Haase (GER), Skeet



Kirill Fokeev (RUS), Double Trap



Gerrit Wülpern (GER), Skeet



Heidi Bechtold (USA), Olympic Trap



Filip Praj (SVK), Double Trap, Trap

Made in Germany

Ergosign®

The shooter in the focus of attention

Satisfied and successful customers are the best reference. Please find below a short excerpt from the list of the national and international top shooters who have decided to actively use our fully adjustable Ergosign EvoComp stock system.



Vasily Mosin (RUS), Double Trap;
Olympia 2012: Bronze



Gabriele Rossetti (ITA), Skeet;
ISSF Junior World Champion 2014



Ahmed Al Maktoum (UAE), Double Trap



Peter Robert Russell Wilson (GBR),
Double Trap; Olympia 2012: Gold



Vincent Hancock (USA), Skeet;
Olympia 2012: Gold



Abbey Ling (GBR), Trap



Richard Bognar (HUN), Double Trap;
Olympia 2012: Position 6



Andreas Chasikos (CYP), Skeet



Håkan Dahlby (SWE), Double Trap, Trap;
Olympia 2012: Silver



Vitaly Fokeev (RUS), Double Trap

EXHIBIT 4

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

STEVEN RUPP; et al.,

Plaintiffs,

v.

**XAVIER BECERRA, in his official
capacity as Attorney General of the
State of California et al.,**

Defendants.

8:17-cv-00746-JLS-JDE

**EXPERT REPORT AND
DECLARATION OF DETECTIVE
MICHAEL MERSEREAU OF THE
LOS ANGELES POLICE
DEPARTMENT**

I, Michael Mersereau, declare and state as follows:

1. I am a Detective employed by the Los Angeles Police Department (the "LAPD") as a sworn officer for approximately 22 years. I have personal knowledge of the facts set forth below except those stated on information and belief. As to those facts, I believe them to be true and if called as a witness, could and would testify competently thereto.

2. I am currently assigned to the LAPD Gun Unit and have been for approximately 15 years. The LAPD Gun Unit is involved exclusively in the enforcement of the California Dangerous Weapons Control Act and the Municipal Code of the City of Los Angeles as it pertains to firearms. Prior to this assignment, I worked uniform patrol, unformed gangs, and divisional gang detectives. In these assignments, I have encountered a wide variety of firearms and firearms accessories, including assault rifles, and I have made numerous arrests for firearms violations.

1 3. Pursuant to my current assignment, I received training from the Bureau
2 of Alcohol, Tobacco, Firearms and Explosives (BATFE) on illegal firearms
3 trafficking, firearms identification and tracing, undercover operations, hidden
4 compartment identification and recognition, assault weapons, and Federal Firearms
5 laws. I have also received informal training on the above- mentioned subjects from
6 more experienced investigators. I routinely review California Department of
7 Justice (DOJ) and BATFE publications related to firearm identification and
8 transactions. I have attended numerous gun shows and firearms trade expositions.
9 I routinely review Firearms Industry trade publications. I have spoken to hundreds
10 of persons engaged in the business of firearms sales. I have also been involved in
11 numerous investigations of illegally transferred firearms, possession of prohibited
12 weapons including machine guns, assault weapons, and short barrel shotguns and
13 rifles, as well as possession of firearms by prohibited persons. As a result of these
14 investigations, I have seized or participated in the seizure of hundreds of assault
15 rifles and numerous high capacity magazines. I am a court qualified firearms
16 expert and have testified on multiple occasions as such. I have also fired many
17 different firearms including various assault weapons and machine guns for training
18 and court testimony.

19 4. Gun violence is a significant problem in Los Angeles. The LAPD lacks a
20 central database of all firearms related statistics. The statistics set forth below are
21 accumulated by many different entities within the department including the Gun
22 Unit and Robbery Homicide division. Here are some statistics for the past several
23 years regarding gun-related crimes in Los Angeles:

Year	Total Number of Gunshot Victims
2013	1012
2014	994
2015	1119
2016	1180
2017 (as of 9/6/17)	718

Year	Total Number of "Shots Fired" Calls
2013	2198
2014	2134
2015	2419
2016	2628
2017	N/A

Year	Total Number of Firearms Related Arrests
2013	1225
2014	1153
2015	1265
2016	1509
2017	N/A

5. Not surprisingly given the above statistics, the number of weapons seized both city-wide, and by the gun unit, are high as well. Here are some statistics for the past five years regarding gun-related seizures:

Year	Total Number of Firearms Booked Citywide
2013	5130
2014	5529
2015	6151
2016	5908
2017 (as of 9/6/17)	4513

6. Statistics regarding assault weapons and machine guns (as define in the California Penal Code) are provided because these guns typically use large-capacity magazines. The LAPD does not keep statistics on the number of assault weapons and machine guns recovered citywide due to the expertise needed to determine whether a weapon is actually an assault weapon or a machine gun. The below statistics represent Assault Weapons / Machine Guns recovered by the Gun Unit only. Citywide numbers are likely higher.

Year	Number of Assault Rifles/Machine Guns recovered by the Gun Unit
2013	123
2014	113
2015	145
2016	89
2017	125

7. With respect to large-capacity magazines specifically, the statistics provided below represent only the seizure of large capacity magazines by the Gun Unit. As with assault rifles, the LAPD does not keep statistics on the number of large-capacity magazines recovered citywide.

Year	Number of Large-Capacity Magazines Recovered by the Gun Unit
2013	601
2014	392
2015	8826 ¹
2016	224
2017	551

8. It is my opinion, based on my training and experience, that assault rifles (as defined by California Penal Code sections 30510 and 30515) pose a greater danger to both police officers and the public than other unrestricted semi-automatic, centerfire rifles with detachable (non-fixed) magazines. What distinguishes Assault Rifles from unrestricted rifles (as described above) is the presence of one or more features enumerated in the California Penal Code including a pistol grip (including a forward pistol grip) or thumbhole stock, adjustable stock, or flash suppressor. These features when attached to a semi-automatic, centerfire rifle with a detachable magazine make that rifle more dangerous to police offices and the public due to an increase in the lethality of the rifle. The purpose of each of these features is to increase the control of the rifle that they are attached too. Increased control leads to the ability of the shooter to fire rounds faster and with more accuracy. Any modification to a firearm that allows a shooter to fire rounds faster with increased accuracy leads to greater potential lethality.

9. The most ubiquitous feature of assault weapons is the pistol grip or thumbhole stock. Modern military battle rifles are almost universally equipped with pistol grips. Modern military battlefield tactics rely on the ability of troops to send, rapidly and accurately, a large number of rounds down range towards enemy positions. Pistol grips and thumbhole stocks provide the combatant with more

¹ This was due to an abnormal seizure regarding a deceased individual at a condominium in the Pacific Palisades.

1 control of the rifle and thus more accuracy during rapid fire. Pistol grips and
2 thumbhole stocks also position the trigger finger relative to the trigger so that the
3 trigger press is in a straight line. This allows the shooter to not only be more
4 accurate but also increases the speed with which rounds can be fired. Pistol grips
5 and thumbhole stocks serve the same purpose when installed on civilian semi-
6 automatic rifles in that they increase the number and accuracy of rounds that can be
7 fired by any given shooter in a given amount of time.

8 10. Adjustable stocks also contribute to the control of the rifle in that they
9 allow the shooter to optimize the rifle to their arm length. This increases the
10 shooter's ability to rapidly send rounds down range with increased accuracy. By
11 collapsing the stock, the rifle becomes more concealable potentially allowing a
12 suspect to introduce the firearm into a vulnerable location such a school or
13 workplace with less fear of detection.

14 11. Flash suppressors also contribute to the potential lethality of a rifle.
15 Flash suppressors function to reduce the "flash signature" in the shooter's field of
16 vision in low light conditions. By reducing the effect of the muzzle flash on the
17 shooter's night vision, the shooter can get back on target quicker. The ability to
18 acquire one's sight picture faster allows the shooter to more rapidly deliver rounds
19 to the target with greater accuracy. Many flash suppressors on the market are
20 hybrid designs meant not only to reduce the flash signature of the rifle but to limit
21 barrel rise which increases accuracy.

22 12. By definition, assault rifles are capable of accepting a detachable (non-
23 fixed) magazine. These magazines can hold as many as 100 rounds. Large
24 capacity magazines allow the shooter to fire more rounds at their target(s) before
25 the need to stop and reload. The use of detachable large capacity magazines in
26 conjunction with any semi-automatic or fully automatic rifle makes that rifle more
27 lethal.
28

1 13. Adding any of the features described above further increases the ability
2 of the shooter to accurately and rapidly deliver rounds to the target, increasing the
3 potential lethality of the firearm beyond that presented by a featureless rifle. There
4 is a direct correlation between a shooter's ability to inflict more casualties on
5 targeted persons and the number of rounds immediately available to a shooter to
6 more rapidly and accurately deliver those rounds on target. This has been
7 illustrated in various mass-shootings in and around the City of Los Angeles over
8 the past twenty years.

9 14. For example, in one of the most brazen crimes ever committed, on
10 February 28, 1997, two heavily armed men robbed a Bank of America in North
11 Hollywood. According to reports that I have read, the bank robbers emptied more
12 than one thousand rounds of ammunition using fully automatic pistol grip equipped
13 machine guns with high-capacity drum magazines (holding 75 to 100 rounds), an
14 AR-15 assault rifle equipped with a pistol grip and converted to fire automatically
15 with two high-capacity magazines (holding 100 rounds each), a semi-automatic
16 HK-91 rifle equipped with a pistol grip and several 30-round high-capacity
17 magazines, and armor-piercing bullets. The LAPD officers responding to the scene
18 were outgunned and injured as a result of this incident. Indeed, twelve police
19 officers and eight civilians were injured.

20 15. On August 10, 1999, a white supremacist fired shots into the lobby of the
21 North Valley Jewish Community Center in Granada Hills. According to reports I
22 have read, the shooter was armed with a fully-automatic Uzi machine gun, a semi-
23 automatic pistol, and large capacity magazines. Three children, a teenage
24 counselor, and an office worker were injured.

25 16. On June 7, 2013, a shooter opened fire in and around the campus of Santa
26 Monica College. According to reports that I have read, the shooter was armed with
27 a semi-automatic rifle (similar in type to an AR-15) equipped with a pistol grip,
28

1 1,300 rounds of ammunition, and forty 30-round magazines. Five people were
2 killed and four people were injured.

3 17. On November 1, 2013, a gunman opened fire at the Los Angeles
4 International Airport. According to reports that I have read, the shooter used a
5 Smith & Wesson M&P15 semi-automatic rifle equipped with a pistol grip and
6 loaded with a detachable 30-round large-capacity magazine. The shooter also had
7 five additional 30-round large-capacity magazines and hundreds of rounds of
8 ammunition in his carrying bag. One TSA agent was killed and several other
9 people were injured.

10 18. On December 2, 2015, a married couple targeted a San Bernardino
11 County Department of Public Health event and Christmas party, killing fourteen
12 people and wounding twenty-two others. According to reports that I have read, the
13 shooters were armed with semi-automatic pistols, a Smith & Wesson M&P15 rifle
14 modified to make it fully automatic and equipped with a pistol grip and detachable
15 large capacity magazine, a DPMS A-15 rifle with a pistol grip that was modified to
16 accept a detachable large-capacity magazine, and at least four large-capacity
17 magazines.

18 19. It is my opinion, based on my training and experience, that the above-
19 described attacks would have been less deadly had the shooters not been armed
20 with assault rifles or assault rifles converted to machine guns.

21 20. There are numerous devices on the market that when installed on a semi-
22 automatic rifle, increase the rifle's rate of fire to that of some machine guns. These
23 devices are easily installed on the rifle without special tools or training. Although
24 these "multiburst trigger activators" are unlawful in the state of California, they are
25 widely available in neighboring states and on the internet. The LAPD Gun Unit has
26 encountered an increasing number of these devices in the last several years.
27 Combining a multiburst trigger activator with a rifle equipped with the above-

1 described features increases the lethality of the firearm many fold. This has been
2 illustrated by a mass-shooting in the City of Las Vegas on October 1, 2017.

3 21. According to reports that I have read, a single shooter firing from a 32nd
4 floor hotel window located some distance from a crowded outdoor concert venue
5 was able to shoot to death 58 concert goers and injuring hundreds of others. This
6 was the deadliest mass shooting in modern United States history. Reports about
7 and photos of the gunman's weapons that I have viewed show that he was armed
8 with numerous semi-automatic, centerfire rifles with detachable magazines and
9 equipped with pistol grips. These firearms would meet the definition of an assault
10 rifle if they were possessed within California. It is highly unlikely that this shooter
11 could have inflicted as many casualties as he was able had his rifles not been
12 equipped with features that were designed to help the shooter control his firearms
13 with improved accuracy during rapid fire.

14 22. I have been involved in the seizure of assault weapons that have been
15 converted into machine guns. This process is as simple as "dropping in" a few
16 parts to a more involved process of drilling additional holes in the receiver of the
17 rifle. Once modified in this manner, rifles equipped with the above-described
18 features are indistinguishable from the battlefield rifles used by the world's military
19 forces.

20 23. There is no evidence that assault rifles are "commonly" used for self -
21 defense. While any firearm including an assault rifle could be used effectively in a
22 self-defense scenario, handguns and shotguns are the more common and preferred
23 choice. Legally sanction use of force including deadly force is commonly
24 understood to be defense against an immediate and proximate threat of physical
25 harm to one's self or others. In other words, the threat needs to be imminent and to
26 some degree up close and personal. This proximity requirement makes a rifle an
27 inappropriate and unnecessary choice of weapon. The evidence cited in articles and
28 by internet bloggers to support the assertion that assault rifles are "commonly" used

1 by the public to defend themselves is mostly based on anecdotal evidence as there
2 is no uniformed collection of data on the subject. Many of the anecdotes cited by
3 proponents for the use of assault rifles as defensive weapons involve the mere
4 pointing of the rifle at the suspect who then fled with no shots fired. Pointing a
5 handgun at a suspect would have the same effect. Other anecdotes involve assault
6 rifles used to fend off unarmed suspects. Again, a handgun or shotgun would have
7 the same effect and of course there are numerous non-lethal options available. In
8 many of these scenarios cited the use of deadly force would not have been legally
9 sanctioned. The purpose of deploying a rifle as opposed to a handgun should be
10 based on the fact that the target is beyond the reasonable effective range of a
11 handgun. Other considerations are a need to defeat body armor, fortified
12 concealment, a position of advantage (high ground), or a suspect armed with
13 superior fire power such as a rifle. These are the criteria used by the LAPD when
14 deciding to deploy a rifle. It is highly unlikely that citizens would face a situation
15 where the threat is beyond the effective range of a handgun and certainly not with
16 any great frequency. It is even less likely that the law would view such a distant
17 perceived threat as justifying a use of force at all much less a use of lethal force
18 delivered via a rifle. I do not believe, based on my training and experience, that
19 there are frequent occasions when a member of the public would face threat by an
20 armed suspect wearing body armor or concealed behind a barrier that would defeat
21 handgun ammunition. Absent these factors a handgun, shotgun or non-lethal
22 options should suffice in dealing with the vast majority of self-defense scenarios
23 where force is legally justified.

24
25 I declare under penalty of perjury that the foregoing is true and correct.

26
27 Executed on October 25, 2018 at Los Angeles, California.

Michael Mersereau
MICHAEL MERSEREAU

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EXHIBIT 5

In the United States District Court
For the Central District of California

RUPP, et al.,

Plaintiffs,

v.

XAVIER BECERRA, in his official
capacity as Attorney General of the
State of California; et al.,

Defendants.

8:17-cv-00746-JLS-JDE

EXPERT REPORT AND
DECLARATION OF
BLAKE GRAHAM

BACKGROUND AND QUALIFICATIONS

1
2 1. I am a Special Agent Supervisor for the California Department of
3 Justice, Bureau of Firearms.

4 2. I received a Bachelor of Science degree in May 1992 in Criminal
5 Justice at the California State University Sacramento. My coursework included
6 forensics, corrections, and a number of classes in criminal justice-related topics.

7 3. Since 1994, I have worked as either an investigator for the California
8 Department of Alcoholic and Beverage Control (ABC), or as a Special Agent for
9 the California Department of Justice (DOJ). My job responsibilities in all of these
10 positions have increasingly required the recovery, investigation, and identification
11 of firearms, the ammunition used for those firearms, and the magazines used for
12 feeding ammunition for such firearms.

13 4. My work as an Investigator for ABC between 1994 and 1999 included
14 the recovery of firearms, magazines and ammunition.

15 5. Between 1999 and 2002, I worked as a Special Agent for DOJ, and was
16 assigned to the Violence Suppression Program in the Bureau of Narcotic
17 Enforcement. In this job, I investigated violent crimes and various violations
18 occurring at California gun shows. As a gun show enforcement agent, I attended
19 gun shows in the San Francisco Bay Area to monitor, and if necessary, seize,
20 firearms, ammunition, and magazines sold illegally to felons, parolees, and
21 probationers.

22 6. From October 2002 to the present, I have been a Special Agent and
23 Special Agent Supervisor, for the DOJ's Bureau of Firearms (BOF). In this
24 capacity, I am assigned to recover firearms from prohibited individuals, monitor
25 gun shows for illegal activities, conduct surveillance on gun dealers suspected of
26 illegal activity, and investigate illegal trafficking of firearms, manufacturing of
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1 assault weapons, machine guns, and illegal possession of various magazines and
2 ammunition.

3 7. Since 2008, I have been responsible for reviewing handguns that are
4 submitted by manufacturers for inclusion in California's roster of handguns certified
5 for sale. A copy of the roster can be found on the DOJ website:
6 <http://certguns.doj.ca.gov/>.

7 8. In my career I have attended at least 40 gun shows and have become
8 very knowledgeable on current laws pertaining to the sales of firearms, assault
9 weapons identification, assault weapons registration, the Automated Firearms
10 System (AFS), ammunition, and ammunition containers—including large-capacity
11 magazines (LCMs)—in the State of California.

12 9. I have been trained and qualified to carry several different types of
13 firearms, including: Glock Model 17 (9 mm semiautomatic pistol), multiple Glock
14 .40 caliber semi automatic pistols, Heckler & Koch MP5 (9 mm submachine gun),
15 Smith & Wesson, Model 60 (.38 Special revolver), multiple .45 caliber
16 semiautomatic pistols, and a Colt, Model M4 (5.56 mm machine gun). I have
17 access to other Department-owned handguns, shotguns, submachine guns, machine
18 guns, rifles, shotguns and 40 mm "less lethal" launchers.

19 10. Throughout my career, I have conducted training programs in the
20 identification and handling of firearms. I have also trained other Special Agents of
21 BOF on assault weapons and firearms identification. I also have given firearms
22 identification classes to members of the multiple District Attorney's offices in the
23 State of California.

24 11. I have also completed at least 15 firearms training courses since 1994.
25 These courses included the assembly and use of specific firearms, cartridge
26 composition (bullet, the propellant, and the casing), common calibers used by law
27 enforcement, and training on rifle and handgun ammunition. I have been certified
28

1 as a California Peace Officer Standards and Training (POST) approved Firearms
2 Instructor/Rangemaster since 2002.

3 12. During the course of my career and training I have become proficient in
4 the use and disassembly of various revolvers, pistols, submachine guns, shotguns,
5 and rifles. I have made or assisted in the arrest of at least thirty persons for
6 violations involving illegal weapons possession. In the course of my employment I
7 have participated in excess of thirty search warrants which involved the illegal
8 possession of firearms.

9 13. I have been qualified as an expert witness regarding the use of firearms
10 in 15 cases in both federal and state court since 2007.

11 **DISCUSSION**

12 **LEGISLATION LIMITING ASSAULT WEAPONS.**

13 14. I am aware of the current state and former federal laws banning the sale
14 assault weapons in California.

15 15. California's Roberti-Roos Assault Weapon Act (AWCA) prohibits the
16 sale of assault weapons and ownership of unregistered assault weapons. The
17 AWCA prohibits certain assault weapons as defined by their make and model. The
18 lists of prohibited weapons are in Penal Code section 30510 and California Code of
19 Regulations, Title 11, Division 5, Chapter 40, Section 5499 (Category 1 and
20 Category 2 weapons). Some of the firearms listed in Penal Code section 30510 are
21 weapons prohibited by the federal assault weapons ban in effect from 1994-2004.
22 In general, the firearms listed in Penal Code section 30510 and the additional ones
23 listed in the regulations could be considered semiautomatic versions of military
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1 weapons.¹ While it is not legally necessary for a Category 1 or Category 2 assault
2 weapon to have certain features, they usually have one more of the features listed in
3 Penal Code Section 30515 (Category 3 definition language). Probably the most
4 common feature of prohibited assault weapons is the pistol grip. The next most
5 common features are probably adjustable stocks (folding or telescoping) and flash
6 suppressors.

7 16. The AWCA also prohibits certain weapons as defined by their features.
8 Penal Code section 30515 defines an “assault weapon” to include “a semiautomatic,
9 centerfire rifle that does not have a fixed magazine but has any one” of certain
10 features.

11 **ASSAULT WEAPON FEATURES²**

12 17. I understand that Plaintiffs in this case have challenged California’s
13 prohibition on assault weapons based on features identified in Penal Code section
14 30515(a)(1)(A-C), (a)(1)(E-F), and (a)(3):
15 PC 30515.

16 (a) Notwithstanding Section 30510, “assault weapon” also means any of the
17 following:

18 (1) A semiautomatic, centerfire rifle that does not have a fixed magazine but has
19 any one of the following:

20 (A) A pistol grip that protrudes conspicuously beneath the action of the weapon.

21 (B) A thumbhole stock.

22 (C) A folding or telescoping stock.

23 ¹ The history of assault rifles, their military features, and their evolution from
24 military weapons have been well documented. *See AR-15/M16 Sourcebook*, by
25 Long (AG00003799-325); *Shooter’s Bible: Guide to AR-15S* by Howlett
26 (AG00003827-3836); *Special Warfare: Special Weapons* by Dockery
27 (AG00003839-3891); *Black Rifle II* by Bartocci (AG00003896-3952); *The*
28 *Militarization of the U.S. Civilian Firearms Market* by the Violence Policy Center
(AG00003955-40060); *Legends and Realities* by Shilin and Cutshaw
(AG00004008-4040); *Assault Weapons Profile* by the U.S. Department of Treasury
(AG00004311-4337); *Small Arms of the World* by Ezell (AG00004973-
AG00005040); *Buyer’s Guide to Assault Weapons* by Peterson (AG00005059-
5070).

² These features have been defined for purposes of assault weapon
registration in California Code of Regulations, Title 11, Division 5, Chapter 39,
Article 2, § 5471 (Exhibit A).

- (E) A flash suppressor.
- (F) A forward pistol grip.

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

18. “Centerfire” refers to the type of ammunition the firearms were built to fire. This excludes many semiautomatic rimfire (usually .22 caliber) rifles that might have had one or more listed features. Centerfire ammunition is more powerful than rimfire ammunition.

19. A “pistol grip that protrudes conspicuously beneath the action of the weapon” is 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 beneath or below the top of the exposed portion of the trigger while firing. In my experience, this feature is the most prevalent feature of assault rifles prohibited under the AWCA. Pistol grips are used in most modern military machine guns and semiautomatic rifles. The designers of military-style firearms are including this feature more and more. A pistol grip on an assault rifle enhances the ergonomics of the weapon. A shooter using an assault rifle without a pistol grip may shoot less accurately if the shooter’s trigger hand is in an awkward position for a significant amount of time. An assault rifle lacking a pistol grip would not necessarily be less accurate than an assault rifle with a pistol grip.

20. A “thumbhole stock” is a stock with a hole that allows the thumb of the trigger hand to penetrate into or through the stock while firing. It allows for a grip similar to that offered by a pistol grip. Below is a photograph showing a thumbhole stock on a rifle.



1
2 21. A “telescoping stock” is a stock that is shortened or lengthened by
3 allowing one section to telescope into another portion. On AR-15 style firearms,
4 the buffer tube or receiver extension acts as the fixed part of the stock on which the
5 telescoping butt stock slides or telescopes. A “folding stock” is a stock that is
6 hinged in some fashion to the receiver to allow the stock to be folded next to the
7 receiver to reduce the overall length of the firearm. A folding stock or telescoping
8 stock that still allows the shooter to fire the rifle while the stock is folded or
9 shortened will have a tactical advantage because it is more versatile. The tactical
10 advantage provided by a telescoping or folding stock include decreased overall
11 length of the rifle by the shooter if desired for concealability. For example, when
12 law enforcement personnel conduct room to room searches of a building, they
13 would not want to give away their locations. More compact weapons with folding
14 or telescoping stocks may maintain the advantage of surprise. Semiautomatic
15 assault weapons deployed by law enforcement with extremely long overall lengths
16 may be seen by antagonists who mean to do harm to law enforcement. Telescoping
17 or folding stocks also allow for easier transportation and storage of the weapon and
18 to more quickly allow the user to adjust the weapon for a better fit, but these are
19 secondary considerations. Subjects intent on shooting one or more persons may
20 have a tactical advantage by using a weapon with a shorter overall length. This
21 tactical advantage described above for law enforcement can also be used by a
22 shooter wishing to remain undetected for as long as possible. A weapon with a
23 shorter overall length could also permit the shooter to smuggle the weapon
24 undetected (by, for example, hiding the weapon in a backpack or bag) or to hide in
25 the crowd without telegraphing the shooter’s location.³ A smaller weapon can also
26 be concealed on the shooter’s person underneath loose or bulky clothing.

27 ³ Some manufacturers design and market certain backpacks specifically to
28 carry assault rifles with folding or telescoping stock while remaining

22. A “flash suppressor” is any device attached to the end of the barrel, that is designed, intended, or functions to perceptibly reduce or redirect muzzle flash from the shooter's field of vision. A hybrid device that has either advertised flash suppressing properties or functionally has flash suppressing properties would be considered a flash suppressor. A device labeled or identified by its manufacturer as a flash hider would also be considered a flash suppressor. Most everyone has experienced a flash from a camera in our lifetimes. This camera flash can cause vision problems for people viewing the flash. A firearm, in low light conditions may produce muzzle flash with each round fired. The muzzle flash may create vision problems for the shooter, which may cause the shooter to shoot less accurately. Two rifles, one with a flash suppressor and one without, shooting the same ammunition with the same length barrels should perform differently in terms of reducing the amount of flash created. The rifle with the flash suppressor should be easier to shoot in low light conditions because the shooter should have less problems aiming accurately.

23. A “forward pistol grip” is a grip that allows for a pistol style grasp forward of the trigger. Many modern military machine guns, submachine guns and assault rifles worldwide have built in forward pistol grips or locations that allow for forward pistol grips to be attached. This feature can aid the shooter by offering an optional grip location on the rifle for the shooter’s non-trigger hand.

24. Overall, in my experience, the challenged features described in Penal Code section 30515 on assault rifles may aid the shooters in being potentially more effective and efficient while shooting people. Semiautomatic assault rifles are generally modelled after successful military machine guns and submachine guns.⁴

inconspicuous. The 5.11 Tactical COVRT M4 Gun Bag with the “Roll-down Assault Compartment” is one example. See <http://www.armtactical.com/5-11-tactical-covrt-m4-gun-bag.html>; https://www.youtube.com/watch?v=EaZ7s5mtA_o; see also <https://www.tactical-life.com/gear/6-discreet-carry-bags/>.

⁴ See sources cited in footnote 1.

1 Target practice is done by militaries of the world so their soldiers are better able to
2 shoot and kill or injure their opponents.

3 25. Generally, weapons currently deemed to be Assault Weapons under
4 California law have had a similar version issued to a military or police force
5 somewhere in the world. The main difference between those military or police
6 forces machine guns and California assault weapons are that defined California
7 assault weapons are semi automatic. In some cases, military or police forces might
8 issue semi automatic rifles that are functionally the same as defined California
9 assault weapons in terms of “rate of fire” or “capacity for firepower.”

10 26. Pistol grip that protrudes beneath the action of the weapon, thumbhole
11 stock, and forward pistol grip may provide the shooter increased physical control of
12 the rifle. These features also provide increased ergonomics, which can enhance
13 more accurate rapid shooting.

14 27. Folding or telescoping stock and a rifle with overall length under 30
15 inches aid in the concealability of the weapon.

16 28. A flash suppressor may increase efficiency while the shooter is firing
17 since the shooter’s vision is less likely to be impaired by excess flash in low light
18 settings.

19 29. Militaries across the world have incorporated these features into their
20 armed forces firearms for many years.

21 30. The photo below depicts a Sturm Ruger, Mini-14/Ranch Rifle with no
22 prohibited features listed in Penal Code section 30515. It is a semiautomatic center
23 fire rifle that is not an assault weapon. It is effectively “featureless” in terms of
24 Penal code section 30515. These types of rifles are currently legal for sale in
25 California and can be lawfully transferred and possessed by California residents
26 who follow state and federal laws. It has a traditional wooden stock, no pistol grip
27 and no muzzle device:
28



31. The semi automatic centerfire rifle depicted below is a Sturm Ruger, Mini-14/Ranch Rifle with a folding stock, pistol grip and flash suppressor on the end of the barrel. These types of rifles are currently not legal for sale in California and cannot be lawfully transferred by California residents.⁵



32. Assault Rifles, as defined under Penal Code Section 30510, typically will have one or more features that are listed in Penal Code Section 30515 (pistol grip, etc.).

ASSAULT RIFLES HAVE HIGHER CAPACITY FOR FIREPOWER.

33. Assault rifles, as defined by California law, must be semiautomatic. One round per pull of the trigger will be fired as long as the rifle has available ammunition in its magazine. LCMs for assault weapons are present in California. As of this writing, certain persons can still legally possess LCMs.⁶ Firearms-prohibited persons such as felons, and persons subject to a restraining order, gun violence restraining order, or certain mental health statuses may also choose to

⁵ Although California residents who registered a rifle similar to the one depicted below during the one year (2000) registration window can still lawfully possess a firearm like this.

⁶ California's prohibition on LCMs has been stayed, in part, by a federal court.

1 acquire LCMs for use in illegally possessed assault weapons. Non-prohibited
2 persons may choose to use assault weapons illegally in conjunction with LCMs.
3 Some LCMs can hold 20, 30, 50, 75 or 100 rounds of ammunition at a time. A
4 person intent on doing harm to citizens or law enforcement will often pair assault
5 weapons and multiple LCMs together. This individual will have a lot of available
6 firepower. Many rounds can be fired quickly and the assault rifle can be rapidly
7 reloaded with the magazines on hand.

8 34. Assault rifles as defined in Penal Code section 30515 are often used
9 with rifle rounds that are associated with increased lethality. The United States
10 military uses various centerfire rifle rounds (5.56 mm and 7.62 x 51, for example)
11 in multiple weapons systems. Some California assault rifles are capable of firing
12 the same centerfire rounds as these military weapons and could have the same high
13 capacity for firepower as the military weapons. In my experience being around the
14 California gun industry and gun culture for nearly 20 years, rounds most commonly
15 used with assault rifles are rifle-caliber rounds such as .223 caliber, 5.56 mm, or
16 7.62 x 39 mm. These rounds will typically defeat normal bullet resistant body
17 armor used by law enforcement. While rifle resistant plates can be added to most
18 law enforcement body armor, the rifle plates are not going to block or resist rifle-
19 caliber rounds fired at all angles. Some rifle rounds are strong enough to defeat
20 even the available rifle resistant plates available to law enforcement. Some assault
21 weapons are chambered in traditional pistol caliber rounds such as 9mm, .40 and
22 .45 calibers. Handgun caliber bullets fired from assault weapons chambered in
23 these calibers may or may not be stopped by traditional law enforcement body
24 armor. Generally, the longer the barrel the faster the bullet will travel. A rifle and
25 handgun both shooting the same ammunition may have different results in terms of
26 penetrating body armor of equal protection levels. The shorter barrel lengths
27 usually associated with a normal semi automatic handgun might be 3-5 inches long.
28 By state and federal law, a rifle must have at least a 16-inch long barrel. The rifle

1 barrel being at least three times longer than most semiautomatic handgun barrels
2 leads to the bullet leaving the barrel at a higher rate of speed (or higher muzzle
3 velocity). In general, the faster the bullet is traveling, the more likely it is to defeat
4 body armor.

5 **USE OF ASSAULT WEAPONS IN MASS SHOOTINGS.**

6 35. Through the course of my career, I am familiar with the use of assault
7 weapons by subjects intending to do harm to civilians and law enforcement.

8 36. Often assault weapons are paired with LCMs during these crimes by the
9 suspects. LCMs are ammunition feeding devices that can hold more than ten
10 rounds, and sometimes up to 100 rounds, of ammunition.

11 37. Semiautomatic assault weapons when loaded with LCMs enable a
12 shooter to potentially fire more than 10 rounds without the need for the shooter to
13 reload the weapon.

14 38. Because LCMs enable a shooter to fire repeatedly without needing to
15 reload every 10 rounds, they significantly increase a shooter's ability to kill and
16 injure large numbers of people quickly.

17 39. Assault weapons have been a popular weapon used in several mass
18 shootings in California and elsewhere.

19 40. Based on my research, all of the shootings listed below involved
20 persons who shot and wounded and/or killed one or more persons, including peace
21 officers, while using assault weapons.

22 a. On January 17, 1989, Patrick Purdy, shot and killed 5 and wounded 32
23 others at the Cleveland Elementary School in Stockton, California. He
24 used an AK-47 style rifle and LCMs in the shooting. The Roberti-Roos
25 Assault Weapon Control Act of 1989 was signed after this shooting.

26 b. On January 9, 2005, Andres Raya used a LCM and illegal assault
27 weapon to shoot and kill Police Sgt. Howard Stevenson in Ceres,
28 California.

- c. On June 15, 2008, Marco Topete used an assault rifle and LCM to shoot and kill Yolo County Sheriff's Deputy Tony Diaz after a traffic stop near Dunnigan, California.
- d. On February 25, 2010, Ricky Liles, used multiple weapons (including an assault weapon) and LCMs to shoot and kill two law enforcement officers and wounded one other in Minkler, California.
- e. On July 20, 2012, James Holmes used an assault weapon and LCMs to kill 12 people and wound 70 others in a movie theater in Aurora, Colorado.
- f. On December 14, 2012, Adam Lanza used LCMs and multiple firearms (including an assault weapon) to kill 20 children and six adults at Sandy Hook Elementary School in Newtown, Connecticut.
- g. On June 7, 2013, John Zawahri—who was previously denied purchase of a firearm by DOJ—used a home-built AR-15 rifle and LCMs to kill his father and brother at their family home, and then kill and wound others at the Santa Monica, California Community College.
- h. On December 2, 2015, Syed Farook and his wife, Tashfeen Malik, used assault weapons and LCMs in killing 14 people and wounding 22 others at the Inland Regional Center in San Bernardino, California.
- i. On June 12, 2016, Omar Mateen used an assault rifle and LCMs to shoot and kill 49 people and wound 53 others inside a nightclub in Orlando, Florida.
- j. On July 7, 2016, Micah Johnson used an assault rifle and a LCM to shoot and kill five police officers and wound nine others in Dallas, Texas.
- k. On July 17, 2016, Gavin Long used an assault rifle and LCMs to shoot and kill three police officers and wound three other officers in Baton Rouge, Louisiana.

- 1 l. On October 1, 2017, Stephen Paddock used assault rifles and LCMs to
- 2 fire over 1,000 rounds on concertgoers at an outdoor music festival in
- 3 Las Vegas, Nevada, killing 58 people and wounding more than 500
- 4 others. To date, this is the deadliest mass shooting in U.S. history.
- 5 m. On October 3, 2018, Frederick Hopkins used an assault rifle in
- 6 Florence, South Carolina to shoot and kill two law enforcement
- 7 officers. Six other officers were also shot.

8 **ASSAULT RIFLES ARE SUITABLE FOR LAW ENFORCEMENT USE.**

9 41. Assault rifles are suitable for law enforcement use. As depicted above,

10 there are many instances that law enforcement and civilians have been hurt and

11 killed by subjects using assault weapons. Law enforcement needs to have equal or

12 better weapons than those subjects they are confronting so that they are not

13 outgunned by criminals with assault rifles.

14 42. Unlike civilians, law enforcement personnel are often required to enter

15 into dangerous situations to take a shooter into custody. Law enforcement

16 personnel must often affirmatively put themselves in dangerous situations to subdue

17 shooters or other criminal suspects or to protect civilians.

18 43. Law enforcement personnel undergo regular, specialized training to

19 safely and effectively use assault weapons. Each round fired by law enforcement

20 has the potential to cause criminal and/or civil ramifications for individuals

21 employed in this field and their agency they work for. We are trained to consider

22 the backdrop (area behind whatever is being aimed at) to make sure persons or

23 property are not needlessly injured or damaged. Regular qualifications with various

24 duty firearms are standard procedure for law enforcement. These qualifications

25 can sometimes include varied distances from the officer to the target, partially

26 concealed targets, and scenarios in which the best option available to the officer is

27 to not shoot the target. Verbal commands and less lethal options are among the

28 options employed by law enforcement in conjunction with potentially lethal force.

1 44. Because Assault Weapons have been used in mass shootings that have
2 occurred both in and outside of California for several years, the State of California
3 has chosen to restrict access to them.

4 45. It is my opinion that the provisions of California Assault Weapons
5 Control Act challenged by plaintiffs in this case enhances public safety by limiting
6 prohibited weapons that are unreasonably dangerous for unrestricted civilian use
7 and are often used by those who intend on committing crimes such as mass
8 shootings.

9
10 I declare under penalty of perjury that the foregoing is true and correct.

11 Executed on October 25, 2018 at Sacramento, California.
12
13


14 
15 Blake Graham

EXHIBIT A

FINAL TEXT

Text added to the regulations is shown in underline.

Text deleted from the regulations is shown in strikethrough.

California Code of Regulations Title 11, Division 5

Chapter 39 Assault Weapons and Large-Capacity Magazines

Article 2. Definitions of Terms Used to Identify Assault Weapons Registration Requirement, What Qualifies for Registration, and Definitions

§ 5469. Definitions. Registration of Assault Weapons Pursuant to Penal Code Section 30900(b)(1); Who Must Register.

The following definitions apply to terms used in the identification of assault weapons pursuant to Penal Code section 30515:

- (a) —“Detachable magazine” means any 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.
- (b) —“Flash suppressor” means any device designed, intended, or that functions to perceptibly reduce or redirect muzzle flash from the shooter's field of vision.
- (c) —“Forward pistol grip” means a grip that allows for a pistol style grasp forward of the trigger.
- (d) —“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.
- (e) —“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.

Any person who, from January 1, 2001, to December 31, 2016, inclusive, lawfully possessed an assault weapon that does not have a fixed magazine, as defined in Penal Code section 30515, including those weapons with an ammunition feeding device that can be readily removed from the firearm with the use of a tool (commonly referred to as a bullet-button weapon) must register the firearm before July 1, 2018.

Note: Authority cited: Section ~~30520~~ 30900, Penal Code. Reference: Sections ~~16170(a), 16350, 16890, 30515, 30600, 30605, 30610, 30615, 30620, 30625, 30630, 30635, 30640, 30645, 30650, 30655, 30660, 30665, 30670, 30675, 30900, 30905, 30910, 30915, 30920, 30925, 30930, 30935, 30940, 30945, 30950, 30955, 30960 and 30965,~~ Penal Code.

Article 3. Assault Weapon Registration

§ 5470. Registration of Assault Weapons Pursuant to Penal Code Section 30900(b)(1); Which Weapons Must be Registered.

- (a) Except as provided in section 5472, an assault weapon that does not have a fixed magazine, as defined by Penal Code section 30515, must be registered with the Department before July 1, 2018.
- (b) A semiautomatic, centerfire or rimfire pistol with an ammunition feeding device that can be readily removed from the firearm with the use of a tool, commonly referred to as a bullet-button weapon, that has one or more specified features identified in Penal Code section 30515 is included in the category of firearms that must be registered.
- (c) A semiautomatic, centerfire rifle with an ammunition feeding device that can be readily removed from the firearm with the use of a tool, commonly referred to as a bullet-button weapon, that has one or more specified features identified in Penal Code section 30515 is included in the category of firearms that must be registered.
- (d) A semiautomatic shotgun with an ammunition feeding device that can be readily removed from the firearm with the use of a tool, commonly referred to as a bullet-button weapon, is included in the category of firearms that must be registered.

Note: Authority cited: Section 30900, Penal Code. Reference: Sections 30515 and 30900, Penal Code.

§ 5471. Registration of Assault Weapons Pursuant to Penal Code Section 30900(b)(1); Explanation of Terms Related to Assault Weapon Designation.

For purposes of Penal Code section 30900 and Articles 2 and 3 of this Chapter the following definitions shall apply:

- (a) “Ability to accept a detachable magazine” means with respect to a semiautomatic shotgun, it does not have a fixed magazine.
- (b) “Action” means the working mechanism of a semiautomatic firearm, which is the combination of the receiver or frame and breech bolt together with the other parts of the mechanism by which a firearm is loaded, fired, and unloaded.

- (c) “Barrel” means the tube, usually metal and cylindrical, through which a projectile or shot charge is fired. Barrels may have a rifled or smooth bore.
- (d) “Barrel length” means the length of the barrel measured as follows: Without consideration of any extensions or protrusions rearward of the closed bolt or breech-face the approved procedure for measuring barrel length is to measure from the closed bolt (or breech-face) to the furthestmost end of the barrel or permanently attached muzzle device. Permanent methods of attachment include full-fusion gas or electric steel-seam welding, high-temperature (1100°F) silver soldering, or blind pinning with the pin head welded over. Barrels are measured by inserting a dowel rod into the barrel until the rod stops against the closed bolt or breech-face. The rod is then marked at the furthestmost end of the barrel or permanently attached muzzle device, withdrawn from the barrel, and measured.
- (e) “Bullet” means the projectile expelled from a gun. It is not synonymous with a cartridge. Bullets can be of many materials, shapes, weights, and constructions such as solid lead, lead with a jacket of harder metal, round-nosed, flat-nosed, hollow-pointed, et cetera.
- (f) “Bullet-button” means a product requiring a tool to remove an ammunition feeding device or magazine by depressing a recessed button or lever shielded by a magazine lock. A bullet-button equipped fully functional semiautomatic firearm does not meet the fixed magazine definition under Penal Code section 30515(b).
- (g) “Bore” means the interior of a firearm’s barrel excluding the chamber.
- (h) “Caliber” means the nominal diameter of a projectile of a rifled firearm or the diameter between lands in a rifled barrel. In the United States, caliber is usually expressed in hundreds of an inch; in Great Britain in thousandths of an inch; in Europe and elsewhere in millimeters.
- (i) “Cartridge” means a complete round of ammunition that consists of a primer, a case, propellant powder and one or more projectiles.
- (j) “Centerfire” means a cartridge with its primer located in the center of the base of the case.
- (k) “Contained in” means that the magazine cannot be released from the firearm while the action is assembled. For AR-15 style firearms this means the magazine cannot be released from the firearm while the upper receiver and lower receiver are joined together.
- (l) “Department” means the California Department of Justice.
- (m) “Detachable magazine” means any ammunition feeding device that can be removed readily from the firearm without disassembly of the firearm action or use of a tool. A bullet or ammunition cartridge is considered a tool. An 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.

An AR-15 style firearm that has a bullet-button style magazine release with a magnet left on the bullet-button constitutes a detachable magazine. An AR-15 style firearm lacking a magazine catch assembly (magazine catch, magazine catch spring and magazine release button) constitutes a detachable magazine. An AK-47 style firearm lacking a magazine catch assembly (magazine catch, spring and rivet/pin) constitutes a detachable magazine.

- (n) “Disassembly of the firearm action” means the fire control assembly is detached from the action in such a way that the action has been interrupted and will not function. For example, disassembling the action on a two part receiver, like that on an AR-15 style firearm, would require the rear take down pin to be removed, the upper receiver lifted upwards and away from the lower receiver using the front pivot pin as the fulcrum, before the magazine may be removed.
- (o) “Featureless” means a semiautomatic firearm (rifle, pistol, or shotgun) lacking the characteristics associated with that weapon, as listed in Penal Code section 30515.
- (p) “Fixed magazine” means an ammunition feeding device contained in, or permanently attached to, a firearm in such a manner that the device cannot be removed without disassembly of the firearm action.
- (q) “Flare launcher” means a device used to launch signal flares.
- (r) “Flash suppressor” means any device attached to the end of the barrel, that is designed, intended, or functions to perceptibly reduce or redirect muzzle flash from the shooter's field of vision. A hybrid device that has either advertised flash suppressing properties or functionally has flash suppressing properties would be deemed a flash suppressor. A device labeled or identified by its manufacturer as a flash hider would be deemed a flash suppressor.
- (s) “FMBUS” means a Firearm Manufactured By Unlicensed Subject.
- (t) “Forward pistol grip” means a grip that allows for a pistol style grasp forward of the trigger.
- (u) “Frame” means the receiver of a pistol.
- (v) “Grenade launcher” means a device capable of launching a grenade.
- (w) “Permanently attached to” means the magazine is welded, epoxied, or riveted into the magazine well. A firearm with a magazine housed in a sealed magazine well and then welded, epoxied, or riveted into the sealed magazine well meets the definition of “permanently attached to”.
- (x) “Overall length of less than 30 inches” with respect to a centerfire rifle means the rifle has been measured in the shortest possible configuration that the weapon will function/fire

and the measurement is less than 30 inches. Folding and telescoping stocks shall be collapsed prior to measurement. The approved method for measuring the length of the rifle is to measure the firearm from the end of the barrel, or permanently attached muzzle device, if so equipped, to that part of the stock that is furthest from the end of the barrel, or permanently attached muzzle device. (Prior to taking a measurement the owner must also check any muzzle devices for how they are attached to the barrel.)

- (y) “Pistol” means any device designed to be used as a weapon, from which a projectile is expelled by the force of any explosion, or other form of combustion, and that has a barrel less than 16 inches in length. This definition includes AR-15 style pistols with pistol buffer tubes attached. Pistol buffer tubes typically have smooth metal with no guide on the bottom for rifle stocks to be attached, and they sometimes have a foam pad on the end of the tube farthest from the receiver.
- (z) “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 beneath or below the top of the exposed portion of the trigger while firing. This definition includes pistol grips on bullpup firearm designs.
- (aa) “Receiver” means the basic unit of a firearm which houses the firing and breech mechanisms and to which the barrel and stock are assembled.
- (bb) “Receiver, lower” means the lower part of a two part receiver.
- (cc) “Receiver, unfinished” means a precursor part to a firearm that is not yet legally a firearm. Unfinished receivers may be found in various levels of completion. As more finishing work is completed the precursor part gradually becomes a firearm. Some just have the shape of an AR-15 lower receiver for example, but are solid metal. Some have been worked on and the magazine well has been machined open. Firearms Manufactured by Unlicensed Subjects (FMBUS) began as unfinished receivers.
- (dd) “Receiver, upper” means the top portion of a two part receiver.
- (ee) “Rifle” means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.
- (ff) “Rimfire” means a rimmed or flanged cartridge with the priming mixture located in the rim of the case.
- (gg) “Second handgrip” means a grip that allows the shooter to grip the pistol with their non-trigger hand. The second hand grip often has a grip texture to assist the shooter in weapon control.
- (hh) “Semiautomatic” means a firearm functionally able to fire a single cartridge, eject the

empty case, and reload the chamber each time the trigger is pulled and released. Further, certain necessary mechanical parts that will allow a firearm to function in a semiautomatic nature must be present for a weapon to be deemed semiautomatic. A weapon clearly designed to be semiautomatic but lacking a firing pin, bolt carrier, gas tube, or some other crucial part of the firearm is not semiautomatic for purposes of Penal Code sections 30515, 30600, 30605(a), and 30900.

- (1) A mechanically whole semiautomatic firearm merely lacking ammunition and a proper magazine is a semiautomatic firearm.
- (2) A mechanically whole semiautomatic firearm disabled by a gun lock or other firearm safety device is a semiautomatic firearm. (All necessary parts are present, once the gun lock or firearm safety device is removed, and weapon can be loaded with a magazine and proper ammunition.)
- (3) With regards to an AR-15 style firearm, if a complete upper receiver and a complete lower receiver are completely detached from one another, but still in the possession or under the custody or control of the same person, the firearm is not a semiautomatic firearm.
- (4) A stripped AR-15 lower receiver, when sold at a California gun store, is not a semiautomatic firearm. (The action type, among other things, is undetermined.)
- (ii) “Shotgun with a revolving cylinder” means a shotgun that holds its ammunition in a cylinder that acts as a chamber much like a revolver. To meet this definition the shotgun’s cylinder must mechanically revolve or rotate each time the weapon is fired. A cylinder that must be manually rotated by the shooter does not qualify as a revolving cylinder.
- (jj) “Shroud” means a heat shield that is attached to, or partially or completely encircles the barrel, allowing the shooter to fire the weapon with one hand and grasp the firearm over the barrel with the other hand without burning the shooter’s hand. A slide that encloses the barrel is not a shroud.
- (kk) “Spigot” means a muzzle device on some firearms that are intended to fire grenades. The spigot is what the grenade is attached to prior to the launching of a grenade.
- (ll) “Stock” means the part of a rifle, carbine, or shotgun to which the receiver is attached and which provides a means for holding the weapon to the shoulder. A stock may be fixed, folding, or telescoping.
- (mm) “Stock, fixed” means a stock that does not move, fold, or telescope.
- (nn) “Stock, folding” means a stock which is hinged in some fashion to the receiver to allow the stock to be folded next to the receiver to reduce the overall length of the firearm. This definition includes under folding and over folding stocks.

- (oo) “Stock, telescoping” means a stock which is shortened or lengthened by allowing one section to telescope into another portion. On AR-15 style firearms, the buffer tube or receiver extension acts as the fixed part of the stock on which the telescoping butt stock slides or telescopes.
- (pp) “Those weapons with an ammunition feeding device that can be readily removed from the firearm with the use of a tool” includes functional semiautomatic rifles, pistols, and shotguns with bullet-button style magazine releases. These weapons do not have a fixed magazine.
- (qq) “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.
- (rr) “Threaded barrel, capable of accepting a flash suppressor, forward handgrip, or silencer” means a threaded barrel able to accept a flash suppressor, forward handgrip, or silencer, and includes a threaded barrel with any one of those features already mounted on it. Some firearms have “lugs” in lieu of threads on the end of the barrel. These lugs are used to attach some versions of silencers. For purposes of this definition a lugged barrel is the same as a threaded barrel.

Note: Authority cited: Section 30900, Penal Code. Reference: Sections 30515 and 30900, Penal Code.

Article 3. Assault Weapon Registration

§ 5472. Registration of Assault Weapons Pursuant to Penal Code Section 30900(b)(1); Weapons That Will Not Be Registered as Assault Weapons.

- (a) The Department will not register as an assault weapon a firearm unless it was lawfully possessed on or before December 31, 2016.
- (b) The Department will not register a firearm that was required to be registered under prior assault weapon registration laws in effect before January 1, 2017. These weapons include, but are not limited to, firearms known as “named assault weapons” and are listed in Penal Code section 30510 and sections 5495 and 5499 of Chapter 40.
- (c) The Department will not register a firearm as an assault weapon if the firearm is featureless, except for bullet-button shotguns as described in section 5470(d).
- (d) The Department will not register a firearm as an assault weapon if the firearm has a fixed magazine that holds ten rounds or less.
- (e) The Department will not register a firearm as an assault weapon unless the firearm is fully assembled and fully functional.

- (f) The Department will not register as an assault weapon a firearm manufactured by a federally-licensed manufacturer if the firearm does not have a serial number applied pursuant to federal law.
- (g) The Department will not register as an assault weapon a FMBUS if the firearm does not have a serial number assigned by the Department and applied by the owner or agent pursuant to section 5474.2.

Note: Authority cited: Section 30900, Penal Code. Reference: Sections 30515 and 30900, Penal Code.

§ 5473. Voluntary Cancellations

- (a) The DOJ will accept voluntary cancellations for assault weapons that are no longer possessed by the registrant. Cancellations will also be accepted for assault weapons, defined and registered pursuant to Penal Code section 30515, that have been modified or reconfigured to no longer meet the assault weapon definition. Cancellation requests must be signed, dated, and provide the following information:
 - (1) Registrant's full name, telephone number, and current address; make, model, and serial number of the assault weapon; and the DOJ assault weapon registration number (as indicated on the registration confirmation letter provided to the registrant at the time of registration). If the DOJ assault weapon registration number is unknown, the request must be notarized.
- (b) After confirmation of the information provided on the cancellation request, the DOJ will permanently delete the registration for the specified assault weapon(s). If there are no remaining assault weapons registered to the individual, all personal information regarding the registrant will also be deleted from the assault weapon data base. The DOJ will mail confirmation of the cancellation to the address provided on the request.

Note: Authority cited: Section 30520, Penal Code. Reference: Sections 30900, 30905, 30910, 30915, 30920, 30925, 30930, 30935, 30940, 30945, 30950, 30955, 30960 and 30965, Penal Code.

§ 5473. Registration of Assault Weapons Pursuant to Penal Code Section 30900(b)(1); California Firearms Application Reporting System ("CFARS"); Account Requirements.

- (a) Assault weapon registrations must be filed electronically using the Department's California Firearms Application Reporting System (CFARS), at the following website: <https://cfars.doj.ca.gov/login.do>.
- (b) A CFARS account must be created to use the electronic registration system. To create a CFARS account, assault weapon registrants will be required to agree to the following conditions of use:

- (1) Non-Liability: The Department is not responsible for and will have no liability for any hardware, software, information, or other items or any services provided by any persons other than the Department. Except as may be required by law, in no event shall either party be liable to the other or any third party, under any theory of liability, including, but not limited to, any contract or tort claim for any cause whatsoever, for any indirect, incidental, special, or consequential damages, including loss of revenue or profits, even if aware of the possibility thereof.
- (2) Authorization: I am authorized to use CFARS for the purpose of reporting firearm information to the Department in order to comply with California firearm laws and regulations. If I become aware of an unauthorized user obtaining access to my CFARS account, I will notify the Customer Support Center immediately at (916) 227-7527, or via email at: firearms.bureau@doj.ca.gov.
- (3) Fees: Notwithstanding such notification, the Department shall not be liable for transaction charges fraudulently incurred. It will be the cardholder's responsibility to pay any charges. The Department will not provide refunds after the submission of a transaction.
- (4) True and Accurate Information: All of the information I submit to the Department through CFARS shall be true, accurate, and complete to the best of my knowledge.
- (c) The following information must be provided by registrants in order to create a CFARS account:

 - (1) Full Name
 - (2) Email Address
 - (3) Three Security Questions and Answers
 - (4) Password

Note: Authority cited: Section 30900, Penal Code. Reference: Sections 30515 and 30900, Penal Code.

§ 5474. Registration of Assault Weapons Pursuant to Penal Code Section 30900(b)(1); Applicant and Firearms Information.

Once a CFARS account has been created, registrants must provide the following information:

- (a) The registrant's full name, address, telephone number, date of birth, sex, height, weight,

eye color, hair color, military identification number (if applicable), California Driver License number or California Identification Card number, U.S. citizenship status, place of birth, country of citizenship, and alien registration number or I-94, if applicable.

- (b) A description of the firearm that identifies it uniquely, including but not limited to: firearm type, make, model, caliber, firearm color, barrel length, serial number, all identification marks, firearm country of origin/manufacture, the date the firearm was acquired, the name and address of the individual from whom, or business from which, the firearm was acquired.
- (c) Clear digital photos of firearms listed on the application. One photo shall depict the bullet-button style magazine release installed on the firearm. One photo shall depict the firearm from the end of the barrel to the end of the stock if it is a long gun or the point furthest from the end of the barrel if it is a pistol. The other two photos shall show the left side of the receiver/frame and right side of the receiver/frame. These locations are typically where firearms are marked when manufacturing is complete. At the discretion of the Department the last two photos shall be substituted for photos of identification markings at some other locations on the firearm.

Note: Authority cited: Section 30900, Penal Code. Reference: Sections 30515 and 30900, Penal Code.

§ 5474.1. Registration of Assault Weapons Pursuant to Penal Code Section 30900(b)(1); Joint Registration of Assault Weapons.

- (a) If a firearm will be jointly registered, one family member must be identified as the primary registrant. The name and relationship of each joint registrant must be provided. Joint registrants must reside in the same household and share the same address.
- (b) All joint registrants must be 18 years of age by June 30, 2018. Joint registrations are only authorized for the following family relationships:
 - (1) Spouses
 - (2) Parent to Child
 - (3) Child to Parent
 - (4) Grandparent to Grandchild
 - (5) Grandchild to Grandparent

(6) Domestic Partners

(7) Siblings

(c) Proof of address for each joint registrant shall be provided at the time of electronic submission. Acceptable forms of proof of address are as follows:

(1) Carry Concealed Weapon (CCW) Permit

(2) Curio and Relic (C & R) Federal firearm license with name and address

(3) Utility Bill: Cable, electricity, garbage, gas, pipeline, propane, alarm/security, or water bill with purchaser's name on it and dated within three months of application for registration.

(4) Military permanent duty station orders indicating assignment within California; (active duty military spouse ID is not acceptable).

(5) Property Deed: Valid deed or deed of trust for the individual's property or a certificate of title

(6) Resident Hunting License

(7) Signed and dated rental agreement/contract or residential lease

(8) Trailer certification of title

(9) DMV Vehicle Registration

(10) Certificate of Eligibility, as defined in section 4031, subdivision (g) of Chapter 3.

Note: Authority cited: Section 30900, Penal Code. Reference: Sections 30515, 30900 and 30955, Penal Code.

5474.2. Registration of Assault Weapons Pursuant to Penal Code Section 30900(b)(1); Firearm Manufactured By Unlicensed Subject (FMBUS).

A person seeking assault weapon registration for this type of firearm shall seek a Department issued serial number at: dojserialnumber@doj.ca.gov, prior to initiating the assault weapon registration process.

(a) A Department-provided serial number shall be issued and applied as follows:

- (1) The Department shall issue a unique serial number to the applicant. The serial number issuance is a separate process and must be done before the assault weapon application will be accepted by the Department. Applicants seeking a FMBUS related serial number shall complete a New Serial Number Application, Form BOF 1008, (Rev. 07/2017) hereby incorporated by reference, and submit it to the Department prior to the initiation of the registration of this type of firearm.
- (2) Once the applicant has received a Department issued serial number, the applicant may contact a Federal Firearms Licensed Manufacturer (type 07) to have the serial number applied in a manner consistent with this section and federal law. However, a Federal Firearms Licensee is under no obligation to perform this work. Persons who have manufactured their own firearm may also use non-licensed parties to apply the serial number and other required markings; however, the owner of the weapon must not leave the firearm unattended with an unlicensed party in violation of firearms transfer and/or lending laws. Proof of the serial number being applied to the firearm shall be given to the Department in the form of one or more digital photographs of the newly serialized firearm being submitted in accordance with the photo requirement noted in section 5474 (c).
- (3) An unlicensed manufacturer of firearms must legibly and uniquely identify each firearm manufactured as follows:

 - (A) By engraving, casting, stamping (impressing), or otherwise conspicuously placing or causing to be engraved, cast, stamped (impressed) or placed on the frame or receiver thereof an individual serial number. The serial number must be placed in a manner not susceptible of being readily obliterated, altered, or removed, and must not duplicate any serial number placed by the unlicensed manufacturer on any other firearm. The engraving, casting, or stamping (impressing) of the serial number must be to a minimum depth of .003 inch and in a print size no smaller than 1/16 inch; and
 - (B) By engraving, casting, stamping (impressing), or otherwise conspicuously placing or causing to be engraved, cast, stamped (impressed) or placed on the frame, receiver, or barrel thereof certain additional information. This information must be placed in a manner not susceptible of being readily obliterated, altered, or removed. The additional information must include:

 - (i) The model of the firearm, if such designation has been made;
 - (ii) The caliber or gauge of the firearm;
 - (iii) The manufacturer's first and last name as provided to the Department for

registration purposes, when applicable; and

(iv) The city and state (or recognized abbreviation thereof) where the manufacturer made the firearm.

(4) Measurement of height and depth of markings. The depth of all markings required by this section will be measured from the flat surface of the metal and not the peaks or ridges. The height of serial numbers required by paragraph (a)(3)(A) of this section will be measured as the distance between the latitudinal ends of the character impression bottoms (bases).

(5) The Department shall deny assault weapon registration applications if it determines the above described marking requirements have not been met.

Note: Authority cited: Section 30900, Penal Code. Reference: Sections 30515 and 30900, Penal Code.

§ 5475. Registration of Assault Weapons Pursuant to Penal Code Section 30900(b)(1); Fees.

(a) The fee to register an assault weapon is \$15.00 per person, per transaction. There is no limit to the number of assault weapons a person can register in a single transaction.

(b) The fee must be paid by debit or credit card at the time the registration is submitted to the Department for processing. If the fee is not paid, the registration will not be processed.

(c) A \$5 fee is required to obtain a copy of the original registration disposition letter.

Note: Authority cited: Section 30900, Penal Code. Reference: Sections 30515 and 30900, Penal Code.

§ 5476. Registration of Assault Weapons Pursuant to Penal Code Section 30900(b)(1); Processing of Applications

(a) Applications for assault weapon registration must be received between January 1, 2017, and June 30, 2018, and will be processed in the order in which they are received.

(b) Once the registration has been submitted electronically and fees have been paid, the Department will inform the applicant, via email, that the application: has been received and accepted for processing; is being returned as incomplete and specify what information is required; or has been rejected.

(c) If the Department deems an application incomplete and notifies the applicant via email of

the incomplete determination, the applicant shall provide the requested information or documentation within 30 days. If the Department does not receive the additional information or documentation within 30 days, the application will be rejected and the application fee will not be refunded. The applicant may complete a new application by June 30, 2018, subject to a new application fee.

- (d) Once the Department determines that all necessary information has been received and the firearm qualifies for registration, the firearms eligibility check shall commence. The Department will inform the applicant of the results of the check.
- (e) If the firearms eligibility check is successful, the registrant shall receive an assault weapon registration disposition letter via U.S. mail.

Note: Authority cited: Section 30900, Penal Code. Reference: Sections 30515, 30900 and 30950, Penal Code.

§ 5477. Registration of Assault Weapons Pursuant to Penal Code Section 30900(b)(1); Post-Registration Modification of Registered Assault Weapons, Prohibition.

- (a) The release mechanism for an ammunition feeding device on an assault weapon registered pursuant to Penal Code section 30900, subdivision (b)(1) shall not be changed after the assault weapon is registered. A weapon's eligibility for registration pursuant to Penal Code section 30900, subdivision (b)(1) depends, in part, on its release mechanism. Any alteration to the release mechanism converts the assault weapon into a different weapon from the one that was registered.
- (b) The prohibition in subdivision (a) does not extend to the repair or like-kind replacement of the mechanism.
- (c) This prohibition in subdivision (a) does not extend to a firearm that is undergoing the deregistration process pursuant to section 5478. Written confirmation from the Department that acknowledges the owner's intent to deregister his or her assault weapon pursuant to section 5478 shall be proof the deregistration process has been initiated.

Note: Authority cited: Section 30900, Penal Code. Reference: Sections 30515 and 30900, Penal Code.

§ 5478. Registration of Assault Weapons Pursuant to Penal Code Section 30900(b)(1); Voluntary Deregistration.

- (a) The Department will accept voluntary deregistration requests for assault weapons that are no longer possessed by the registrant, in the form of a completed Form BOF 4546, "Notice of No Longer in Possession," (Rev. 07/2017) hereby incorporated by reference.

Deregistration requests will also be accepted for assault weapons, as defined in Penal Code section 30515, that have been modified or reconfigured to no longer meet that definition. Deregistration requests must be in writing, signed, dated, and provide the following information:

- (1) Registrant's full name, telephone number, and current address; make, model, and serial number of the assault weapon; and the Department assault weapon registration number (as indicated on the registration confirmation letter provided to the registrant at the time of registration). If the Department assault weapon registration number is unknown, the request must be notarized.
- (2) If the firearm has been modified or reconfigured to no longer meet the definition of assault weapon, one or more photographs clearly depicting the firearm in its current configuration shall be attached to the written deregistration request. Additional information, photographs, or inspection may be requested by the Department before determining eligibility for deregistration.
- (3) If the registrant is no longer in possession of the firearm, proof of sale or transfer of the firearm shall be attached to the written deregistration request. Acceptable proof includes receipts from out-of-state gun stores, or law enforcement reports depicting the seizure and/or destruction of the firearm(s).
- (b) Upon determining eligibility for deregistration, the Department will delete the assault weapon registration for the specified firearm(s), and, if the weapon is still in the possession of the registrant, will convert the information to a BOF 4542A, "Firearm Ownership Report, (Rev. 07/2017), hereby incorporated by reference.
- (c) If the registrant has sold the weapon to a party outside of the State of California or otherwise lawfully disposed of the weapon, or if the weapon was seized by law enforcement, the Department will create a "No Longer In Possession" entry in the Automated Firearms System.
- (d) Upon completion of the assault weapon deregistration, the Department will mail confirmation of deregistration and updated firearm ownership information to the registrant at the address provided on the request.

Note: Authority cited: Section 30900, Penal Code. Reference: Sections 30515 and 30900, Penal Code.

EXHIBIT 6

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

STEVEN RUPP; et al.,

Plaintiff,

vs.

XAVIER BECERRA, in his
official capacity as Attorney
General of the State of
California et al.,

Defendants.

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) No. 8:17-cv-00746-JLS-JDE

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DEPOSITION OF MICHAEL MERSEREAU

Long Beach, California

Tuesday, December 4, 2018

Volume I

Reported by:

KATY BONNETT

CSR No. 13315

Job No. 3135706

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Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

STEVEN RUPP; et al.,

Plaintiff,

vs.

XAVIER BECERRA, in his
official capacity as Attorney
General of the State of
California et al.,

Defendants.

Deposition of MICHAEL MERSEREAU, Volume I, taken
on behalf of Plaintiff, at 180 East Ocean Boulevard,
Suite 200, Long Beach, California, beginning at 1:12
p.m. and ending at 6:05 p.m. on Tuesday,
December 4, 2018, before KATY BONNETT, Certified
Shorthand Reporter No. 13315.

1 APPEARANCES:

2
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12
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14 STATE OF CALIFORNIA

15 DEPARTMENT OF JUSTICE

16 BY: PETER H. CHANG

17 Attorney at Law

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19 San Francisco, California 94102-7004

20 (415) 510-3776

21 peter.chang@doj.ca.gov

1 A Yes.

2 Q How many times?

3 A Once.

4 Q When was that?

5 A In 2014.

6 Q Can you describe the circumstances?

7 A I was attacked off duty by a gun-welding gang
8 member, and I discharged my handgun twice at the
9 individual, knocking him down to the ground and causing
10 him to drop his weapon.

11 Q I assume you had a pistol?

12 A I did.

13 Q A semiautomatic pistol?

14 A Yes.

15 Q Does that semiautomatic pistol shoot at a
16 different rate than an assault rifle?

17 A I've never studied that.

18 Q Fair enough. But, generally, does a -- not
19 counting for nanoseconds or splitting hairs with slow
20 motion cameras, but generally, is it fair to say that a
21 semiautomatic firearm can be fired at the same rate as
22 any other semiautomatic firearm?

23 A For any given shooter and whatever their skill
24 levels are, I imagine they're pretty comparable.

25 Q Can you recall how quickly you discharged two

1 rounds at the assailant in the time you had to use your
2 weapon?

3 A I'd estimate maybe three to four seconds.

4 Q So you discharged one round, evaluated the
5 situation and discharged the second round?

6 A That's correct.

7 Q So we talked about pistol grips giving the user
8 more control, and I believe -- and correct me if I'm
9 wrong -- your testimony was that that control is a bad
10 thing in the hands of somebody misusing the firearm, but
11 is a good thing in the hands of somebody properly using
12 that firearm; is that fair to say?

13 A I don't know if that accurately reflects what I
14 said, but yes, that's fair to say.

15 Q So the next feature that you discussed in your
16 report as being problematic is an adjustable stock; is
17 that correct?

18 A Yes.

19 Q And what is your concern about adjustable stocks?

20 A It's the same concern as with the pistol grips --

21 Q And what concern?

22 A -- that hold stocks, the increased control of the
23 firearm.

24 Q So, again, it's control?

25 A Yes.

1 Q How does a telescoping stock increase control?

2 A Everybody's built differently. They have
3 different arm lengths. If you took a given shooter and
4 handed him a fixed stock rifle, it might not be optimum
5 for their particular physical build. And that could
6 reduce their control, thus their ability to fire
7 accurately and rapidly. The adjustable stock allows the
8 shooter to adjust that stock to the optimum length of
9 the rifle, so that they can more comfortably and more
10 accurately control the firearm, and fire it with more
11 rapidity.

12 Q And that's bad thing?

13 A Again, it depends on who's shooting it, why
14 they're shooting it.

15 Q So then, again, proper stock fit on the shooter's
16 shoulder is a bad thing if a -- for a bad guy, but a
17 good thing for somebody who's properly using the
18 firearm. Is that fair to say?

19 MR. CHANG: Objection. Vague and ambiguous as to
20 properly.

21 BY MR. BRADY:

22 Q Not trying to kill anybody.

23 MR. CHANG: Improperly using.

24 BY MR. BRADY:

25 Q Who has no ill intent, a person who has no ill

1 intent, there is -- is there any reason why a person who
2 has no ill intent should not have a firearm that
3 properly fits their shoulder?

4 A I think it's more than that, and this goes back
5 to my previous answer in regards to the pistol grips.
6 Even if you have no bad intent, on the one hand
7 increased control sound reasonable, you want that, but
8 it also allows you to fire more rapidly. And that can
9 lead to all kinds of issues. If you're cranking out
10 rounds at a rapid rate, you're going to eventually come
11 off target and send those rounds down range to hit
12 whoever.

13 So even if they're not, you know, they don't have
14 evil intention when they fire their -- their rifle, just
15 given that few people have the kind of training and
16 experience to manipulate those firearms properly under
17 different circumstances, particularly under rapid fire
18 circumstance, that's a bad thing.

19 Q So how does stock fit, does how the stock fits
20 somebody's shoulder affect the rate of fire of the
21 firearm?

22 A If you take a rifle and you fire it, and it's not
23 at your optimal position of your hand to the trigger, to
24 the pistol grip, it's going to affect your ability to
25 control that firearm.

1 Q Okay. So I want to just wrap up the discussion
2 about adjustable stocks by asking you, essentially, your
3 concern about adjustable stocks is with respect to
4 concealability. Not the -- not the control factor, but
5 with respect to concealability, your concern with the
6 adjustable stock is that a -- an evildoer might be able
7 to somewhat better conceal the firearm to go undetected;
8 is that accurate?

9 A Yes.

10 MR. CHANG: If you're moving to another subject,
11 can we go off the record for a second?

12 MR. BRADY: Sure.

13 (Interruption in the proceedings.)

14 MR. BRADY: We're back on the record.

15 Yeah. We are back on the record after a short
16 water break.

17 Q So moving on down your report to paragraph 11, it
18 talks about flash suppressors. You state, "Flash
19 suppressors also contribute to the potential lethality
20 of the rifle. Flash suppressors function to reduce the
21 flash signature in the shooter's field of vision in low
22 light conditions." Is that accurate?

23 A Yes.

24 Q You go on to say, "By reducing the effect of the
25 muzzle flash on the shooter's night vision, the shooter

1 can get back on target quicker." Is that accurate?

2 A Yes.

3 Q So is it your position that a flash suppressor is
4 only relevant in low light situations?

5 A I believe that that's the purpose of it, yes. I
6 don't know how effective it would be in daylight.

7 Q And a flash suppressor -- does a flash suppressor
8 hide the flash from -- from the viewpoint down range?
9 In other words, does somebody on the wrong end of the
10 muzzle, does it change their view of the flash?

11 A It depends on the particular flash suppressor and
12 how it functions, but not to any great degree, I don't
13 think.

14 Q So the purpose of a flash suppressor is not to
15 hide the flash from somebody on the wrong end of the
16 gun, it is to divert the flash from the shooter's field
17 of vision; is that correct?

18 A Yes.

19 Q And that is, like you say in your report, to
20 lessen the impact of the flash on the person's night
21 vision in low light conditions, because their pupils
22 will be dilated, right?

23 A Yes.

24 Q Does a flash suppressor affect a rifle's rate of
25 fire at all?

1 A No.

2 Q Does it --

3 A Only -- only -- excuse me. Only to the degree
4 that the shooter is trying to reacquire their target
5 without the flash suppressor might take them longer.

6 Q In low light conditions?

7 A Yeah. And that would reduce their -- either
8 reduce their rate of fire or reduce the accuracy of --

9 Q Okay. So if somebody -- so if somebody
10 discharges a firearm in low light conditions in self-
11 defense, would it be a good thing that they not lose
12 their night vision if, like you said, they wouldn't be
13 able to stay on target?

14 A I don't know how you're defining self-defense.

15 Q A legitimate self-defense shooting.

16 A In a legally justifiable use of that firearm in
17 self-defense, a flash suppressor may provide some degree
18 of increased accuracy for them, which would, presumably,
19 be a good thing.

20 But I don't know, in an enclosed environment
21 where -- such as a house, where your typical self-
22 defense scenario for civilians occurs, at least legally
23 justifiable ones, I'm not sure it would benefit them
24 that much.

25 Because you're -- you've got the flash bouncing

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4
5 I, MICHAEL MERSEREAU, do hereby declare under
6 penalty of perjury that I have read the foregoing
7 transcript; that I have made any corrections as appear
8 noted, in ink, initialed by me, or attached hereto; that
9 my testimony as contained herein, as corrected, is true
10 and correct.

11 EXECUTED this ____ day of _____,
12 2015, at _____, _____.
(City) (State)

13
14
15
16
17
18 _____
MICHAEL MERSEREAU
Volume I

1 I, the undersigned, a Certified Shorthand
2 Reporter of the State of California, do hereby certify:

3 That the foregoing proceedings were taken
4 before me at the time and place herein set forth; that
5 any witnesses in the foregoing proceedings, prior to
6 testifying, were administered an oath; that a record of
7 the proceedings was made by me using machine shorthand
8 which was thereafter transcribed under my direction;
9 that the foregoing transcript is a true record of the
10 testimony given.

11 Further, that if the foregoing pertains to the
12 original transcript of a deposition in a Federal Case,
13 before completion of the proceedings, review of the
14 transcript [] was [] was not requested.

15 I further certify I am neither financially
16 interested in the action nor a relative or employee
17 of any attorney or any party to this action.

18 IN WITNESS WHEREOF, I have this date subscribed
19 my name.

20 Dated: December 19, 2018

21
22 
23

24 KATY BONNETT

25 CSR No. 13315

INSTRUCTIONS FOR READING/CORRECTING YOUR DEPOSITION

To assist you in making corrections to your deposition testimony, please follow the directions below. If additional pages are necessary, please furnish them and attach the pages to the back of the errata sheet.

This is the final version of your deposition transcript.

Please read it carefully. If you find any errors or changes you wish to make, insert the corrections on the errata sheet beside the page and line numbers.

If you are in possession of the original transcript, do NOT make any changes directly on the transcript.

Do NOT change any of the questions.

After completing your review, please sign the last page of the errata sheet, above the designated "Signature" line.

ERRATA SHEET

Page Line

35 5

Change: "IN 2014" TO "IN 2016"

Reason: _____

15 7

Change: "OPERATE IN SEMI-AUTOMATIC OR FULL AUTO MOD"

Reason: FOR CLARITY

17 13

Change: "INTERNET SEARCHES PRIMARILY, YOUR BALLISTIC..."

Reason: FOR CLARITY

42 24

Change: "IT ALLOWS GREATER CONTROL OF A WEAPON SYSTEM..."

Reason: FOR CLARITY

Change: _____
Reason: _____

Change: _____
Reason: _____

Change: _____
Reason: _____

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Change: _____
Reason: _____

MM Subject to the above changes, I certify that the transcript is true and correct.

_____ No changes have been made. I certify that the transcript is true and correct.

Michael Mercereau
Signature

1/18/19
Date

EXHIBIT 7

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

STEVEN RUPP, et al.,

Plaintiffs,

vs.

XAVIER BECERRA, in his official
capacity as Attorney General of
the State of California,

Defendant.

)

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) Case No.:

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8:17-cv-00746-JLS-JDE

DEPOSITION OF BLAKE GRAHAM

Sacramento, California

Wednesday, December 19, 2018

Volume I

Reported by:

Kaitlyn B. Houston, CSR No. 14170

Job No. 3135718

PAGES 1 - 223

Page 1

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

STEVEN RUPP, et al.,

Plaintiffs,

vs.

XAVIER BECERRA, in his official
capacity as Attorney General of
the State of California,

Defendant.

Case No.:

8:17-cv-00746-JLS-JDE

Deposition of BLAKE GRAHAM, Volume I, taken on behalf of
Plaintiffs, at 1300 I Street, Sacramento, California,
beginning at 10:53 a.m. and ending at 5:57 p.m. on
Wednesday, December 19, 2018, before Kaitlyn B. Houston,
Certified Shorthand Reporter No. 14170.

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Peter.Chang@doj.ca.gov

11 --o0o--

1 make an arrest that's sort of gun show related, the
2 person is either a prohibited person or a non-prohibited
3 person and they have bought something at the show that
4 caused us to make a contact, maybe a traffic stop or do a
5 later search warrant on them. And we will probably find
6 an assault weapon of some kind involving -- in those
7 events.

8 I would say more recently since 2012 to present,
9 we're getting more people assembling guns because of the
10 knowledge of how to do that with YouTube and other
11 things. It's just more prevalent. And the home-built
12 guns now, those are getting easier and easier for people
13 to make again with, you know, social media if you include
14 YouTube in there. The internet has various step-by-step
15 guides. People can build stuff.

16 Q. So do you see the parts that are used to build
17 AR platform rifles at gun shows fairly frequently?

18 A. Oh, yeah.

19 Q. And in California gun shows -- because you
20 attend both California and Nevada gun shows, correct?

21 A. Mostly California. Maybe once or twice a year
22 do we go to an out-of-state show.

23 Q. Okay.

24 A. And it's getting less and less common that we go
25 to the out-of-state shows.

1 Q. Got it. Prior to the recent -- the most recent
2 change to the assault weapon act -- the Assault Weapon
3 Control Act, essentially making bullet-button rifles into
4 assault weapons, were you -- were bullet-button AR-15
5 rifles fairly prevalent at these gun shows?

6 A. Yes.

7 Q. Would -- what percentage -- or rather than
8 percentages, because that's kind of hard to do, I admit.
9 If you were to rank the most common firearms at these gun
10 shows going around looking at all the booths, you know,
11 your hunting shotguns or your bolt-action rifles,
12 handguns, AR platform rifles, what have you, what would
13 you think if you had to -- based on your experience, what
14 would you say is the most prevalent, most ubiquitous
15 firearm at these gun shows?

16 A. My answer is going to be based on Northern
17 California shows. I don't get to a lot of Southern
18 California shows. I'd say the most common two groups
19 that we would have seen since 2004 or '05 would have been
20 a semiautomatic handgun or probably an AR platform of
21 some kind.

22 Q. Okay.

23 A. And when I say the platform, it might just be a
24 lower receiver sitting there. Because you'll see
25 sometimes dozens of those available for sale, and then at

1 the various accessories so somebody could build up their
2 own, you know, version of whatever they want.

3 Q. Got it. And at the Nevada shows, same or
4 different?

5 A. I'd say at the Nevada shows we see a lot more of
6 the curio and relic antiques, lever-action, bolt-action,
7 pump-action. There seems to be a big collector market.
8 I know a lot of California residents will go up there and
9 find stuff that they can't find here for whatever reason.
10 I think part of it is because a lot of the gun show
11 promoters are on a circuit, so they'll bring -- the
12 vendors also are kind of on the same circuit. They'll
13 bring weapons from other states.

14 And Reno, specifically where we work a lot or
15 used to, that's sort of a hub for different guns to, you
16 know, kind of get in one spot and people from various
17 states can come to.

18 Q. Okay. So you were noticing that those shows
19 were more focused on collectible guns or older guns more
20 so than the modern stuff?

21 A. No, the modern stuff is present. But I'd say a
22 -- if I had to, like, put a percentage on it, there's
23 definitely more tables for sure. The shows are bigger
24 over there than in Northern California right now, and I
25 would say a higher percentage of non-assault weapons and

1 non-AR platforms over there.

2 See, it's kind of the same with the number of
3 handguns at the Reno shows. There's certainly the
4 older -- older technology, bolt-action, lever-action,
5 etcetera, here at the California shows. But it's just a
6 little bit different feel when you're at one of these
7 shows.

8 Q. So it next says that you conduct surveillance of
9 gun dealers suspected of illegal activity.

10 Do these -- obviously without divulging
11 specifics about, you know, specific investigations or
12 your tactics, how often do these -- this surveillance
13 involve assault weapons?

14 A. Speaking broadly over the -- I guess the current
15 part of my career within firearms, the most -- I would
16 say the most common -- one of the two most common crimes
17 we're investigating is possession or manufacturer of
18 assault weapons when it applies to a dealer.

19 The other side of what we do with a dealer is if
20 they're basically doing phoney paperwork, you know, not
21 filling out the stuff correctly and fudging intentionally
22 the data on this stuff, which then goes into the
23 databases.

24 So it's sort of maybe like a half and half on
25 the type of crime in general that we're looking at on the

1 dealer. The California dealer is what I'm speaking of.
2 Not an out-of-state or something.

3 Q. When you say "half and half," it's half and half
4 of that type of crime or half and half involved assault
5 weapons?

6 A. I'd say, like, 50/50. It's the -- the guns
7 specifically that we're seizing are more likely than not
8 -- an unregistered assault weapon and a dealer doesn't
9 have a dangerous weapons permit, so there's no way that
10 they can legally be in possession of it. And then we
11 have paperwork violations, which might involve perjury or
12 something else on behalf of the dealer. That kind of
13 thing.

14 Q. Are you inspecting gun stores generally? Not
15 just those that are suspected of illegal activity, but
16 going in and monitoring -- checking -- doing check-ups on
17 gun stores?

18 A. I personally do not get involved in the
19 day-to-day inspection process. There are times when the
20 folks that do the inspections will say, "Hey. We think
21 we have a problem at this store. Would you mind coming
22 along?" In those cases, I will come out. But that's, I
23 would say, very rare.

24 Q. Do you have a reason to go into gun stores
25 throughout California or in your region for other

1 reasons? Do you find yourself in gun stores often?

2 A. For a noncriminal investigation, meaning; or
3 what do you mean?

4 Q. In any capacity. Whether it's professional or
5 personal, do you find yourself in gun stores frequently?

6 A. Yes. Yes, I do.

7 Q. Okay. The same one or two, or various ones?

8 A. Various.

9 Q. Okay. And prior to this change in the law,
10 change in the definition of assault weapon to include
11 bullet-button rifles, at those gun stores that you
12 frequented, were AR-15 platform rifles, non-assault
13 weapons at that time, bullet-button rifles, prevalent at
14 those gun stores?

15 A. Yes.

16 Q. Would you say it would be more likely than not
17 that if you were to go into a random gun store, there
18 would be AR platform rifles?

19 MR. CHANG: Objection. Calls for speculation.

20 BY MR. BRADY:

21 Q. At that time?

22 MR. CHANG: Same objection.

23 THE WITNESS: When you say "at that time" --

24 BY MR. BRADY:

25 Q. Just so we're clear -- because I'm going to ask

1 you in a second -- maybe there's a not a distinction --
2 or let me ask you now. Let me rephrase. Sorry.

3 The -- at that time, I was referring to prior to
4 the new law changing. So when bullet-button rifles could
5 be sold with all the other features, okay?

6 Now, right, it's changed so that you have -- you
7 have to have a bullet button and no features, right?
8 Or -- or no bullet button and no features?

9 A. So -- yeah. After Senate Bill 880 or Assembly
10 Bill 1135, as soon as that changed, there was a shift in
11 the marketplace as far as what -- how weapons could be
12 configured if it was an AR platform and some of the other
13 platforms, too.

14 There are still AR platform weapons being sold
15 in California. I would say if you go to a corporate
16 store -- Big 5 or maybe some of the other chains --
17 you're less likely to see the AR platforms unless it's
18 maybe like a .22 version or something. Turners, which is
19 down south, I think you're more likely to -- you're not
20 more likely. But there's a greater chance than a Big 5
21 that you're going to see a centerfire version of some
22 kind down there.

23 The -- I would say, like, the mom-and-pop kind
24 of stuff where there's one or two dealerships owned by
25 the same person or couple of people, that's where you're

1 going to find the prevalent -- the prevalence of the AR
2 family, if you will.

3 Q. And that's still happening today post SB880
4 you're talking about?

5 A. Yes.

6 Q. And now, prior to SB880, were there more or less
7 AR platform rifles than there are now in these gun stores
8 you frequent?

9 A. I would say towards the end of 2016, there was a
10 huge surge. So I don't know if that was a true -- or if
11 you just notice, that's a spike. The numbers that -- of
12 the guns in the stores now, I would say overall, all gun
13 sales have dipped a little bit. I'm not sure by what
14 percentage, but I'm just hearing people talk around the
15 office. There's less DROSes happening right now -- maybe
16 10 percent less or something like that -- than before
17 that spike. Late 2016.

18 So we might be back at a time where maybe we're
19 mirroring the numbers from 2014, 2015 possibly, and I
20 haven't done a -- any kind of analysis on, like,
21 large-sale DROS numbers or anything like that, but
22 typically we notice that handguns are about 50 percent of
23 the sales and long guns are about 50 percent of the
24 sales. AR platforms are typically rifles. And over a
25 long period of time, those 50/50 numbers have held true.

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1 I don't know what's -- what we're on pace for this year,
2 though, for example.

3 Q. Okay. But prior to SB880, is it fair to say
4 that you would see AR platform rifles at gun stores
5 frequently?

6 A. Yes.

7 Q. Moving onto paragraph 8 of your report. So we
8 already talked about gun shows. You said you've attended
9 at least 40.

10 Would it be less than 100?

11 A. Honestly, I stopped counting after about 40. No
12 one really asks me, "Hey. How many have you been to?"
13 At some point doing some mental math in my career, I came
14 up with, oh, at least 40 at some point, and then I just
15 didn't see any reason to keep counting after that.

16 As far as 100 or less, it could be close to
17 the -- to that number, maybe. Close to 100.

18 Q. So let's -- actually, before we go on to your
19 training, I want to ask you about back in paragraph 6,
20 you talk about what you're doing today. You're
21 investigating the illegal trafficking of firearms,
22 manufacturing of assault weapons.

23 Do you do any investigation of the violent use
24 of firearms?

25 A. Are you speaking about like do I work involved

1 in murder cases right now, or...

2 Q. So, for example, it looks like these crimes that
3 you are investigating are violations of the AWCA such as
4 illegal possession, making, importing, of an assault
5 weapon; is that right?

6 A. For the most part, yes. But also like 29800,
7 which is felony possession. It doesn't necessarily just
8 limit to the AWCA. There are other statutes in play.

9 Q. So -- but it's enforcement of illegal possession
10 statutes, right?

11 A. Possession, manufacture, or trafficking, or
12 sales. I don't typically get involved in -- me
13 personally. Our bureau might have -- depending on the
14 month, might have some involvement in a home invasion, or
15 we might provide expertise about, you know, something to
16 someone else's case.

17 Q. So you don't get involved in shooting crimes?

18 A. I personally do not. We have, overtime, gotten
19 involved in someone that was making statements about
20 wanting to shoot -- shoot up a school, that kind of
21 thing.

22 Q. Uh-huh.

23 A. I -- and I can say I personally have been
24 involved in two of those in the last year.

25 Q. Okay. Moving on, then, to your training.

1 By in and of itself, you could probably -- with
2 a lot of training, you could probably overcome like my --
3 if I train a lot with one -- like you brought up the
4 MonsterMan. If I trained a ton and that's all I used, I
5 could probably get to the point where I'd be comfortable
6 with it and it wouldn't affect my score if I was shooting
7 on a paper target.

8 But what I've used since -- I don't know -- the
9 year 2000 is a pistol grip, so that's what I'm most
10 comfortable with. I believe my score would drop if I had
11 to use that only.

12 Q. Do you believe comfort when shooting is a
13 positive thing?

14 A. Yes.

15 Q. Okay. Moving on to adjustable stocks.

16 A. Do you have a page?

17 Q. Sure. Let me -- so you state on page 8 in
18 paragraph 27 that "folding or" -- "folding or telescoping
19 stocks and a rifle with overall length under 30 inches
20 aid in the concealability of the weapon;" is that right?

21 A. Could you give me the paragraph again?

22 Q. 27.

23 A. "Folding or telescoping stock and a rifle with
24 an overall length under 30 inches aid in the
25 concealability."

1 Okay. I see what you're speaking of.

2 Q. Now, back on page 6, you discuss telescoping
3 stocks.

4 A. Do you have a line?

5 Q. So paragraph 21. So you say, "Telescoping stock
6 is a stock that is shortened or lengthened by allowing
7 one section to telescope into another portion."

8 Is that right?

9 A. Yes.

10 Q. And on AR-15-style firearms, the buffer tube or
11 receiver extension acts as the fixed part of the stock on
12 which the telescoping butt stock slides or telescopes; is
13 that right?

14 A. Yes.

15 Q. On an AR-style rifle, how -- how much does it --
16 a stock telescope generally in your experience?

17 A. Three or four inches.

18 Q. Three or four inches?

19 A. Yeah.

20 Q. So could -- are you familiar with short barrel
21 rifle laws?

22 A. Somewhat.

23 Q. Do you know the definition of a short barrel
24 rifle under California law?

25 A. I can give it a shot if you want me to.

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1 Q. Sure. I can assist you if you want. I'm not
2 trying to quiz you.

3 A. Sure. No. I've testified as an expert at least
4 once on one of the cases --

5 Q. Okay. Go ahead while I look for it to confirm.

6 A. So generally on the short barrel rifle, the
7 things you're going to evaluation: Is the barrel less
8 than 16 inches? Is the overall length less than 26
9 inches?

10 Q. That's my understanding.

11 A. Yeah. So those are the rough parameters that
12 state and federal law would kick in if something like
13 that was found.

14 Q. And that's Penal Code Section 17170.

15 A. The definition, yes. The charging section is
16 possibly 33210.

17 Q. Okay.

18 A. Somewhere around there.

19 Q. Okay. So why couldn't somebody with an AR -- or
20 strike that.

21 So an AR must have at least a 16-inch barrel in
22 order to be legal, correct?

23 A. AR rifle.

24 Q. An AR rifle must have at least a 16-inch barrel,
25 correct?

1 Q. Yes.

2 A. The department issued me that rifle, and it had
3 it when I got it.

4 Q. Would you prefer a rifle that did not have an
5 adjustable stock?

6 A. No. I'm happy with it having an adjustable one
7 because I have different levels of body armor, thickness
8 levels. So between the heaviest armor that I wear for
9 search warrants, it's definitely thicker, and I have to
10 put it on a different setting. Otherwise it causes me
11 problems.

12 Q. Okay. And why -- why do you need different --
13 different lengths of the rifle? Why do you need to
14 change the stock to accommodate the body armor? Why
15 can't it just be a fixed stock?

16 A. Ergonomics because sometimes I have a helmet on.
17 Sometimes I have Level 4 body armor on with a rifle
18 plate. I'm very -- my girth increases, if that makes
19 sense. So I need to shorten the stock so I can have the
20 same sight picture, the same eye relief, etcetera.

21 So if I have a T-shirt on, I might change the
22 position because I don't have, you know, two or
23 three inches of body armor on.

24 Q. So you're saying that the length of stock can
25 affect your ability to -- to effectively use the firearm?

1 A. In an ergonomic sense, yeah. You're better off
2 customizing the length of the stock to fit your body
3 type. You might have somebody that has really short
4 arms, and they may need to go as short as they legally
5 can go. Somebody that's really long, over six-foot
6 something, they're going to probably want that stock
7 backed out because they're likely to have longer arms,
8 and that's just what fits their body type better.

9 Q. So stock fit is important in being able to shoot
10 properly?

11 A. Yes.

12 Q. And if a rifle does not have an -- an adjustable
13 stock is meant to, like you just said, fit a particular
14 shooter whether it be their standard arm length or if
15 they have a heavy coat on versus a T-shirt, right?

16 A. Yeah. Those things would be factors.

17 Q. Or teaching a younger person who's smaller or
18 teaching somebody else who's of a different size how to
19 use a firearm. That might be a factor in wanting an
20 adjustable stock?

21 A. Yeah. Versatility. Like I said, the department
22 issues us these weapons. We all get the same weapon
23 regardless of our height and weight and our length, so
24 it's a practical reason.

25 Q. Without an adjustable stock, a person who wants

1 to have the proper stock fit, what would they do to find
2 a rifle that has the proper stock fit?

3 A. They may try the one that came with it and see
4 if it -- if it's too long or too short for them, they may
5 add a pad to the end of their stock if their stock will
6 accept different thickness pads. They may just go
7 outside the box and buy a whole other company's stock
8 that fits their rifle.

9 I'll use an example of a company that a lot of
10 people use. MagPole. They make various stocks for the
11 AR platform. There's probably -- I don't know -- five or
12 six different variants of their stocks, and some of those
13 versions have different thickness. Buffers -- I'm sorry.
14 Not buffers, but pads for the end of the stock, and some
15 of those are fixed stocks. Some of them are telescoping
16 stocks.

17 Q. So you can change the length of your stock if
18 you want whether it has a telescoping stock or not?

19 A. Generally, there's some variation -- some --
20 there's a lot of options is what I'm trying to say, I
21 guess, for a person. If you want a fixed stock or a
22 telescoping stock, there are a ton of options out there
23 in the marketplace.

24 Q. Well, people can't have telescoping stocks under
25 the AWCA, so that's my question is: What are the

1 alternatives? And I think you just laid out some of
2 them. People can figure out certain -- they can put a
3 pad on or try to find a stock that fits them, buy a
4 custom stock.

5 Wouldn't it just be a whole lot easier to have a
6 stock that you can move around to adjust to your -- your
7 shoulder length?

8 A. A whole lot easier in what sense?

9 Q. When you're -- to get the proper shoulder fit.

10 A. If that was allowed by law, which in some cases,
11 it is. A .22 rifle that didn't have Category 1 or 30510
12 markings, .17 caliber, those are still allowed. But if
13 it's a centerfire without a fixed mag, it might get
14 classified as a 30515 or a Category 3 assault rifle.

15 Q. Because those three to four inches on an AR are
16 increasing its concealability.

17 Is that the sole reason that the telescoping
18 stock is --

19 MR. CHANG: Objection. Lacks foundation. Calls
20 for speculation.

21 MR. BRADY: Good objection, but I need to finish
22 my question.

23 MR. CHANG: I just wanted -- it looks like -- it
24 looked like the witness was about to answer, so I was
25 trying to thread the needle right there. Please finish.

1 bolt.

2 Q. And if an upper was off a lower, that would
3 basically cut the size of an AR in half, right?

4 A. Pretty close to it because you could lay it on
5 top of each other. You might be down to -- instead of
6 30 inches, you're going to be down to -- I don't know.
7 You could shave off 12 inches, maybe, or something from
8 the overall length and put it in a backpack or something.

9 Q. And when an upper is separated from the lower on
10 an AR, it is not considered an assault weapon; is that
11 correct?

12 A. Correct. For registration purposes right now.

13 Q. Well, if somebody was walking, you know -- for
14 registration purposes, if somebody has an upper separated
15 from the lower in their house, they are not in violation
16 of the AWCA; is that correct? Assuming it's not a Cat 1
17 or a Cat 2.

18 A. Right. Well, if their upper and lower are
19 separated, as I said earlier, the semiautomatic wouldn't
20 apply, right? So separate upper and lower shouldn't be
21 based on your receiver question. It's kind of the same
22 thing.

23 Q. 30515 also requires it be a semiautomatic rifle,
24 right?

25 A. Yes.

1 Q. Okay.

2 A. Yeah. So, yeah, separated upper and lower. I
3 wouldn't advise anybody to arrest a non-prohibited
4 person -- meaning an average citizen, gun store owner,
5 whatever -- for a separated upper and lower if it's a
6 16-inch barrel. And then when those things get
7 assembled, it's more than 26 inches; so there's no short
8 barrel rifle issues or any of that stuff.

9 Sean, can we do a five-minute break?

10 MR. BRADY: Any time you want. Off the record.

11 (Recess from 2:14 p.m. to 2:22 p.m.)

12 BY MR. BRADY:

13 Q. Go back on the record. We -- let's take a look
14 at page 8 of your report, paragraph 28.

15 You say, "Flash suppressor may increase
16 efficiency while the shooter is firing since the
17 shooter's vision is less likely to be impaired by excess
18 flash in low light settings."

19 Is that right?

20 A. Yes.

21 Q. So is a flash suppressor only relevant -- the
22 effect of a flash suppressor only relevant in low light
23 conditions?

24 A. I would say it's most relevant because the --
25 I'll call it the ball of fire at the end of the barrel is

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1 most visible the darker things get.

2 And in terms of flash suppressor, the way the
3 definition has always sort of been focused, it's about
4 the shooter's vision being affected as opposed to someone
5 other than the shooter being able to see the shooter.
6 Like a muzzle blast from a distance. It's more about
7 what can the shooter see or not see because of the device
8 on the end of the barrel.

9 Q. So a flash suppressor under California law would
10 not necessarily, anyway, affect the muzzle -- the
11 visibility of the muzzle flash by people being shot at;
12 is that right?

13 A. Could you rephrase that question?

14 Q. Sure. If you're downrange on the wrong end of
15 the gun --

16 A. Okay.

17 Q. -- okay, a flash suppressor will not make the
18 muzzle flash less visible to you, right?

19 A. Depending on your angle to the shooter, it may.
20 If you're off to the side, you're probably going to be
21 able to still see the shooter a bit. If you're dead on,
22 it may be less of -- I don't know how to explain this.
23 It may not matter if there's a device on the end of the
24 barrel or not.

25 Q. Because it's dead on.

1 be legitimate or illegitimate, the shooter is going to
2 have probably a better chance of hitting what they're
3 shooting at. Regardless if it's a civilian -- you know,
4 non-prohibited citizen or a criminal. There's an
5 advantage to it at the end of the day.

6 Q. All right. So in paragraph 24, you say that the
7 challenge features described in Penal Code Section 30515
8 on assault rifles, and those features are the ones we
9 just went through as far as the pistol grip, the
10 adjustable stock, and the flash suppressor, right? And
11 granted, there's others; but those are the three that
12 we're mostly talking about here.

13 A. Right. You called it adjustable. I would call
14 it telescoping stock.

15 Q. Correct. Well, there's telescoping and folding,
16 right?

17 A. Correct.

18 Q. And those are two different animals, if you
19 will, with respect to your -- well, I guess even
20 telescoping can be broken into two categories as we
21 already found: One that will allow the rifle to be
22 shortened down to the receiver and then the AR
23 telescoping stock which cannot be as shortened. And so
24 those are sort of two different types of concerns; is
25 that fair to say?

1 A. Yes.

2 Q. So we're talking about those -- we're talking
3 about those features when in paragraph 20, you say that
4 they may, quote, aid -- sorry. Let me rephrase that.
5 That, quote, "May aid the shooters in being potentially
6 more effective and efficient while shooting people."

7 Is that correct?

8 A. Yes.

9 Q. Okay. So as we just went through, and I believe
10 you said with respect to the -- all of those things --
11 the flash suppressor in low light, the adjustable stock
12 for proper shoulder fit, the pistol grip for the
13 ergonomics and control -- those things would also aid a
14 person shooting people legitimately in self-defense,
15 right?

16 A. Potentially, yeah.

17 Q. You have these features on your rifle, right?

18 A. Right.

19 Q. And you are only shooting people in legitimate
20 self-defense, right?

21 A. Yeah. It might be a dog or it might be a person
22 that has a weapon. Something like that.

23 Q. You're only taking life if there is a legal,
24 justified reason to do so, right?

25 A. Correct.

1 Q. And your department use of force policy is -- is
2 what? Can you explain?

3 A. Yeah. I'll give it a shot. I'm not the
4 department's expert.

5 Q. What is your understanding of when you are able
6 to use up to deadly force?

7 A. If you boil it down, it's basically to prevent
8 serious bodily injury to myself, other law enforcement,
9 or other members of the public that might be subject to
10 an immediate attack. Somebody may be swinging a weapon
11 or throwing a brick or shooting at one of us, and there's
12 nothing else that can potentially stop that from
13 happening. So you have to stop the threat by potentially
14 using lethal force against the aggressor.

15 Q. Is that standard any different than for a
16 non-law enforcement member of the public, to your
17 knowledge?

18 A. There's -- there's a specific Penal Code that
19 breaks down justified homicide, and there might be a
20 separate exemption that is carved out for law enforcement
21 versus civilian. I'm not an expert on that area, so I
22 don't want to comment, but I think there might be some
23 differentiation, at least a separate exemption broken
24 down there.

25 Q. Generally, you're only using lethal force to

1 sounds of certain weapons if they're fired at you.

2 Submachine guns, machine guns, etcetera.

3 So our agents -- we try to train them so that
4 they can safely -- when they recover weapons, they're
5 making sure they're clearing the chamber, making sure
6 we're not taking loaded guns home -- or back to the
7 office for our evidence technicians to have an accidental
8 discharge or things like that. So there's a good reason
9 to have these out there and shoot various ones.

10 We have a -- one that looks a lot like Rifle B,
11 and then there's a one that looks a lot like Rifle A, and
12 I think there's one or two other variants that are sort
13 of in between with, like, a flash suppressor attached,
14 and then there's another version that has some other
15 change to it. I think it might be stainless or
16 something.

17 Q. And you shot those side by side on the same day
18 at the same targets?

19 A. Yeah. Yeah.

20 Q. And what was the difference in your groupings?

21 A. It was -- I don't know that it was a groupings
22 difference. It was my speed to which -- it wasn't a
23 timed test, per se, but it was how quickly could I fire
24 enough rounds to stop the threat. That type of thing.

25 If I was doing two rounds, mag change, put the

1 new mag in, charge it, and then two more rounds, it was
2 three or four seconds slower with the rifle that was
3 similar to Rifle A.

4 Q. Okay. So then your effective rate of fire was
5 not as -- was slower than the actual rate of fire.

6 Is that fair to say with Rifle A versus Rifle B?

7 A. Yes. Rifle A, I was a little bit slower. The
8 distance in which we were shooting was seven yards.

9 Q. Okay.

10 A. So the distance -- it was negligible.

11 Q. So accuracy did not change between the two?

12 A. I didn't notice a much larger pattern.

13 Q. It was the magazine change that made the
14 difference there?

15 A. Yeah. The speed in which I could reload and
16 just do similar drills that we do with our M4s and stuff.
17 We were just having the agents mimic that.

18 Q. And that was because of the pistol grip, right?

19 A. That's what -- yeah. I found that to be more
20 similar to my M4 which I've used for many years, so it
21 just seemed more natural.

22 Q. Okay. So between Rifle A and Rifle B, when you
23 did a side-by-side comparison, you weren't really looking
24 for accuracy because you were at short distances, right?
25 But -- so accuracy was really -- couldn't be

1 distinguished at that...

2 A. Yeah. At that short range, seven yards, it's
3 not going to make a difference.

4 Q. So on what do you base your opinion that the
5 features on Rifle B increase accuracy on a rifle?

6 A. So I was in a -- I was in a scenario which I
7 didn't have people shooting back at me. I had -- I
8 basically could go as fast as I felt comfortable going.
9 I was at my own pace, in other words. So if I'm going to
10 be in a stressful situation trying to shoot, reload,
11 shoot again, and repeat that cycle as long as I needed
12 to, Rifle B would be my choice. I might be 10 percent
13 more effective because especially in low light with the
14 flash suppressor change. And when I say effective, I
15 mean quicker and potentially more accurate.

16 Another factor with Rifle B -- it wouldn't come
17 to play with a 50- to 100-yard or longer -- but if I'm up
18 close, say seven yards, I could probably even fire this
19 thing with no stock, meaning it's been folded to collapse
20 it down, and I could still probably hit the target with
21 all my rounds, and just coming up like this without
22 actually a brace or a sling on there.

23 I'm going to -- I may lose a little bit of
24 accuracy there, but the -- the difference being is I
25 would be sort of simulating coming out from maybe -- I

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1 don't know -- a trench coat or some other -- maybe out of
2 a bag, and I didn't see the need at that point to flip
3 the stock out. I just wanted to start shooting. The
4 concealability factor there would override the accuracy
5 at a close range.

6 Does that make sense?

7 Q. Yeah. I believe so. It makes sense. I don't
8 know if it was completely responsive to my question about
9 why you think the features -- or what you base your
10 opinion that the features make Rifle B more accurate than
11 Rifle A, because that is your opinion in your report,
12 correct?

13 A. Right.

14 Q. So I'm just wondering, do you -- do you base
15 that opinion that Rifle B is going to be more accurate
16 than Rifle A on just your personal preference for these
17 features or on testing that you've seen? That's what I'm
18 trying to get at.

19 A. I would say, like, the only time I've done that
20 side by side with weapons similar to Rifle A and Rifle B
21 would be that one time. I've fired a weapon like Rifle A
22 a few other times, but we didn't have the Rifle B clone
23 out there, and it was sufficient. I was able to hit, you
24 know, things on target, but I just felt like I was
25 more -- when the stock would be extended, I was more

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1 comfortable shooting Rifle B. And if I had to shoot for
2 some kind of a score between the two and a timed score, I
3 think I'm going to do better with Rifle B.

4 Q. Okay. How much better, do you think?

5 A. Perhaps 10 percent. Something like that. Each
6 of these features maybe is going to give you a few maybe
7 percentage points of improvement. Small little things.
8 The professional or semipro shooters out there, they do
9 all kinds of things to their guns, whether it be handgun
10 or long gun, from grip wraps so they get a perfect grip
11 and different, you know, carvings on the wood stocks and
12 all this other stuff.

13 So little ergonomic differences make a
14 difference if you're really into having a high score if
15 it's a, you know, paper target scenario where you're
16 shooting metal plates and, you know, things like that at
17 a competition.

18 Q. And accuracy is a good thing, right?

19 A. Yes.

20 Q. You train to be accurate, right?

21 A. Yeah. You want to have the highest score
22 possible if you're shooting for a qualification, for
23 example.

24 Q. And that's because -- well, also, you want to
25 hit your target in the real world if you need to, right?

1 A. Uh-huh. Same thing would apply.

2 Q. And we would want somebody who is shooting
3 somebody in self-defense to hit their target and not miss
4 and hit something else, right?

5 A. Legitimate --

6 Q. Yeah, we're assuming legitimate.

7 A. Yes.

8 Q. Yes. Bad guys coming down the hallway with the
9 knife in hand. You want the homeowner to put two in his
10 chest and not two over his shoulder into the neighbor,
11 right?

12 A. Yeah. You want responsible gun owners to --
13 and/or law enforcement, if that's what's going on in the
14 shooting, to hit what they're shooting at and not have
15 rounds flying around.

16 Q. And control of the firearm assists with being
17 accurate, right?

18 A. I believe so.

19 Q. So you want a gun that fits well, right?

20 A. Yes.

21 Q. That's crucial for proper firearm -- safe
22 firearm use, right?

23 A. Depending on how your -- what your needs are,
24 you can get away with certain things that you -- some
25 people have multiple weapons, and they're all slightly

1 configured different ways. Rifle A and Rifle B can both
2 get the job done. But probably people with Rifle B,
3 you're going to end up with -- if you have had a lot of
4 training with an AR specifically and had to transition to
5 one of these two, I'm going to be most accurate, I
6 believe, with Rifle B.

7 Q. All right. Got it. We're going to talk a
8 little bit more about mass shootings in a second. But
9 while we're on the subject of accuracy, I just want to
10 ask what you think.

11 If a mass shooter -- because they're, by
12 definition, merely trying to kill people, I wouldn't say
13 the average criminal would do this. But in a mass
14 shooting situation, if a mass shooter hits somebody
15 they're shooting at, what do you think would be their
16 most likely response after they realize that they've hit
17 their target?

18 MR. CHANG: Objection. Calls for speculation.

19 THE WITNESS: I think the response might be
20 dependent upon what body part they hit on the victim, how
21 much ammunition they have left, are they seeking to flee,
22 or are they just going to stay and shoot it out until
23 they're out of ammunition.

24 BY MR. BRADY:

25 Q. Let's say they're at the beginning of their --

1 they don't anticipate any resistance yet. They're there.
2 They're just starting. Shot, they hit somebody, person
3 goes down, what do you think their reaction is going to
4 be?

5 A. They may move to another target unless they
6 perceive the person on the ground to be a threat.

7 Q. And if they realize that they completely missed
8 the person, what do you think their most likely reaction
9 is going to be?

10 MR. CHANG: Objection. Calls for speculation.

11 THE WITNESS: Unless they have some threat
12 approaching them or they get distracted, they may go back
13 and fire again at that person that they apparently
14 missed.

15 BY MR. BRADY:

16 Q. And granted, this is a hypothetical and anything
17 could happen. But I'm just asking what a reasonable
18 result would be, and I think that you provided your
19 answer.

20 A. Yes.

21 Q. And so based on that, could it be possible that
22 a less accurate weapon that a mass shooter is using could
23 result in more rounds being fired?

24 MR. CHANG: Objection. Calls for speculation.
25 Incomplete hypothetical.

1 I, BLAKE GRAHAM, do hereby declare under penalty
2 of perjury that I have read the foregoing transcript,
3 that I have made any corrections as appear noted, in ink,
4 initialed by me, or attached hereto; that my testimony as
5 contained herein, as corrected, is true and correct.

6
7
8 EXECUTED this 7th day of February, 2019, at
9 Sacramento, CA.
(City) (State)

10
11
12
13 

14 BLAKE GRAHAM

VOLUME I

1 I, the undersigned, a Certified Shorthand
2 Reporter of the State of California do hereby certify:
3 That the foregoing proceedings were taken before me at
4 the time and place herein set forth; that any witnesses
5 in the foregoing proceedings, prior to testifying, were
6 duly sworn; that a verbatim record of the proceedings was
7 made by me using machine shorthand which was thereafter
8 transcribed under my direction; that the foregoing
9 transcript is an accurate transcription thereof.

10 I further certify I am neither financially
11 interested in the action nor a relative or employee of
12 any attorney or any of the parties.

13 IN WITNESS WHEREOF, I have this date subscribed
14 my name.

15

16 Dated: January 11, 2019

17

18

19

Kaitlyn B. Houston

KAITLYN B. HOUSTON

20

CSR No. 14170

21

22

23

24

25

EXHIBIT 8

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Attorneys for Defendant Xavier Becerra

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

**STEVEN RUPP; STEVEN
DEMBER; CHERYL JOHNSON;
MICHAEL JONES; CHRISTOPHER
SEIFERT; ALFONSO VALENCIA;
TROY WILLIS; and CALIFORNIA
RIFLE & PISTOL ASSOCIATION,
INCORPORATED,**

Plaintiffs,

v.

**XAVIER BECERRA, in his official
capacity as Attorney General of the
State of California; and DOES 1-10,**

Defendants.

8:17-cv-00746-JLS-JDE

**DEFENDANT'S RESPONSE TO
PLAINTIFF CHRISTOPHER
SEIFERT'S REQUEST FOR
ADMISSIONS**

Propounding Party: Christopher Seifert

Responding Parties: Defendant Xavier Becerra

SET No.: One

1 Defendant Attorney General Xavier Becerra (“Defendant”) responds and
2 objects to Plaintiff Christopher Seifert’s (“Plaintiff”) First Set of Requests for
3 Admission as follows:

4 **PRELIMINARY STATEMENT**

5 Defendant has not yet completed the investigation of the facts relating to this
6 case and has not yet completed discovery in this action. All of the responses
7 contained herein are based solely upon information and documents that are
8 presently available to and specifically known by Defendant, and disclose only those
9 contentions that presently occur to Defendant. It is anticipated that further
10 discovery, independent investigation, legal research, and analysis may supply
11 additional facts and lead to additions, changes, and variations from the responses
12 herein. Further, Defendant makes the following objections and responses without
13 agreeing or implying that any of the requests for admissions are relevant to the
14 subject matter of this case.

15 **OBJECTIONS TO INSTRUCTIONS AND DEFINITIONS**

16 1. Defendant objects to each instruction, definition, and request to the extent
17 that it purports to impose any requirement or discovery obligation greater than or
18 different from those under the Federal Rules of Civil Procedure and the applicable
19 Rules and Orders of the Court.

20 2. Defendant objects to each request that is overly broad, unduly
21 burdensome, or not relevant to any party’s claim or defense and proportional to the
22 needs of the case.

23 3. Defendant objects to the definition of “ASSAULT WEAPON” as
24 overbroad and unduly burdensome, and vague and ambiguous, as the definition and
25 scope of the term in California Penal Code section 30510 and/or section 30515 has
26 changed over time.

27 4. Defendant objects to each definition and request to the extent that it seeks
28 documents protected from disclosure by the attorney-client privilege, the

1 governmental deliberative process privilege, the law enforcement investigatory
2 privilege, the official information privilege, the common interest privilege, the
3 attorney work product doctrine, or any other applicable privilege or protection.
4 Should any such disclosure by Defendant occur, it is inadvertent and shall not
5 constitute a waiver of any privilege or protection.

6 5. To the extent that any individual Request for Admission purports to
7 impose on Defendant the burden of providing information which is not in
8 Defendant's possession, custody, or control, or is already in Plaintiffs' possession,
9 custody or control, or is not reasonably available to Defendant after a diligent
10 search and reasonable inquiry, Defendant objects on the grounds that the Requests
11 are overbroad, unduly burdensome, oppressive, and the burden, expense and/or
12 intrusiveness of the discovery clearly outweighs the likelihood that the information
13 sought will lead to the discovery of admissible evidence.

14 6. Defendant incorporates by reference every general objection set forth
15 above into each specific response set forth below. A specific response may repeat a
16 general objection for emphasis or some other reason. The failure to include any
17 general objection in any specific response does not waive any general objection to
18 that request.

19 7. Defendant objects to the Requests for Admission to the extent they
20 demand speculation or legal conclusions.

21 **RESPONSES TO REQUESTS FOR ADMISSIONS**

22 **REQUEST FOR ADMISSION NO. 1:**

23 Admit YOU do not know how many ASSAULT WEAPONS are possessed in
24 California.

25 **RESPONSE TO REQUEST FOR ADMISSION NO. 1:**

26 Admitted: Defendant does not know how many unregistered assault weapons
27 are possessed in California.
28

REQUEST FOR ADMISSION NO. 2:

Admit YOU do not know how many ASSAULT WEAPONS are possessed in the United States.

RESPONSE TO REQUEST FOR ADMISSION NO. 2:

Admitted.

REQUEST FOR ADMISSION NO. 3:

Admit that prior to January 1, 2014, the Department of Justice did not retain any information regarding non-ASSAULT WEAPON rifles upon their lawful transfer.

RESPONSE TO REQUEST FOR ADMISSION NO. 3:

Denied.

REQUEST FOR ADMISSION NO. 4:

Admit that there are peace officers employed at the California Department of Justice who are authorized by YOU to possess ASSAULT WEAPONS while discharging their official duties.

RESPONSE TO REQUEST FOR ADMISSION NO. 4:

Admitted.

REQUEST FOR ADMISSION NO. 5:

Admit that there are peace officers employed at the California Department of Justice who possess ASSAULT WEAPONS while discharging their official duties.

RESPONSE TO REQUEST FOR ADMISSION NO. 5:

Admitted.

REQUEST FOR ADMISSION NO. 6:

Admit that California peace officers can be authorized to acquire an ASSAULT WEAPON.

RESPONSE TO REQUEST FOR ADMISSION NO. 6:

Admitted.

REQUEST FOR ADMISSION NO. 7:

Admit that a California peace officer who is authorized to acquire an ASSAULT WEAPON can possess that ASSAULT WEAPON at the officer's home.

RESPONSE TO REQUEST FOR ADMISSION NO. 7:

Defendant has made a reasonable inquiry and the information Defendant possesses or can readily obtain is insufficient to enable Defendant to admit or deny.

Dated: September 14, 2018

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
MARK R. BECKINGTON
Supervising Deputy Attorney General

/s/ Peter H. Chang

PETER H. CHANG
Deputy Attorney General
*Attorneys for Defendant Xavier
Becerra*

SA2017106868

CERTIFICATE OF SERVICE
IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

Case Name: *Rupp, et al. v. Becerra*
Case No.: 8:17-cv-00746-JLS-JDE

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 180 East Ocean Boulevard, Suite 200, Long Beach, California 90802.

I am not a party to the above-entitled action. I have caused service of:

**DECLARATION OF SEAN A. BRADY IN SUPPORT OF PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT; EXHIBITS 1-8**

on the following party by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

Xavier Becerra
Attorney General of California
Peter H. Chang
Deputy Attorney General
E-mail: peter.chang@doj.ca.gov
John D. Echeverria
Deputy Attorney General
E-mail: john.echeverria@doj.ca.gov
455 Golden Gate Ave., Suite 11000
San Francisco, CA 94102

I declare under penalty of perjury that the foregoing is true and correct.

Executed March 25, 2019.

/s/Laura Palmerin
Laura Palmerin