

# **A CLASH OF ARMS: THE GREAT AMERICAN GUN DEBATE**

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## **FOREWORD**

This study was undertaken in response to Senate Concurrent Resolution No. 227, S.D. 1, requesting the Legislative Reference Bureau to examine the impact of gun control measures, including a firearms ban, on reducing the incidence of violent crime and accidental shootings in Hawaii. The Bureau extends its sincere appreciation to all the individuals and organizations whose cooperation in providing information and assistance in the preparation of this study was invaluable. The Bureau wishes to thank especially those members of the law enforcement community who undertook the task of attempting to estimate the planning and commitment of resources required by law enforcement to implement an effective firearms ban. Special acknowledgement is made to Major James Femia, Honolulu Police Department, for the information and assistance he provided with respect to firearm registration records and procedures.

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## **Chapter 1**

### **INTRODUCTION**

During the 1990 regular session of the Legislature, over thirty bills were introduced relating to firearms control; many of these proposed some type of ban on firearms. Although few of these bills were given a hearing, the House and Senate responded to the concerns raised by adopting Senate Concurrent Resolution No. 227, S.D. 1 (hereinafter S.C.R. No. 227, S.D. 1) (see Appendix A), which requested the Legislative Reference Bureau (hereafter the Bureau) to study the impact of a ban on firearms in Hawaii in reducing the incidence of violent crime and accidental shootings.

#### **Salient Points of S.C.R. No. 227, S.D. 1**

S.C.R. No. 227, S.D. 1, sets forth the following principal assumptions and concerns:

- (1) The number of violent crimes and accidental injuries and deaths involving the use of firearms in recent years has led to a growing concern that firearms should be banned in the State;
- (2) Despite Hawaii's stringent firearms registration law, the incidence of violent crimes involving firearms and accidents involving the misuse of firearms remain a problem;
- (3) Firearms bans proposed during the 1990 regular session were supported primarily by law enforcement agencies and a few private citizens who contend that limiting the availability of firearms will help to reduce the incidence of violent crime and of accidental shootings involving misuse of firearms;
- (4) Opponents of any type of firearms ban came out in force to testify against a ban contending any ban would violate their constitutional right to bear arms for self-protection and to enjoy sporting and recreational activities involving firearms;
- (5) Many of the estimated 250,000 Hawaii residents who have registered firearms numbering about 400,000 are law-abiding citizens who should not have their rights unjustly curtailed without compelling reasons;
- (6) The Senate Judiciary Committee held all bills proposing firearms bans because the evidence presented in support was insufficient to ascertain whether a ban

on certain firearms would effectively reduce violent crimes and accidental shootings; and

- (7) The Legislature expressed an obligation to investigate and collect more meaningful and objective information on firearms bans to determine if a ban would be effective in reducing violent crimes and accidental shootings in Hawaii.

### **Objective of the Study**

S.C.R. 227, S.D. 1, requested the Bureau to study a number of rather complex issues. Specifically, the resolution directed that the study include, but not be limited to, the following:

- (1) A summary of all the arguments for and against the banning of firearms;
- (2) An examination of the experiences of other states or countries that have a firearms ban to ascertain (to the extent information is available) the degree of effectiveness those bans have had in reducing violent firearms crimes and accidental shootings, including a consideration of other factors that may have contributed to any reduction;
- (3) An analysis regarding the constitutionality of a firearms ban, including a review of court challenges made on laws banning firearms and the status of those cases;
- (4) A description, based upon information provided by law enforcement agencies, of the planning and commitment of resources required of the State and counties in order to implement an effective firearms ban;
- (5) An examination of any legislation pending in the United States Congress to ban firearms; and
- (6) A summary of existing empirical evidence, if any, of the effectiveness of banning only a certain category of firearms, or enacting lesser restrictive alternatives in lieu of a ban, on reducing violent crime and accidental shootings.

## INTRODUCTION

### Scope and Organization of the Report

Bureau staff attempted to conduct an in-depth examination of the constitutionality of a firearms ban and of pending federal legislation. The amount of literature on the effectiveness of gun control measures on violent crime rates and accidental shootings is enormous. Most of the empirical evidence available concerns gun control measures less restrictive than a ban. This is because the few firearm bans enacted in the United States are of recent origin; thus empirical research on their effectiveness has yet to be conducted. Bureau staff attempted to review as much of the literature as possible. Nevertheless, because of the volume of material to review, the amount of research entailed, and the time constraints imposed, no claim is made that the review conducted on this issue was thoroughly comprehensive. The Bureau included only the major issues raised with respect to a firearms ban in the summary of arguments for and against a ban; minor points or arguments considered facetious have not been included.

With respect to the discussion of a firearms ban, it should be noted that the resolution did not specify what category or categories of firearms should be focused upon in the study, but instead used the rather general phrase "firearms ban." Accordingly, much of the discussion in this report of a ban is general in nature, although the Bureau has attempted to discuss bans on specific categories of firearms where it seemed appropriate. Weapons that already are prohibited under federal or state law (such as automatic firearms, sawed-off guns, etc.) were excluded from consideration. Also, the resolution did not distinguish between a true ban and a freeze on firearms. A true ban would impose an absolute prohibition on all firearms (of whatever category banned), even those already in private possession; whereas a freeze only would apply prospectively, and, in effect, would grandfather in prohibited firearms that were already in private possession prior to the freeze. Where appropriate, the study distinguishes between a true ban and a freeze; otherwise the term ban is used generally.

This report is organized as follows:

Chapter 1 presents introductory material.

Chapter 2 discusses the primary constitutional issues raised with respect to gun control laws, including firearms bans, and reviews the applicable caselaw.

Chapter 3 attempts to examine what evidence exists on the effectiveness of banning firearms. The chapter is divided into three parts: Part I reviews state and local laws, emphasizing those that ban some category of firearms; Part II reviews the literature that compares the experiences of other countries with respect to gun control with that of the United States; and Part III discusses what information is available to date on the implementation and effectiveness of California's assault weapons ban.



Chapter 4 summarizes information from law enforcement agencies estimating the planning and commitment of resources required by the State and counties to implement an effective firearms ban. The actual letters received from the law enforcement agencies follow at the end of the chapter.

Chapter 5 summarizes major federal laws regulating firearms and presents a detailed review of gun control measures that were under consideration by the 101st Congress.

Chapter 6 presents a summary of the major arguments for and against a firearms ban, including a discussion of evidence of the effectiveness of lesser restrictive gun control measures, and contains conclusions and recommendations.

## **Chapter 2**

### **A RIGHT TO BEAR ARMS -- FOR WHAT PURPOSE?**

The primary constitutional issue raised with respect to any firearms control legislation, including a ban, is the effect of the Second Amendment to the United States Constitution on the legislation. The full text of the Second Amendment reads as follows:

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.<sup>1</sup>

For years, pro gun advocates, focusing on the latter half of the amendment, have staunchly proclaimed that this language guarantees their individual right to keep and bear firearms, and consequently, that any firearms ban would be unconstitutional. The fact that 87% of those persons responding to a 1978 public opinion survey believed that the Second Amendment guarantees them an individual right to keep and bear arms might indicate that the majority of the populace agree with pro gun advocates or it simply may be a testimony to the success of their public relations campaigns.<sup>2</sup>

At any rate, given the percentage of those expressing this view, it likely would surprise many to learn that there has been considerable, and often acrimonious, debate over the true meaning of the Second Amendment.<sup>3</sup> The scholarly debate has produced two radically different schools of thought which have most commonly been referred to as the collective right theory and the individual right theory.

#### **Collective vs. Individual Right Theory**

The collective right theory has been endorsed with almost complete unanimity by modern courts and by the majority of legal scholars, practicing attorneys, and the American Bar Association and is considered the dominant view.<sup>4</sup> Proponents of this theory believe that the first half of the Second Amendment, with its reference to a "well regulated militia being necessary to a free state," defines the scope for the right to bear arms. Under this interpretation, the Second Amendment only guarantees the states' right to maintain organized reserve military units, such as the modern day National Guard.<sup>5</sup> The Second Amendment confers no right to bear arms other than what is necessary to the maintenance of the organized state military units; consequently individuals cannot invoke Second Amendment protections. From this perspective, the Second Amendment is largely irrelevant to the gun control debate because gun control proposals are aimed at restricting an individual's access to firearms and have little impact upon organized state militias.<sup>6</sup>

The collective right theory has been sharply criticized by some academic scholars who contend that the amendment's guarantee of the right to bear arms extends also to individual citizens. Under the *individual right theory*, the *Second Amendment would bar enactment of certain gun control proposals, including those banning firearms.*<sup>7</sup> Proponents of the individual right view base their theory on a number of issues; only the major arguments are summarized here. First, relying primarily upon the writings of the founding fathers and their contemporaries, historical documents concerning the struggle to get the Constitution ratified, and earlier English tradition, the individual right proponents argue that the drafters of the Bill of Rights intended, and the populace at large understood, that the language of the *Second Amendment guaranteed an individual right to keep and bear arms.*<sup>8</sup>

Second, they attempt to refute the collective right view that the *Second Amendment's reference to "militia" limits the amendment's rights only to the states' organized military units* by arguing that the term "militia" refers to the concept of a universally armed citizenry and not to any specifically organized military unit.<sup>9</sup> To support further their contention that today's National Guard is not the "militia" referred to in the *Second Amendment, individual right proponents argue that Congress created the National Guard under its power to "raise and support armies" and not by virtue of its power under the Constitution's Militia Clauses to "provide for organizing, arming and disciplining the Militia."*<sup>10</sup> This argument certainly is less persuasive in light of the United States Supreme Court's recent ruling in *Perpich v. Department of Defense*,<sup>11</sup> in which the Court left little doubt that the National Guard was organized not as part of the standing army, but under powers granted by the Militia Clauses, and is considered the modern equivalent of the constitutional militia.<sup>12</sup>

Another argument put forth by individual rights advocates is that the reference to "the people" in the *Second Amendment and elsewhere in the Bill of Rights describes rights intended to be individual in nature.*<sup>13</sup> They maintain that since the references to "the people" in the First and Fourth Amendments have been interpreted to guarantee individual rights, consistency demands that the same interpretation be applied with respect to "the people" in the *Second Amendment.*

### **Judicial Interpretations**

The scholarly debate over the meaning of the *Second Amendment is extensive, with little agreement among commentators on any point. Although the foregoing discussion gives the reader an initial introduction to some of the major issues involved, a complete summary of all viewpoints in the debate is beyond the scope of this study.*<sup>14</sup> For purposes of responding to the request of S.C.R. No. 227, S.D. 1 for an analysis regarding the constitutionality of a firearms ban, one must look to judicial decisions to discover how the courts have interpreted the scope of the *Second Amendment; for under our constitutional system of government, it is*

the province and duty of the judiciary alone to interpret the constitution.<sup>15</sup> As noted previously, the individual right theory has found little judicial support,<sup>16</sup> as almost without exception,<sup>17</sup> courts have ruled that the Second Amendment "is a limitation only on the federal government and therefore is irrelevant in assessing the constitutionality of state or local legislation."<sup>18</sup>

### Supreme Court Decisions

The United States Supreme Court, as the "final arbiter on questions of [federal] constitutionality,"<sup>19</sup> has addressed Second Amendment issues in only four instances, none of which have involved a firearms ban. Critics of the Supreme Court's decisions are quick to point out that three of these four rulings occurred during the nineteenth century, prior to the development of much contemporary constitutional doctrine.<sup>20</sup>

In 1986, the Supreme Court in United States v. Cruikshank<sup>21</sup> reversed a criminal conviction of southern white men charged with, among other things, conspiring to deprive black citizens of their constitutional rights to assemble and bear arms.<sup>22</sup> Concluding that the Second Amendment conferred no right to bear arms upon individuals but, rather, was intended to restrict the powers of the national government in its relations with the states, the Court stated:

This is not a right granted by the Constitution. Neither is it in any manner dependent upon that instrument for its existence. The second amendment declares that it shall not be infringed; but this, as has been seen, means no more than that it shall not be infringed by Congress. This is one of the amendments that has no other effect than to restrict the powers of the national government....<sup>23</sup>

The Court reaffirmed this ruling ten years later in Presser v. Illinois,<sup>24</sup> in which the Court upheld the defendant's conviction for violating a state law that prohibited military assemblies and parades without a license.<sup>25</sup> The discussion of the Second Amendment issue was brief;<sup>26</sup> citing the foregoing language from Cruikshank, the Court held that the Second Amendment did not establish an individual right to bear arms and that its prohibition did not apply to actions of state governments.<sup>27</sup>

In Miller v. Texas,<sup>28</sup> the defendant sought to overturn his murder conviction on the ground that the crime of illegally carrying a pistol on his person, for which he initially had been apprehended, was unconstitutional under the Second Amendment. The Court upheld the conviction on the basis that the Second Amendment applied only to the federal government and not to the states.<sup>29</sup>

United States v. Miller<sup>30</sup> is the only twentieth century case in which the Supreme Court has construed the Second Amendment. In Miller, the defendant had been indicted for transporting a sawed-off shotgun in interstate commerce in violation of the National Firearms Act of 1934.<sup>31</sup> The federal district court had quashed the defendant's indictment on the ground that the provision on which the indictment was based violated the Second Amendment. The Supreme Court reversed the lower court's ruling, holding that the Second Amendment's right to keep and bear arms extends only to those weapons that are necessary to maintain a well regulated militia. The Court declared:

In the absence of any evidence tending to show that possession or use of a [sawed-off shotgun] at this time has some reasonable relationship to the preservation or efficiency of a well regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument. Certainly it is not within judicial notice that this weapon is any part of the ordinary military equipment or that its use could contribute to the common defense.<sup>32</sup>

After examining the history behind the Second Amendment, the Court concluded that the amendment's "obvious purpose [was] to assure the continuation and render possible the effectiveness of [state militias]. It must be interpreted and applied with that end in view."<sup>33</sup>

### The Aftermath of Miller

The Miller decision has been sharply criticized. Some of its detractors argue it should be accorded very little precedential weight because the Second Amendment issue was not fully argued to the Court.<sup>34</sup> Moreover, recent commentators have pointed out that, despite the Court's ruling to the contrary, sawed-off or short-barreled shotguns commonly are used as military weapons.<sup>35</sup> Derogators also have criticized the Court's analysis as "[leading] to absurd results" because the type of weapons that would be the most obviously useful in a military context, such as automatic rifles, artillery, portable rocket launchers, and nuclear devices, would raise considerable concern if possessed by private civilians.<sup>36</sup> Finally, a few commentators have suggested that the Supreme Court in the Miller decision actually recognized that the Second Amendment protects an individual's right to keep and bear arms.<sup>37</sup>

Several of these criticisms were addressed by the first circuit court of appeals in Cases v. United States,<sup>38</sup> decided only a few years after Miller. Conceding that extension of the rule in Miller could lead to illogical results, especially given new developments in weaponry, the court determined that the Supreme Court in Miller did not intend to formulate a

general rule, but dealt merely with the facts of that case. In view of the first circuit court's reading of Miller, extensive citation of its opinion is warranted:

[W]e do not feel that the Supreme Court in this case was attempting to formulate a general rule applicable to all cases. The rule which it laid down was adequate to dispose of the case before it and that we think was as far as the Supreme Court intended to go. At any rate the rule of the Miller case, if intended to be comprehensive and complete would seem to be already outdated ... because of the well known fact that in the so called "Commando Units" some sort of military use seems to have been found for almost any modern lethal weapon. In view of this, if the rule of the Miller case is general and complete, the result would follow that, under present day conditions, the federal government would be empowered only to regulate the possession or use of weapons such as a flintlock musket or a matchlock harquebus.<sup>39</sup>

Having previously noted that the Court in Miller approved the notion that the Second Amendment does not absolutely prohibit all federal regulation of firearms,<sup>40</sup> the court's opinion continues:

But to hold that the Second Amendment limits the federal government to regulations concerning only weapons which can be classed as antiques or curiosities, -- almost any other might bear some reasonable relationship to the preservation or efficiency of a well regulated militia unit of the present day, -- is in effect to hold that the limitation of the Second Amendment is absolute.<sup>41</sup>

The court also addressed the problematic issue of the possession of obvious military weaponry by private persons:

Another objection to the rule of the Miller case as a full and general statement is that according to it Congress would be prevented from regulating the possession or use by private persons not present or prospective members of any military unit, of distinctly military arms, such as machine guns, trench mortars, anti-tank or anti-aircraft guns, even though under the circumstances surrounding such possession or use it would be inconceivable that a private person could have any legitimate reason for having such a weapon. It seems to us unlikely that the framers of the Amendment intended any such result. Considering the many variable factors bearing upon the question it seems to us

impossible to formulate any general test by which to determine the limits imposed by the Second Amendment but that each case under it, like cases under the due process clause, must be decided on its own facts and the line between what is and what is not a valid federal restriction pricked out by decided cases falling on one side or the other of the line.<sup>42</sup>

After determining that the Supreme Court did not lay down a general rule in Miller, the first circuit court proceeded to consider the facts presented in the case at bar. Although conceding that the weapon in question, a .38 caliber Colt revolver, might be capable of military use or at least of value in military training, the court nevertheless ruled:

[T]here is no evidence that the appellant was or ever had been a member of any military organization or that his use of the weapon under the circumstances disclosed was in preparation for a military career. In fact, the only inference possible is that the appellant at the time charged in the indictment was in possession of, transporting, and using the firearm and ammunition purely and simply on a frolic of his own and without any thought or intention of contributing to the efficiency of the well regulated militia which the Second Amendment was designed to foster as necessary to the security of a free state.<sup>43</sup>

Similarly, in United States v. Warin,<sup>44</sup> the sixth circuit court of appeals considered the defendant's contention that the holding in Miller implies that a member of the "sedentary militia" lawfully may possess any weapon having military capability. The defendant maintained that he was exempted from the prohibition on possessing or carrying a deadly ordnance by virtue of the fact that he, in common with all adult residents and citizens of the State, was subject to enrollment in the state militia.<sup>45</sup>

In rejecting this argument, the court agreed with the conclusion in Cases that the Supreme Court did not lay down a general rule in Miller and that each case must be decided based upon its own set of facts and in light of applicable authoritative decisions.<sup>46</sup> Looking at the statute in question, the court noted that it exempted "members of the **organized** militia of [Ohio] or any other state" and that no such exemption existed for members of the "sedentary militia." In light of the facts, the court concluded: "there is absolutely no evidence that a submachine gun in the hands of an individual 'sedentary militia' member would have any, much less a 'reasonable relationship to the preservation or efficiency of a well regulated militia.'"<sup>47</sup>

Finally, like the court in Cases, the sixth circuit court also emphasized that the Second Amendment is not absolute:

In Miller the Supreme Court did not reach the question of the extent to which a weapon which is "part of the ordinary military equipment" or whose "use could contribute to the common defense" may be regulated. In holding that the absence of evidence placing the weapon involved in the charges against Miller in one of these categories precluded the trial court from quashing the indictment on Second Amendment grounds, the Court did not hold the converse -- that the Second Amendment is an absolute prohibition against all regulation of the manufacture, transfer and possession of any instrument capable of being used in military action.<sup>48</sup>

It should be pointed out that, regardless of any criticism of the ruling in Miller, it is the latest pronouncement by the United States Supreme Court on the Second Amendment. If the Supreme Court wished to adopt a different view of the Second Amendment, it has had ample opportunity to do so.<sup>49</sup> Until the Court does so, its decisions in this area are controlling. Those decisions have held that: (1) with respect to the federal government, the Second Amendment protects only the collective right of the state to organize and maintain a militia and, apart from that right, does not guarantee any rights to individuals; and (2) the Second Amendment imposes no limitation upon the states.<sup>50</sup>

#### Lower Court Decisions

Lower federal courts<sup>51</sup> and most state courts<sup>52</sup> that have considered the issue have approved and followed the decisions of the United States Supreme Court, flatly rejecting any claims of an individual right to bear arms under the Second Amendment. For example, in Stevens v. United States,<sup>53</sup> the sixth circuit court of appeals held that:

Since the Second Amendment right "to keep and bear Arms" applies only to the right of the State to maintain a militia and not to the individual's right to bear arms, **there can be no serious claim to any express constitutional right of an individual to possess a firearm.**<sup>54</sup>

Likewise, in United States v. Johnson,<sup>55</sup> the fourth circuit court of appeals confirmed that:

The courts have consistently held that the Second Amendment only confers a **collective right of keeping and bearing arms** which must bear a "reasonable relationship to the preservation or efficiency of a well regulated militia."<sup>56</sup>



Similarly, in United States v. Nelsen,<sup>57</sup> the eighth circuit court of appeals stated:

We also decline to hold that the [Switchblade Knife Act] violates the second amendment. Nelsen claims to find a fundamental right to keep and bear arms in that amendment, but this has not been the law for at least 100 years.<sup>58</sup>

And, in United States v. Tot,<sup>59</sup> the third circuit court of appeals concluded that:

It is abundantly clear both from the discussions of this amendment contemporaneous with its proposal and adoption and those of learned writers since that this amendment, unlike those providing for protection of free speech and freedom of religion, was not adopted with individual rights in mind, but as a protection for the States in the maintenance of their militia organizations against possible encroachments by the federal power.<sup>60</sup>

### The Constitutionality of Banning Firearms

At issue in the majority of cases considering Second Amendment issues has been some type of firearms regulation considerably less restrictive than a ban. To date, only a few courts have considered the constitutionality of a firearms ban.<sup>61</sup> The landmark case of Quilici v. Village of Morton Grove<sup>62</sup> involved an Illinois village ordinance that almost completely banned handgun ownership within the village borders. Exceptions were made in the ordinance for police officers, prison personnel, members of the armed services, private security guards, authorized state employees, licensed gun collectors, licensed gun clubs, and owners of antique firearms.<sup>63</sup> Handgun owners in Morton Grove brought suit, alleging the ordinance violated the Illinois Constitution and the Second, Fifth, Ninth, and Fourteenth amendments of the United States Constitution.

Both the United States district court<sup>64</sup> and the Court of Appeals for the Seventh Circuit denied these claims. Quoting from Presser, the Court of Appeals categorically rejected the appellants' contentions that the Second Amendment applies to state and local governments and that the right to keep and bear arms exists not only to assist in the common defense but also to protect the individual:

It is difficult to understand how appellants can assert that Presser supports the theory that the second amendment right to keep and bear arms is a fundamental right which the state cannot regulate when the Presser decision plainly states that "[t]he Second Amendment declares that it shall not be infringed, but this

means no more than that it shall not be infringed by Congress. This is one of the amendments that has no other effect than to restrict the powers of the National government ...." As the district court explained in detail, appellants' claim that Presser supports the proposition that the second amendment guarantee of the right to keep and bear arms is not subject to state restriction is based on dicta quoted out of context. **This argument borders on the frivolous and does not warrant any further consideration.**<sup>65</sup>

In support of their claim that the Second Amendment applies to the states, the appellants also argued that: Presser was no longer "good law" because later Supreme Court decisions that incorporated other amendments into the fourteenth amendment had the effect of overruling Presser; the Presser decision was illogical; and the entire Bill of Rights, including the Second Amendment, had been implicitly incorporated into the Fourteenth Amendment to apply to the states.<sup>66</sup> The court found no merit in any of these arguments:

First, appellants offer no authority, other than their own opinions, to support their arguments that Presser is no longer good law or would have been decided differently today. Indeed, the fact that the Supreme Court continues to cite Presser ... leads to the opposite conclusion. Second, regardless of whether appellants agree with the Presser analysis, it is the law of the land and we are bound by it. Their assertion that Presser is illogical is a policy matter for the Supreme Court to address. Finally, their theory of implicit incorporation is wholly unsupported. **The Supreme Court has specifically rejected the proposition that the entire Bill of Rights applies to the states through the fourteenth amendment.**<sup>67</sup>

Although the court's holding that the Second Amendment does not apply to the states was sufficient to dispose of the Second Amendment claim, the court commented briefly on the scope of the Second Amendment for "the sake of completeness" and because of the extent to which appellants discussed the issue in their briefs.<sup>68</sup> Construing the "plain meaning" of the Second Amendment language, the court concluded that the right to bear arms clearly is:

[I]nextricably connected to the preservation of a militia. This is precisely the manner in which the Supreme Court interpreted the second amendment in United States v. Miller .... There the Court held that the right to keep and bear arms extends only to those arms which are necessary to maintain a well regulated militia.<sup>69</sup>

The appellants attempted to avoid Miller's holding by arguing (1) that "[t]he fact that the right to keep and bear arms is joined with language expressing one of its purposes in no way permits a construction which limits or confines the exercise of that right" and (2) that handguns are military weapons. In rejecting these claims, the court ruled:

Our reading of Miller convinces us that it does not support either of these theories. [A]ppellants are essentially arguing that Miller was wrongly decided and should be overruled. Such arguments have no place before this court. Under the controlling authority of Miller we conclude that the right to keep and bear handguns is not guaranteed by the second amendment.<sup>70</sup>

In addition to attacking the ordinance on Second and Fourteenth Amendment grounds, the appellants also alleged in their complaint that the Morton Grove ordinance violated the Ninth and Fifth Amendments. With respect to the Ninth Amendment, appellants maintained they had a fundamental right to use commonly-owned arms for self-defense that was protected by the Ninth Amendment, although not explicitly provided for in the Bill of Rights.<sup>71</sup> The appellant relied upon debates in the First Congress and writings of legal philosophers in an attempt to establish an individual's absolute and inalienable right to self-defense, but they cited no authority that directly supported their thesis.<sup>72</sup>

Both the district court<sup>73</sup> and the court of appeals<sup>74</sup> pointed out that the Supreme Court has never explicitly held that a specific right was protected by the Ninth Amendment. As explained by the district court, when the Supreme Court has extended protection to individual rights not explicitly listed in the Bill of Rights, it has relied upon:

"[P]enumbras, formed by emanations from [specific guarantees in the Bill of Rights] that help give them life and substance." The only rights so recognized by the Court have involved the truly personal and private rights relating to questions of family and procreation. Never has the Court recognized anything like a right to self defense, or a right to carry handguns, based either on the penumbra theory or directly under the Ninth Amendment.<sup>75</sup>

The district court further explained that the only explicit discussion of the Ninth Amendment in any Supreme Court decision appeared in Justice Goldberg's concurring opinion in Griswold v. Connecticut,<sup>76</sup> in which he had argued that there were "certain fundamental rights, arising from the 'traditions and [collective] conscience of our people'" in addition to those already enumerated in the Constitution, that require Ninth Amendment protection. The district court emphasized that Goldberg's thesis has never been accepted by a majority of the Supreme Court.<sup>77</sup> The court of appeals also rejected the appellants' argument, declaring that, although "[a]ppellants may believe the ninth amendment should be

read to recognize an unwritten, fundamental, individual right to own or possess firearms; the fact remains that the Supreme Court has never embraced this theory."<sup>78</sup>

In their complaint filed in the district court,<sup>79</sup> the appellants also had alleged that the Morton Grove ordinance violated the Fifth Amendment.<sup>80</sup> Noting that the plaintiffs appeared to have abandoned their Fifth Amendment claim by failing to discuss the issue in their memoranda of law, the court nevertheless condescended to address the issue for the sake of completeness.<sup>81</sup> The district court rejected the Fifth Amendment claim, ruling that the ordinance did not go so far as to constitute a taking "[resulting] in the destruction of the use and enjoyment of a legitimate private property right" for which compensation must be made.<sup>82</sup> The court based its ruling on the fact that: (1) the geographical reach of the ordinance was limited, permitting owners to sell or otherwise dispose of their handguns outside of Morton Grove boundaries; (2) handgun owners wishing to keep their guns could register and store them at a licensed gun club; and (3) the ordinance included an exemption for licensed gun collectors for whom neither of the other two alternatives might be acceptable.<sup>83</sup>

The most recent court decision involving a ban of firearms was Fresno Rifle and Pistol Club, Inc. v. Van De Kamp,<sup>84</sup> in which the federal district court upheld California's Roberti-Roos Assault Weapons Act restricting the manufacture, sale, and possession of specifically named assault weapons.<sup>85</sup> Quoting extensively from Cruikshank, Presser, Warin, and Quilici, the court stressed that the caselaw has "universally held that the Second Amendment to the United States Constitution expresses a limitation that is applicable to the Congress and the National Government only and has no application to the States."<sup>86</sup>

The plaintiffs apparently argued, as have some commentators,<sup>87</sup> that it is evident that the framers of the Bill of Rights intended the use of the phrase "the right of the people" in the Second Amendment to reflect individual rights because exactly the same phrase is used elsewhere, particularly in the First and Fourth Amendments, to protect individual not state's rights. The court noted that the plaintiffs, in support of this contention, relied upon United States v. Verdugo-Urquidez,<sup>88</sup> wherein the Supreme Court discussed the definition of the phrase "the people" in various parts of the constitution and decided that:

While this textual exegesis is by no means conclusive, it suggests that "the people" protected by the Fourth Amendment, and by the First and Second Amendments, and to whom rights and powers are reserved in the Ninth and Tenth Amendments, refers to a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community.<sup>89</sup>

The district court acknowledged its acceptance of "that definition of those who are protected from Congress or other parts of the National Government from infringing on their rights to bear arms;" however, it determined that the "analysis [in Verdugo] in no way changes the traditional interpretation of the Second Amendment."<sup>90</sup> Quoting the Tenth Amendment, in which the framers reserved non-delegated powers to the states, the court concluded that "the [United States] Constitution has left the question of gun control to the several states. There are no federal constitutional provisions that have been offended by this Act."<sup>91</sup>

The plaintiffs also argued the California law violated the right to bear arms existing under a right of privacy guaranteed by the federal and California constitutions. Acknowledging that the guarantee of personal privacy under the United States Constitution (first recognized in *Roe v. Wade*) has been applied to a number of areas, such as the right of a person not to have the person's name or likeness used without consent, the right to be left alone, and freedom of choice in marriage and family life, the court nonetheless determined that the "concept has never been extended to the private citizen right to possess weapons, or to defend himself and his property."<sup>92</sup> In further rejection of plaintiffs' argument, the court noted that the modern rule of self-defense is not of constitutional origin, but rather, has its basis in English common law, and that the right of self-defense does not depend upon the existence of certain weapons versus others.<sup>93</sup> With respect to a right of privacy under the state constitution, the court emphasized that it is bound to follow the California Supreme Court's interpretation of the California Constitution. After reviewing cases decided by the California appellate courts since the privacy right was added to the state constitution, the district court concluded that none of the cases reviewed had "[equated] the right to privacy with the right of self-defense, or the right to possess firearms."<sup>94</sup>

### **State Constitutional Issues**

An analysis of the constitutionality of a firearms ban has two components: the federal constitution and state constitutions. As noted previously, since the Second Amendment has been held not to apply to the states, it has little bearing on the constitutionality of state or municipal regulation of firearms. However, any such regulation must pass muster under the applicable state constitution.

Most state constitutions contain a provision similar to the Second Amendment.<sup>95</sup> (See Appendix B for applicable state constitutional provisions.) In some instances, the state constitution's right to bear arms provision exactly tracks the language of the Second Amendment.<sup>96</sup> In others, the language is somewhat different and in some cases seemingly broader. For example, Alabama's Constitution provides that "every citizen has a right to bear arms in defense of himself and the state."<sup>97</sup> Likewise, Missouri's Constitution states that "the right of every citizen to keep and bear arms in defense of his person, home and property, or when lawfully summoned in aid of the civil power, shall not be questioned ...."<sup>98</sup> Where

the language differs, some state courts have ruled that the state constitutional provision effects broader rights to individual citizens than the Second Amendment.<sup>99</sup> Even in these instances, however, the state constitutional provisions generally have not been held to prohibit the legislature from regulating the acquisition or possession of firearms as a reasonable exercise of police power.<sup>100</sup>

However, the interpretation of other state constitutional provisions has little bearing on this study. At issue, instead, is the interpretation of the right to bear arms provision of the Hawaii State Constitution.<sup>101</sup> That provision, found in Article I, Section 17, is identical in language to the Second Amendment.<sup>102</sup> A review of Hawaii case law has revealed no cases interpreting the right to bear arms provision of the Hawaii Constitution.

However, the intent of the drafters of the constitution may prove instructive. When the Hawaii Constitution was first drafted in 1950, many of the federal Bill of Rights provisions were taken over either verbatim or with little change. It has been reported that, in doing this, the delegates to the constitutional convention intended "that Hawaii would have the benefit of federal court decisions interpreting these provisions."<sup>103</sup> One could speculate that, as all of the Supreme Court cases and many lower federal court cases concerning the Second Amendment had been decided by 1950, the delegates were aware of those decisions and were free to modify the language of Article I, Section 17, if they had intended to guarantee an individual's right to keep and bear arms.

In the absence of any case law interpreting Article I, Section 17, of the Hawaii Constitution, it is difficult to say with any authority what is the scope of that provision. Nevertheless, given the intent of the drafters and constitutional language that is identical to the Second Amendment, it is reasonable to surmise that a court considering the issue might well construe the scope of Article I, Section 17, narrowly.

## Conclusion

Although there is a great deal of confusion and debate among the general public and scholars over the what the Second Amendment means, it is the judiciary that has been charged with interpreting the Constitution. The caselaw is overwhelming in interpreting the Second Amendment as preserving only the right of the state to organize and maintain a militia. Furthermore, the courts have held that the limitation expressed in the amendment applies only to the federal government and has no application to the states. Courts adhering to this interpretation of the Second Amendment have upheld the constitutionality of bans on handguns and on assault rifles.

Barring any reversal of this position by the United States Supreme Court, it therefore seems likely that any challenge based upon Second Amendment grounds to a handgun or an

assault weapons ban in Hawaii would be rejected by the courts. It is uncertain how the courts would rule on a challenge based upon state constitutional grounds. However, since the language of the Article I, Section 17 of the Hawaii Constitution is identical to the Second Amendment, it seems plausible that, in the absence of evidence showing an intent to grant a right individual in nature, the courts would reject this challenge also.

Constitutional objections also have been raised on the basis of the Fifth, Ninth, and Fourteenth Amendments, but these have not been successful thus far. As to the future, the scholarly debate over the true meaning of the Second Amendment will probably continue without either side being won over to the other's position.

### ENDNOTES

1. U.S. Const., amend. II.
2. Don B. Kates Jr., "Handgun Prohibition and the Original Meaning of the Second Amendment." 82 Mich. L. Rev. 204, 206-07 n.11 (1983) [hereinafter cited as Kates, "Handgun Prohibition"]. The author also notes that in response to a 1975 poll asking whether the Second Amendment applies to each individual citizen or only to the National Guard, seventy percent endorsed the individual right alternative and another three percent said it applied to both. Accord, Nelson Lund, "The Second Amendment, Political Liberty, and the Right to Self-Preservation," 39 Ala. L. Rev. 103, 105 (1987) [hereinafter cited as Lund].
3. See, e.g., Warren Freedman, The Privilege to Keep and Bear Arms: the Second Amendment and Its Interpretation (Westport, Connecticut: Greenwood Press, Inc., 1989) [hereinafter cited as Freedman]; Stephen Halbrook, A Right to Bear Arms: State and Federal Bills of Rights and Constitutional Guarantees (Westport, Connecticut: Greenwood Press, 1989); Don B. Kates, Jr. (ed.), Restricting Handguns: The Liberal Skeptics Speak Out, (Croton-on-Hudson, N.Y.: North River Press, 1979) [hereinafter cited as Kates, Liberal]; Earl Kruschke, The Right to Keep and Bear Arms: A Continuing American Dilemma (Springfield, Illinois: Charles C. Thomas, 1985) [hereinafter cited as Kruschke]; Donald Beschle, "Reconsidering the Second Amendment: Constitutional Protection For A Right Of Security," 9 Hamline L. Rev. 69 (1986) [hereinafter cited as Beschle]; Robert Dowlut & Janet Knoop, "State Constitutions and the Right to Keep and Bear Arms," 7 Oklahoma City Univ. L. Rev. 177 (1982) [hereinafter cited as Dowlut]; David Hardy, "The Second Amendment and the Historiography of the Bill of Rights", IV The Journal of Law and Politics 1 (1987) [hereinafter cited as Hardy]; Kates, "Handgun Prohibition," supra note 2; Lund, supra note 2; Stanford Levinson, "The Embarrassing Second Amendment," 99 The Yale L. J. 637 (1989).
4. Kates, "Handgun Prohibition," supra note 2, at 206-07. Accord, Beschle, supra note 3, at 69; see also Lund, supra note 2, at 105.
5. Hardy, supra note 3, at 1; accord, Beschle, supra note 3, at 69-70 (The Second Amendment "guards only against federal attempts to disarm or abolish organized state militias.").

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6. Beschle, supra note 3, at 70; accord, Kates, "Handgun Prohibition," supra note 2, at 207 n. 13 (The Second Amendment has been regarded by the great majority of constitutional scholars as irrelevant to gun control.)
7. See Beschle, supra note 3, at 70; Lund, supra note 2, at 122.
8. Commentators favoring the individual right approach also have attempted to prove their thesis by analyzing the meaning of each word used to structure the Second Amendment. For an in depth historical analysis of the meaning and origins of the Second Amendment by such commentators, see e.g., Stephen P. Halbrook, That Every Man Be Armed: The Evolution of a Constitutional Right (Albuquerque: University of New Mexico Press, 1984); Kates, "Handgun Prohibition," supra note 2.
9. See e.g., Kruschke, supra note 3, at 45 and 153-54; Kates, Liberal, supra note 3, at 172; "The Gun Control Controversy: Pro & Con," Congressional Digest, May 1986, at 150. See also Kates, "Handguns Prohibition," supra note 2, at 248-251 in which Kates contends that the Supreme Court, in United States v. Miller, 307 U.S. 174 (1939), repudiates the collective right argument in its indication of what the term "militia" signifies and, in so doing, recognizes that the defendants could claim the amendment's protection as individuals without having to prove themselves members of some formal military unit such as the National Guard. For a discussion of Miller, see notes 30-50 infra & accompanying text.
10. See Kruschke, supra note 3, at 45.
11. 58 U.S.L.W. 4750 (July 12, 1990).
12. In an *amicus curiae* brief, individual rights advocates had argued that the constitutional status of the modern National Guard was as a component of the U.S. Army and that it was not the constitutional militia intended by the framers of the Bill of Rights. Brief of Amicus Curiae Firearms Civil Defense Fund in Support of Appelles at 19-20. Responding to this issue, the Court asserted as "undisputed" that Congress was acting pursuant to the Militia Clauses of the Constitution in organizing the National Guard. 58 U.S.L.W. at 4752. Further on in the Court's opinion addressing how the second Militia Clause enhances federal power, the Court discussed the composition of the militia:

First, it authorizes Congress to provide for "organizing, arming and disciplining the Militia." It is by congressional choice that the available pool of citizens has been formed into organized units. Over the years, Congress has exercised this power in various ways, but its current choice of a dual enlistment system is just as permissible as the 1792 choice to have the members of the militia arm themselves.

Id. at 4754.
13. See further discussion of this issue at notes 87-91 infra & accompanying text.
14. Furthermore, such a task would be nearly impossible given the timeframe set for LRB to respond to the Legislature.
15. See e.g., Marbury v. Madison, 5 U.S. (1 Cranch) 137, 177 (1803); United States v. Nixon, 418 U.S. 683,



703 (1974). Under the settled principle of judicial supremacy, "[i]t is within the especial province and duty of the courts and the courts alone, to say what the law is, and to determine whether a statute or ordinance is constitutional ...." 16 *American Jurisprudence* 2d "Constitutional Law" §§150 & 308 (1979) (citations omitted). The principle is so firmly established as to make superfluous any extended citation of authority; however, for representative decisions on point, see cases cited at *id.* §150 n. 34.

16. For example, one author concludes that:

[M]ost state court decisions have followed the leadership of the Supreme Court in holding that the amendment is applicable to the federal government only, that the right to keep and bear arms is not an absolute right, and that the intention of the Second Amendment was to assure a collective, not an individual, right to keep and bear arms.

Kruschke, *supra* note 3, at 155.

17. Some pre-civil war and early post-civil war state cases construing a state constitutional right to arms provision recognized a qualified individual right to possess some type of arms. See e.g., Kates, "Handgun Prohibition," *supra* note 2, at 244 n. 170. The author points out that a few of the cases recognizing an individual right were based on the Second Amendment as well as the applicable state constitutional provision, but he acknowledges that the courts in these cases limited the right to include only militia type arms and to extend only to carrying arms openly, not concealed. *Id.* at 245 & nn. 174-175. Moreover, another commentator notes that, after the Supreme Court rejected the individual right contention and also declined to apply the Second Amendment to the states through the Fourteenth Amendment, a majority of these courts later held that the Second Amendment did not create an individual right to bear arms. Beschle, *supra* note 3, at 77 & nn. 45-46.

18. Beschle, *supra* note 3, at 72.

19. See e.g., *Bush v. Orleans Parish School Board*, 188 F. Supp. 916 (E.D. La. 1960), *aff'd*, 365 U.S. 569 (1961) (per curiam opinion); 16 *American Jurisprudence* 2d "Constitutional Law" §154 ("The ultimate decision in cases involving the federal Constitution rests with the United States Supreme Court").

20. Prior to the passage of the Fourteenth Amendment, it was well settled that the federal Bill of Rights, including the Second Amendment, was not applicable to the states. Further elaboration on this point may be instructive:

[Because] the Constitution of the United States only takes from the states, for federal exercise, enumerated express powers and those necessarily implied, and moreover, since the states are left with all powers of sovereignty whose exercise is not expressly forbidden, the limitations that the Constitution of the United States imposes upon the powers of government are upon the Federal Government only, except where the states are expressly mentioned. In the application of this doctrine specifically to the guaranties contained in the Federal Bill of Rights, it has been held since the early days of our constitutional history that the first ten amendments or, as some of the authorities more accurately put it, the first eight amendments, forbid the abridgment only by acts of Congress or the United States Government, its agencies and departments, of the rights

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therein guaranteed, and do not apply to acts of the states, or private person.

16A American Jurisprudence 2d "Constitutional Law" §450 (1979) (footnotes omitted). Since there existed no federal firearms legislation until passage of the Federal Firearms Act in 1934, the Second Amendment rarely was litigated. However, a few cases were brought challenging state legislation under state guarantees of the right to keep and bear arms. Beschle, supra note 3, at 72. See also the discussion of the incorporation of parts of the Bill of Rights into the Fourteenth Amendment at notes 66-67 and accompanying text.

21. 92 U.S. 542 (1876)
22. The indictment contained thirty-two counts, many of them repetitive, and only two of which related to the right to bear arms. Beschle, supra note 3, at 72 n. 13.
23. 92 U.S. at 553.
24. 116 U.S. 252 (1886).
25. The indictment charged, in substance, that Presser:  
[D]id unlawfully belong to, and did parade and drill in the city of Chicago with an unauthorized body of men with arms, who had associated themselves together as a military company and organization, without having a license from the Governor, and not being a part of, or belonging to, 'the regular organized volunteer militia' of the State of Illinois, or the troops of the United States.  
Id. at 254.
26. The majority of the Court's opinion dealt with the defendant's argument that the state law under which he was convicted was unconstitutional either because it conflicted with federal law or because it impermissibly intruded upon the federal interest in having all citizens armed and well-trained for possible military service. Id. at 260-269.
27. "[A] conclusive answer...lies in the fact that the amendment is a limitation only upon the power of Congress and the National government, and not upon the States." Id. at 265.
28. 153 U.S. 535 (1894).
29. "[I]t is well settled that the restrictions of [the Second Amendment] operate only upon the Federal power, and have no reference whatever to proceedings in state court." Id. at 538.
30. 307 U.S. 174 (1939).
31. National Firearms Act, ch. 757, 48 Stat. 1236-40 (current version at 26 U.S.C. §§5801-72 (1989 ed.)). Enacted in response to increasing public concern over violence by organized crime, the 1934 Act "curtailed civilian ownership of machine guns, sawed-off shotguns, silencers, and other forms of 'gangster-type' weapons." James Wright, et. al., Under The Gun: Weapons, Crime and Violence In America 245 (1983).

32. 307 U.S. at 178.
33. Id.
34. See e.g., Lund, supra note 2, at 109. The defendants disappeared after the dismissal of their indictment and, consequently, never briefed their side of the argument.
35. See id. at 109 & n. 15.
36. See e.g., id. at 109. Another commentator points out that "Miller can be read to support some of the most extreme anti-gun control arguments, e.g., that the individual citizen has a right to keep and bear bazookas, rocket launchers, and other armaments that are clearly relevant to modern warfare, including, of course, assault weapons." Furthermore, he suggests that arguments over the constitutionality of a congressional ban on private ownership of handguns or on assault rifles "might turn of the usefulness of such guns in military settings." Levinson, supra note 3, at 654-55.
37. Kates, "Handgun Prohibition," supra note 2, at 248-251; Kruschke, supra note 3, at 44; Lund, supra note 2, at 110. Also see note 9 supra. The commentators appear to rely upon the following language in Miller to support this contention:
- The signification attributed to the term Militia appears from the debates in the Convention, the history and legislation of Colonies and States, and the writings of approved commentators. These show *plainly enough that the Militia comprised all males physically capable of acting in concert for the common defense....* And further, that ordinarily when called for service these men were expected to appear bearing arms supplied by themselves and of the kind in common use at the time.
- 307 U.S. at 179.
38. 131 F.2d 916 (1st Cir. 1942), cert. denied sub nom., Valazques v. United States, 319 U.S. 770 (1943).
39. Id. at 922; accord United States v. Warrin, 530 F.2d 103, 106 (6th Cir. 1976), cert. denied, 426 U.S. 948 (1976). See notes 44-48 infra & accompanying text.
40. 131 F.2d at 922. Accord, United States v. Tot, 131 F.2d 261 (3rd Cir. 1942), rev'd on other grounds, 319 U.S. 463 (1943). In Tot, the court, although citing Miller with approval, upheld the defendant's conviction under the Federal Firearms Act on the broader basis that prohibiting a convicted felon from possessing a firearm is an entirely reasonable regulation and "does not infringe upon the preservation of the well regulated militia protected by the Second Amendment." Id. at 266-267. As one commentator acknowledges, the Second Amendment was *never intended to be* "a blanket endorsement, inasmuch as English and colonial tradition had likewise excluded certain classes from weapons ownership, e.g., lunatics, idiots, infants, and felons." Kruschke, supra note 3, at 11.
41. 131 F.2d at 922.
42. Id.

43. Id. at 923 (footnotes omitted).
44. 530 F.2d 103 (6th Cir. 1976), cert. denied, 426 U.S. 948 (1976).
45. Id. at 106. A similar argument was made in *United States v. Oakes*, 564 F.2d 384, (10th Cir. 1977), cert. denied, 435 U.S. 926 (1978), in which the appellant contended that, even if the Second Amendment is construed to guarantee the right to bear arms only to an organized militia, he came within the scope of the amendment because, under the state constitution, the state militia includes all "able-bodied male citizens between the ages of twenty-one and forty-five years ...." Id. at 387. The appellant also pointed out that he was a member of a militia-type organization, known as "Posse Comitatus," which was registered with the state of Kansas. Id. Concluding that the appellant's prosecution did not violate the Second Amendment, the court stated:
- To apply the amendment so as to guarantee appellant's right to keep an unregistered firearm which has not been shown to have any connection to the militia, merely because he is technically a member of the Kansas militia, would be unjustified in terms of either logic or policy. This lack of justification is even more apparent when applied to appellant's membership in "Posse Comitatus," an apparently nongovernmental organization.
- Id.
46. 530 F.2d at 106.
47. Id.
48. Id. at 105-06.
49. See e.g. *Quilici v. Village of Morton Grove*, 695 F.2d 261 (7th Cir. 1982), cert. denied, 464 U.S. 863 (1983); *United States v. Oakes*, 564 F.2d 384 (10th Cir. 1977), cert. denied, 435 U.S. 926 (1978); *United States v. Warin*, 530 F.2d 103 (6th Cir. 1976), cert. denied, 426 U.S. 948 (1976). As this report was being finalized, it was reported that the United States Supreme Court, on January 14, 1991, refused to hear an appeal from the eleventh circuit court of appeals, which had upheld a 1986 amendment to the Gun Control Act of 1968, flatly banning the possession or transfer of machine guns not lawfully possessed before the law was enacted. The appellant had contended that such a flat ban violates the Second Amendment and that the appeals court had wrongly interpreted the 1986 law. "High court upholds machine guns curb," Honolulu Star-Bulletin (January 14, 1991) at A-12. It should be noted, however, that denial of certiorari is not a decision on the merits of the case; it signifies only that, at the time of the application, there were not four justices who thought the case should be heard at that time. Because the majority of cases coming to the Supreme Court for constitutional review come up on writ of certiorari, the Court has considerable power to determine which issues it will hear. Applications for certiorari may be denied by the Court for any number of, often "unspoken," reasons, including but not limited to: when the case involves no more than its particular facts; when the issue is not of sufficient significance; when the court below was not clearly in error; when the issues and pleadings below have not been satisfactory to the Supreme Court; and when the Court deems that the time is not yet right for judicial resolution of the controversy. 16 American Jurisprudence 2d "Constitutional Law" §154 (1979) (citations omitted).

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50. See Beschle, supra note 3, at 74.
51. See e.g., United States v. Nelsen, 859 F.2d 1318, 1320 (8th Cir. 1988); United States v. Oakes, 564 F.2d 384, 387 (10th Cir. 1977), cert. denied, 435 U.S. 926 (1978); United States v. Warin, 530 F.2d 103, 106 (6th Cir. 1976), cert. denied, 426 U.S. 948 (1976); United States v. Swinton, 521 F.2d 1255, 1259 (10th Cir. 1975); United States v. Johnson, 497 F.2d 548, 550 (4th Cir. 1974); United States v. Lauchli, 444 F.2d 1037, 1041 (7th Cir. 1971); Stevens v. United States, 440 F.2d 144, 149 (6th Cir. 1971); United States v. Synnes, 438 F.2d 764, 772 (8th Cir. 1971), vacated on other grounds, 404 U.S. 1009 (1972); United States v. Tot, 131 F.2d 261, 266 (3rd Cir. 1942), rev'd on other grounds, 319 U.S. 463 (1943); Cases v. United States, 131 F.2d 916, 921-22 (1st Cir. 1942), cert. denied sub nom., Valazquez v. United States, 319 U.S. 770 (1943); United States v. Kozenski, 518 F. Supp. 1082, 1090 (D.N.H. 1981), aff'd mem., 740 F.2d 952 (1st Cir. 1984), cert. denied, 469 U.S. 842 (1984); United States v. Wiley, 309 F. Supp. 141, 144-45 (D. Minn. 1970).
52. See e.g., Galvan v. Superior Court of San Francisco, 70 Cal. 2d 851, 76 Cal. Rptr. 642, 452 P.2d 930 (1969); Ex parte Rameriz, 193 Cal. 633, 226 P. 914 (1924); Strickland v. State, 137 Ga. 1, 72 S.E. 260 (1971); Onderdonk v. Handgun Permit Review Bd. of Dep't of Pub. Safety & Correctional Services, 407 A2d 763 (Md. App. 1979); Commonwealth v. Davis, 343 N.E.2d 847 (Mass. 1976); People v. Brown, 253 Mich. 537, 235 N.W. 245 (1931); In Re Atkinson, 291 N.W.2d 396 (Minn. 1980); State v. Keet, 269 Mo. 206, 190 S.W. 573 (1945); Harris v. State, 83 Nev. 404, 432 P.2d 929 (1967); Burton v. Sills, 53 N.J. 86, 248 A2d 521 (1968), appealed dismissed, 394 U.S. 812 (1969); State v. Sanne, 116 N.H. 583, 364 A.2d 630 (1976).
53. 440 F.2d 144 (6th Cir. 1971).
54. Id. at 149 (emphasis added).
55. 497 F.2d 548 (4th Cir. 1974).
56. Id. at 550 (citations omitted) (emphasis added).
57. 859 F.2d 1318 (8th Cir. 1988).
58. Id. at 1320 (emphasis added).
59. 131 F.2d 261 (3rd Cir. 1942), rev'd on other grounds, 319 U.S. 463 (1943).
60. Id. at 266 (citations omitted) (emphasis added).
61. An ordinance similar to the one adopted by the Village of Morton Grove (see notes 64-83 infra) also was passed in San Francisco City, but was held void on the grounds that it conflicted with legislation enacted by the State of California and that it concerned an area expressly preempted by state legislation. See *Doe v. City & County of San Francisco*, 186 Cal. Rptr. 380 (Cal. App., 1982).
62. 695 F.2d 261 (7th Cir. 1982), cert. denied, 104 S. Ct. 194 (1983).

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63. See Village of Morton Grove Ordinance No. 81-11 cited in 695 F.2d at 263 n.1.
64. 532 F.Supp. 1169 (N.D. Ill. 1981), aff'd 695 F.2d 261 (7th Cir. 1982), cert. denied, 104 S. Ct. 194 (1983).
65. 695 F.2d at 269 (citations omitted) (emphasis added).
66. Id. at 269-270. A number of pro-gun advocates also have put forth the Fourteenth Amendment incorporation argument. They contend that the argument for Fourteenth Amendment incorporation of the Second Amendment is considerably stronger than that for any other provision of the Bill of Rights because the legislative history of the Fourteenth Amendment and the Civil Rights Acts show a specific congressional intent to overturn the Black Codes of the antebellum South that forbade blacks to own or bear firearms, thus rendering them defenseless against assaults. Given this, they argue that the right to keep and bear arms clearly "was meant to be and should be protected under the civil rights statutes and the Fourteenth Amendment against infringement by officials acting under color of state law." Kruschke, supra note 3, at 43; Kates, Liberal, supra note 3, at 180-81; Lund, supra note 2, at 112-13 & n. 25. Over the years, some justices of the Supreme Court also have taken the view that the Fourteenth Amendment makes the entire Bill of Rights applicable to the states, (see cases cited at 16A American Jurisprudence 2d, "Constitutional Law" §453 n. 21), but a majority of the Court has never adopted this view and, in fact, has specifically rejected it. See Malloy v. Hogan, 378 U.S. 1 (1963). Instead, the doctrine of "selective incorporation" has evolved under which "the Fourteenth Amendment incorporates specific provisions of the Bill of Rights ..., providing protections against the states exactly congruent with those against the federal government." 16A American Jurisprudence 2d, "Constitutional Law" §453 (footnotes omitted). Among those guarantees in the federal Bill of Rights that have been held to be fundamental rights protected by the Fourteenth Amendment against infringement by the states are the First Amendment freedoms of speech, press, religion, assembly, and association, and the right to petition the government and the Fourth Amendment protection against unreasonable searches and seizures and requisites as to search warrants. In contrast, the Second Amendment's guarantee of the right to keep and bear arms has been held not applicable to the states. Id. at §454 (footnotes omitted).
67. 695 F.2d at 270 (citations omitted) (emphasis added).
68. See id.
69. Id. (citations omitted).
70. Id. (citations omitted) (emphasis added).
71. Id. at 271.
72. Id.
73. 532 F.Supp. at 1183.
74. 695 F.2d at 271.

75. 532 F.Supp. at 1183 (citations omitted).
76. 381 U.S. 479, 486-99 (1965).
77. 532 F.Supp. at 1183 (citations omitted).
78. 695 F.2 at 271.
79. The appellants failed to raise these arguments before the court of appeals. *Id.* at 271 n. 10.
80. Several commentators, citing *Haynes v. United States*, 390 U.S. 85 (1968), have warned that any law requiring admission of unlawful possession of a firearm would violate a person's Fifth Amendment privilege against self-incrimination. See e.g., Kruschke, *supra* note 3, at 148. Commentators also have charged that the Fifth Amendment's guarantee against the government's taking of private property without just compensation effectively would preclude a firearms ban that required the giving up of firearms lawfully possessed prior to the effective date of the ban. *Id.* at 148-49. *But cf.* *Miller v. Schoene*, 276 U.S. 272 (1928) (no duty to compensate if one class of property is destroyed rather than taken for public use). See also *Freedman*, *supra* note 3, at 9-10 in which the author notes that the federal government has been upheld in not paying compensation in a number of instances including but not limited to: (1) liquor prohibition cases when the government's action represented an exercise of the valid police power; (2) the destruction of oil reserve facilities (although the government did compensate for the oil destroyed) to prevent their falling into enemy hands during World War II; and (3) the destruction of a noxious use under the government's power to abate a nuisance. The author concludes that several theories exist under which a state or the federal government could declare all firearms to be an evil to be avoided for the benefit of the public and not be required to compensated the firearm owners. *Id.* at 10. *Accord*, Note, "The Public Use Test: Would a Ban on the Possession of Firearms Require Just Compensation?" 49 *Law and Contemporary Problems* 223-249 (Winter 1986) (concludes a federal or state ban would not trigger Fifth Amendment compensation requirement).
81. 532 F.Supp. at 1183.
82. *Id.* at 1183-84 (citations omitted).
83. *Id.* at 1184.
84. No. CV F-90-097 EDP (E.D. Cal., filed Sept. 6, 1990) [hereinafter cited as *Fresno Rifle and Pistol Club*].
85. Cal. Penal Code §§12275-12290 (Deering).
86. *Fresno Rifle and Pistol Club*, *supra* note 84, at 4.
87. Several commentators have argued strenuously that because interpreting the phrase "the people" in the Second Amendment as conferring a collective, rather than an individual, right conflicts with judicial interpretations of similar phrases in other amendments, such interpretation must be wrong, and an individual right must have been intended. For example, one commentator asserts that "given the fact that

the amendment is part of the Bill of Rights, and that the first, fourth, ninth, and tenth amendments have been construed to refer to individuals rather than to a collectivity, it would seem bizarre to assume that they did not have individuals in mind when they wrote the second.” Kruschke, supra note 3, at 11. Accord, Kates, Liberal, supra note 3, at 173; Lund, supra note 2, at 107. The commentators also point out that the reference both to “the States” and to “the people” in the Tenth Amendment indicates the framers view the two as different entities. Id.

88. 110 S. Ct. 1056 (1883).
89. Fresno Rifle and Pistol Club, supra note 84, at 7.
90. Id. at 7 & n. 3.
91. Id. at 8.
92. Id. at 9.
93. Id. at 10.
94. Id. at 13.
95. According to a 1982 law review article, the constitutions of thirty-nine states contain some provision concerning a right to bear arms. See Dowlut, supra note 3, at 177 n. 1. These provisions appear in Appendix B. Another author contends that only thirty-seven states have constitutional provisions modeled after the Second Amendment and they “[run] the gamut of the argument as to individual versus collective right. He maintains that fifteen states adhere to the individual right theory in contrast to twenty-two states, including Hawaii, that hold to the collective right theory. Freedman, supra note 3, at 28-29.
96. See Alaska Const. art. I, §19; Hawaii Const. art I, §15; N.C. Const. art. I, §30; S.C. Const. art. I, §20; and Va. Const. art. I, §13.
97. Ala. Const., art. I, §26.
98. Mo. Const., art. II, §12. This right is not absolute, however, as the remainder of the provision provides: “but this shall not justify the wearing of concealed weapons.” Id.
99. See, e.g., In re Brickley, 8 Idaho 597, 70 P. 609 (1902); Bliss v. Commonwealth, 12 Ky. (2 Litt.) 90 (1822); People v. Zerillo, 219 Mich. 635, 189 N.W. 927 (1922); Las Vegas v. Moberg, 82 N.M. 626 (1971); State v. Kerner, 181 N.C. 574, 107 S.E. 222 (1921).
100. See e.g., Biffer v. Chicago, 278 Ill. 562, 116 N.E. 182 (1917); People v. Brown, 253 Mich. 537, 235 N.W. 245 (1931); Burton v. Sills, 53 N.J. 86, 248 A2d 521 (1968). See also 79 American Jurisprudence 2d, Weapons and Firearms §§4 & 5 (1979).



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101. Hawaii Const. art. I, sec. 17.
102. There is, however, a slight difference in punctuation and the use of capitals.
103. Hilary Josephs, et. al. Article I: Bill of Rights, Hawaii Constitutional Convention Studies (Honolulu: University of Hawaii, LRB, 1968), at 3.

## **Chapter 3**

### **FIREARMS BANS: ARE THEY EFFECTIVE?**

The Bureau was directed by S.C.R. No. 227, S.D. 1, to examine the experiences of other states and countries that have firearms bans to ascertain the effectiveness of such bans in reducing violent crimes and accidental shootings. The Resolution also called for a summary of any existing empirical evidence of the effectiveness on reducing crime of banning only a certain category of firearms or enacting lesser restrictive gun control measures. A summary of empirical evidence on the effectiveness of gun control measures less restrictive than a ban is presented in Chapter 6. The remaining issues are discussed below.

#### **Part I. State and Local Laws**

It is frequently estimated that there are over 20,000 state and local gun control laws in effect.<sup>1</sup> State and local firearm laws generally fall into the following categories:

- (1) Dealer controls and record keeping requirements;
- (2) Licensing and registration aimed at prohibiting certain individuals from purchasing or possessing particular firearms;
- (3) Acquisition and transfer by private citizens;
- (4) Carrying restrictions;
- (5) Prohibition of certain types of firearms or ammunition;
- (6) Criminal penalties for using or possessing firearms.

(See Appendix C which details certain elements of state gun control laws.)

The majority of state and local gun control laws attempt to restrict the place and manner of firearm use.<sup>2</sup> Only a relatively few laws actually prohibit firearms; and those that do so impose the prohibition only upon certain types of firearms. For example, most states prohibit the sale and possession of machine guns and sawed-off rifles and shotguns. A number of states also ban the sale and possession of silencers and metal piercing or "cop killer" bullets.

In addition to these laws, the only other statewide firearm bans of which the Bureau is aware are: California's and New Jersey's bans on assault weapons; Maryland's prohibition on cheap, inferior handguns; and Minnesota's prohibition on the sale and manufacturing of "saturday night special" pistols.<sup>3</sup> A summary of these laws is presented below. On a local level, a number of counties have banned assault weapons (these appear in Appendix D), and a few cities or counties have banned handguns.<sup>4</sup>

## California

California became the first state to prohibit, effective January 1, 1990, the private sale or transfer of assault weapons to anyone other than a licensed gun dealer. (A copy of the California law is attached as Appendix E.) Specifically included within the definition of assault weapon are thirty-three brand name models of semi-automatic rifles, pistols, and shotguns.<sup>5</sup> In enacting the Roberti-Roos Assault Weapons Control Act of 1989, the California legislature specifically found that each prohibited assault weapon has such a "high rate of fire and capacity for firepower that its function as a legitimate sports or recreational firearm is substantially outweighed by the danger that it can be used to kill and injure human beings."<sup>6</sup> *At the same time, the legislature noted that it was not its intent to place restrictions on the use of weapons that are designed and intended primarily for hunting, target practice, or other legitimate sports or recreational activities.*<sup>7</sup>

Under the new law, it is a felony, punishable by up to eight years imprisonment, for anyone in the state to manufacture or cause to be manufactured, keep, offer, expose for sale, give, or lend any assault weapon except as allowed by law.<sup>8</sup> It also is a felony, punishable by imprisonment for up to one year, for anyone to possess an assault weapon in California, except as provided by law.<sup>9</sup> The law permits any person who was in lawful possession of an assault weapon prior to June 1, 1989, to keep the weapon if it is registered by January 1, 1991, but imposes restrictions on such possession unless a permit allowing additional uses is obtained.<sup>10</sup> Any person who obtained any assault weapon between June 1, 1989 and January 1, 1990 and wished to keep the weapon or any person who wished to obtain an assault weapon after January 1, 1990 must obtain a permit from the department of justice.<sup>11</sup> Thus California's law technically imposes a freeze on assault weapons, not a true ban. The restrictions do not apply to the department of justice, department of corrections, state highway patrol, state police, district attorney's offices, police departments, sheriffs' offices, and state or national military forces when sworn members of these agencies are on duty and they are acting within the scope of their duties.

After the passage of the Roberti-Roos Assault Weapons Control Act, pro-gun forces filed suit in federal court seeking declaratory relief concerning the Act's validity and an injunction to bar its enforcement. In response, the Attorney General of California filed a motion to dismiss the complaint. On September 6, 1990, the United States District Court for

the Eastern District of California upheld the California law and granted the State's motion to dismiss.<sup>12</sup>

### **New Jersey**

On May 17, 1990, the New Jersey legislature passed a law restricting the ownership of a wide range of assault firearms. (A copy of the New Jersey law is attached as Appendix F.) Manufacturing, transporting, shipping, selling, or disposing of an assault firearm without being registered or licensed also is prohibited.<sup>13</sup> The New Jersey law, like the California law, defines assault firearms by specific brand name models.<sup>14</sup>

New Jersey's law has been touted as the nation's toughest law on assault weapons.<sup>15</sup> Any person desiring to purchase, possess, or carry an assault firearm may file an application for a license with the superior court, stating in detail the reasons the person desires such a license.<sup>16</sup> No license shall be issued to any person who would not lawfully qualify for a permit to carry a handgun, and no license shall be issued unless the court finds that the public safety and welfare so require.<sup>17</sup>

The attorney general is required to determine and promulgate a list by trade name of any assault firearm that is used legitimately for target-shooting purposes. Any owner of an assault firearm purchased on or before May 1, 1990, that is on this list has one year in which to register the firearm with the police. To register the assault firearm, the owner must:

- (1) Complete an assault firearm registration statement;
- (2) Pay a registration fee of \$50 per firearm;
- (3) Produce for inspection either a valid firearms purchaser identification card, a valid permit to carry handguns, or a copy of the permit to purchase a handgun that was used to purchase the assault firearm; and
- (4) Submit valid proof that the person is a member of a rifle or pistol club in existence prior to the effective date of the law.<sup>18</sup>

Any person in lawful possession of an assault firearm who chooses not to register the firearm as provided above has one year from the law's effective date in which to either transfer the firearm to any person or firm lawfully entitled to own or possess such firearm, render the firearm inoperable, or voluntarily surrender the firearm.<sup>19</sup>

If any assault firearm licensed or registered as provided above is used in the commission of a crime, the holder of the license or registration shall be civilly liable for any

resulting damages, unless the firearm was stolen and the licensee or registrant reported the theft to law enforcement authorities within twenty-four hours of discovery of the theft. The law also prohibits possession of large capacity ammunition magazines, except when used in connection with participation in competitive shooting matches, and increases penalties for crimes committed with assault firearms.

## **Maryland**

Maryland passed a law, effective July 1, 1988, aimed at outlawing the sale and manufacture of inferior and inaccurate handguns. (A copy of the Maryland law is attached as Appendix G.) The Maryland legislature, in enacting the law, specifically stated that such handguns have "no legitimate socially useful purpose and are not suitable for law enforcement, self-protection, or sporting activities."<sup>20</sup>

The law establishes a nine-member Handgun Roster Board<sup>21</sup> to determine by 1990 which handguns have a legitimate purpose and therefore should be included on a handgun roster. After January 1, 1990, in Maryland, any person who manufactures for distribution or sale any handgun not included on the handgun roster shall be guilty of a misdemeanor and fined not more than \$10,000 for each violation; and any person who sells or offers for sale a handgun manufactured after January 1, 1985, that is not on the handgun roster shall be guilty of a misdemeanor and shall be fined not more than \$2,500 for each violation.<sup>22</sup>

The board was to publish the initial roster by July 1, 1989, and must republish it with any changes twice a year. In determining which handguns to include on the roster and which to prohibit, the board was to consider the weapon's:

- (1) Concealability;
- (2) Ballistic accuracy;
- (3) Weight;
- (4) Quality of materials and of manufacturing;
- (5) Safety reliability;
- (6) Caliber;
- (7) Detectability by standard security equipment at airports and courthouses; and

- (8) Utility for legitimate sporting activities, self-protection, or law enforcement.<sup>23</sup>

The board may place a handgun on the roster upon its own initiative. The law also contains provisions allowing an individual to petition the board to place a handgun on the roster.<sup>24</sup>

Efforts by pro-gun forces to overturn the Maryland law failed when the Maryland voters approved the law 58 percent to 42 percent, by referendum, during the November 1988 election.

## Minnesota

Minnesota law makes it a gross misdemeanor for any federally licensed firearms dealer to sell a saturday night special pistol or to manufacture or assemble a saturday night special pistol.<sup>25</sup> The term "saturday night special pistol" is defined as:

[A] pistol other than an antique firearm or a pistol for which the propelling force is carbon dioxide, air or other vapor, or children's pop guns or toys, having a frame, barrel, cylinder, slide or breechblock:

- (a) of any material having a melting point (liquidus) of less than 1,000 degrees Fahrenheit, or
- (b) of any material having an ultimate tensile strength of less than 55,000 pounds per square inch, or
- (c) of any powdered metal having a density of less than 7.5 grams per cubic centimeter.<sup>26</sup>

## Conclusion

The foregoing laws are of too recent an origin to permit any empirical evaluation of their effectiveness in reducing crime or accidental shootings.

## Part II. International Comparisons

Most technologically advanced nations have far stricter gun control laws than the United States and less violent crime.<sup>27</sup> In some of these countries, the laws regulating individual firearm ownership amount to a virtual ban. Accordingly, many gun control advocates attempt to demonstrate the effectiveness of restricting private gun ownership by comparing the gun control laws and crime rates in the United States with those of other industrialized countries.<sup>28</sup>

The statistics are shocking indeed. Handgun Control Inc. reports that in 1985,<sup>29</sup> handguns were used to murder:

46 people in Japan,  
8 people in Great Britain,  
31 people in Switzerland,  
5 people in Canada,  
18 people in Israel,  
5 people in Australia, and  
8,092 people in the United States.<sup>30</sup>

Similarly, a 1988 United States Department of Justice comparison of crime rates revealed the United States's violent crime rate is at least several times higher than other countries. For example, murder, rape, and robbery occurred four to nine times more frequently in the United States than in European countries.<sup>31</sup> Easy access to handguns was cited as a major reason for the higher crime rate in the United States.<sup>32</sup>

A recent article in the New England Journal of Medicine would appear to support this conclusion.<sup>33</sup> In the article, a group of physicians reported statistics they had gathered comparing crime rates and handgun registrations in Seattle and Vancouver, which have similar geography and socio-economic conditions but significantly different firearm laws. Seattle's firearm restrictions are fairly loose; whereas in Vancouver, carrying concealed weapons is forbidden, buying a handgun requires a restricted weapons permit, and buying a long gun requires a firearm-acquisition certificate.

The doctors calculated the homicide rates per 100,000 residents and found that the rates for non-firearm homicides were nearly identical between the two cities, but that handguns were 4.8 times more likely to be used in homicides in Seattle than in Vancouver.<sup>34</sup> Similar findings are reported for aggravated assaults: Vancouver had slightly more non-firearm aggravated assaults than Seattle, but Seattle had 87.9 aggravated assaults involving the use of firearms per 100,000 residents compared to Vancouver's 11.4.<sup>35</sup> The doctors suggested that the lower homicide rate in Vancouver was attributable to restricted access to handguns.

As is frequently pointed out, however, comparisons of United States crime rates with those of other countries fail to take into consideration the vast historical, social, legal, and cultural factors that contribute to the differences in crime rates.<sup>36</sup> For example, in an article examining Japanese gun laws and crime rates, one commentator asserts that:

[G]un control has little, if anything, to do with Japan's low crime rates. Japan's lack of crime is more the result of the very extensive powers of the Japanese police and the distinctive relation of the Japanese citizenry to authority....

....

Partly because the Japanese are so unified and homogenous, they accept and internalize social controls. It is this attitude of obedience and impulse control that matters most in the low Japanese crime rate. Guns or not, the Japanese are simply the world's most law-abiding people.<sup>37</sup>

Besides the police and the military in Japan, only hunters are allowed to possess guns, and that possession is strictly limited. Hunters must store their rifles or shotguns in a locker when not hunting. Civilians are forbidden to possess handguns, and even the possession of a starter's pistol is allowed only under certain detailed conditions.<sup>38</sup>

After discussing the history of Japanese civilian firearm ownership and the disarmament of Japan following World War II, the commentator concludes that:

The contrast between the individualist American and the communal Japanese ethos is manifested in everything from behavior at sporting events to industrial labor organization. As a result, pressure to conform, and internalized willingness to do so are much stronger in Japan than in America. This spirit of conformity provides the best explanation for Japan's low crime rate. It also explains why the Japanese people accept gun control.<sup>39</sup>

A comparison of firearms and crime between the Netherlands and the United States resulted in a similar conclusion.<sup>40</sup> The authors of the study found that:

- (1) Americans possess 300 guns per 1,000 people versus 9 guns per 1,000 people in the Netherlands:



- (2) Laws restricting gun ownership are much more stringent in the Netherlands than in the United States;<sup>41</sup>
- (3) Police in the Netherlands are very concerned with enforcing firearm laws, seizing about 34 guns per 100,000 people annually compared to an estimated 2 guns seized by the federal government per 100,000 people in the United States, plus another 1 or 2 guns per 100,000 people in each state; and
- (4) Crime rates are higher and guns are used more often in crimes in the United States than in the Netherlands - in 67 percent versus 37 percent of the murders and in 45 percent versus 18 percent of the robberies.<sup>42</sup>

The authors note that, because their comparison is correlational, it does not permit any cause and effect conclusion to be drawn. Nevertheless, they suggest that the data support the argument that death and serious injury are less likely to occur if criminals are prevented from using guns.<sup>43</sup> However, they also acknowledge that cultural values significantly affect these conclusions:

In the Netherlands, none of the violent robberies we studied resulted in the death of the victim, and the criminal use of firearms brings no greater risk of death (or serious injury) to the victim than the use of another weapon. In the USA, the picture is very different; firearm injuries result in death three to four times more often than blade-weapon injuries (Block, 1977). It would appear that the attitudes and motives of criminals are different in the two cultures. Robbers in the Netherlands, though they may carry guns, are not motivated to kill (or seriously injure) their victims, whereas robbers in the USA may be so motivated. Newman (1974) has discussed the need to hurt and the need to control in American violent offenders, needs which often lead to serious injury for the victims. Such needs may well be weaker in offenders in the Netherlands.

These cultural attitudes may be the crucial factor in national differences in the possession and use of firearms. Americans possess guns in large quantities and clearly desire to do so. American criminals carry guns and are prepared to use them in the commission of their crime. Those in the Netherlands do not need to own guns; and even when they do carry guns, are less likely to use them to produce serious injury.<sup>44</sup>

Crime rate comparisons with England,<sup>45</sup> where firearms are strictly regulated, also are criticized. Critics point out that both the rates of firearm ownership and of violent crime were extremely low in England for decades before strict gun-control laws were passed and also that these laws have not prevented a sharp increase in gun crime in England in the past decade.<sup>46</sup>

A recent examination of the effect of 1977 Canadian legislation strictly regulating the acquisition of firearms on violent crimes, suicides, and accidental deaths found that the stock of firearms in general and handguns in particular has actually grown since the law's implementation.<sup>47</sup> After reviewing the trends in Canada over the past ten years for various types of violent crime, suicide, and accidental death relative to the United States, the author concludes that the 1977 legislation has had few perceptible effects.<sup>48</sup>

Pro-gun advocates frequently point to Switzerland, where high-powered guns are readily available, to support their contention that guns do not cause an increase in crime rates.<sup>49</sup> Switzerland has a murder rate which is a fraction of that of the United States and which is less than that of Canada's or England's, where guns are strictly controlled, or Japan's where guns are virtually prohibited.<sup>50</sup>

For centuries, Switzerland has maintained a policy of armed neutrality with a well-armed citizenry. Today, military service is universal for all Swiss males. After an initial training period, conscripts are required to keep their guns, ammunition, and equipment in their homes until the end of their term of service. Enlisted men are issued M57 automatic assault rifles and officers are given pistols. Each man is given a bolt rifle after being discharged from the service.<sup>51</sup>

In addition, the army sells a variety of machine guns, submachine guns, anti-tank weapons, anti-aircraft guns, howitzers, and cannons to purchasers who have an easily obtained cantonal (roughly equivalent to a state) license. These weapons are required to be registered. Other firearms also are easily obtained. The purchase of long guns requires no special permit or procedure. Handguns are sold to those with a purchase certificate, which can be obtained from a cantonal authority by any applicant over eighteen who is not a criminal or mentally infirm.<sup>52</sup>

After reviewing Switzerland's stable, integrated community structures and the many factors that contribute to the inter-generational harmony that exists in Switzerland to inhibit age separation, alienation, and growth of a separate youth culture, the authors of one article conclude that:

Guns in themselves are not a cause of crime; if they were, everyone in Switzerland would long ago have been shot in a domestic quarrel.

Cultural conditions, not gun laws, are the most important factors in a nation's crime rate. Young adults in Washington D.C. are subject to strict gun control, but no social control, and they commit a staggering amount of armed crime. Young adults in Zurich are subject to minimal gun control, but strict social control, and they commit almost no crime.<sup>53</sup>

## Conclusion

One of the foremost researchers in the area of gun control sums up the inconclusive nature of these international comparisons as follows:

It does not take advance training in research methods to see that in the absence of more detailed analyses, such comparisons are vacuous. Any two nations will differ along many dimensions--history, culture, social structure, and legal precedent, to name a few--and any of these differences (no less than the difference in gun laws or in the number of guns available) might well account for the difference in violent crime rates. Without some examination of these potentially relevant factors, attributing the crime difference to the gun-law or gun-availability difference begs the question.<sup>54</sup>

Phrased differently, in the absence of controlling for the historical, legal, social, and cultural differences in these international comparisons, any inference that crime rate differences are attributable to differences in firearm availability is gratuitous.<sup>55</sup>

### **Part III. Evidence of the Effectiveness of Banning Certain Categories of Firearms**

This section, to the extent possible, will provide information on the effectiveness of banning certain categories of firearms. Because the request to review empirical evidence that proves the "effectiveness" of banning "certain categories" of firearms is extremely vague and nebulous, several assumptions must be made to develop a manageable focus to provide beneficial information to the Legislature. Perhaps the most difficult aspect of the task is to interpret the meaning of the terms "certain categories" and "effectiveness."

Indeed, there are many categories of firearms. Most categories of firearms are regulated, to some degree, by the federal government and other jurisdictions throughout the United States. Federal laws regulating categories of weapons such as "machine guns,"

"sawed-off shot guns," and "plastic weapons" apply equally to all the states. Additionally, although it cannot be stated that Hawaii's laws are the most comprehensive in the nation, the scope of the State's firearms law is fairly broad. In view of the existing time constraints, focusing on categories of weapons already regulated to a significant degree under the State's existing law would not be particularly beneficial.

Accordingly, primary attention has been focused instead on those weapons that are not presently regulated in Hawaii as stringently as they are in some other states. Because assault weapons have been the principal focus of state laws and public attention in recent years, this section will place an emphasis on reviewing any available evidence of the performance, thus far, of programs that have stricter assault weapons requirements than Hawaii.

### **California's Assault Weapons Ban**

As noted previously, because assault weapons bans have been in effect such a short period of time, any empirical evaluation of effectiveness will have to await the collection of sufficient data. Thus, while it is premature at this juncture to develop any definite conclusions as to the impact of the assault weapons bans in states such as New Jersey and California, the California program, which has been in existence a little longer than New Jersey's, may offer insights into the potential obstacles such programs may face. The following discussion was compiled from conversations with the California Bureau of Firearms in December 1990 and on January 4, 1991.

The Roberti-Roos Assault Weapons Control Act of 1989, which took effect on January 1, 1990, recently confronted its first major hurdle. The Roberti-Roos Act requires any individual who lawfully owned or possessed one or more of the types of weapons identified in the law as assault weapons prior to June 1, 1989 to register the firearm with the California Department of Justice by January 1, 1991. The law further provided that any person wishing to own or purchase any weapon identified as an assault weapon under the law after the June 1, 1989 date, would need to obtain a permit from the State prior to assuming ownership of the weapon.

According to the chief of the California Bureau of Firearms, a flat registration charge of \$20 per person--regardless of the number of weapons the person may submit for registration--was established to offset the cost of processing each registrant's application and to make the assault weapon registration process, in effect, self-sustaining. According to the Bureau chief, the task would entail the registration of some 300,000 assault weapons in California--an estimate that even the National Rifle Association (NRA) calls conservative. In addition to paying for miscellaneous processing expenses, the fee would also pay for the cost of conducting a criminal history review on the individual. To date, the Bureau of Firearms

estimates that approximately seventy per cent of the applicants have had no criminal history files of significance.

The chief of the California Bureau of Firearms indicated that the initial response to the assault weapons registration requirement was "no response at all." During the first several months of the effective date of the law, the Bureau of Firearms estimated that it processed "several hundred" registrants a week. Given the estimate of 300,000 assault weapons in California, the initial rate of registration was obviously less than satisfactory.

Complicating the Bureau of Firearms's effort to register all the weapons subject to the law's requirement prior to the deadline at the end of the 1990 calendar year was the question cast over the entire law by a suit filed by the NRA which challenged the constitutionality of the California law. According to the Bureau chief, gun owners in California were probably waiting for the issuance of the federal court's determination, prior to making their decisions as to whether they would comply with the registration requirement of the law. With the issuance of the federal court's determination in September of 1990 that the Roberti-Roos Act was indeed constitutional, however, the response of gun owners did not appreciably improve. It was estimated that the level of incoming registration applications rose to about 200 a week. By November of 1990, the Bureau of Firearms estimated that it had processed approximately four to five thousand registrations for the estimated 300,000 assault weapons they would ultimately be required to register.

In December of 1990, however, media coverage and the fast approaching deadline motivated "several thousand" gun owners each week to submit their registration forms to the Bureau of Firearms. According to the Bureau chief, more than 10,000 applications were received by the Bureau of Firearms through the mail during the closing weeks of 1990; and the eleventh hour rush of registration applications it received in the mail up to the deadline, kept the Bureau of Firearms busy opening envelopes night and day well into the first week of the new year. The Bureau chief's best estimate of the total number of assault weapon registration applications that the Bureau of Firearms ultimately will process, after all the envelopes are opened, will range near 20,000. Although the final figure would need to be qualified when accurate data on the number of weapons registered by the Bureau of Firearms are released in the future, this compliance rate of seven percent will surely fall far short of the expectations envisaged by the California Legislature when it initially passed the law.<sup>56</sup>

While the California Bureau of Firearms can only speculate on the reasons for the low rate of compliance, the reluctance of gun owners to abide by the requirements of the law is more than likely an exercise in protest or civil disobedience. The Bureau chief reports that the attitude of many gun owners toward the requirement has been less than understanding--many gun owners have called or written to the Bureau of Firearms to vent their hostility toward the law and the Bureau's employees. Among the principal concerns of California assault weapon owners who fail to comply with the law relates to the offense they would be

## FIREARMS BANS: ARE THEY EFFECTIVE?

guilty of committing as a result. Because this issue was anticipated by the Governor of California, the initial signing of the law was delayed to amend the law to provide that the fine for first-time offenders of the registration requirement would be a minimum of \$350 and a maximum of \$500 and the violation would be classified merely as an "infraction." Upon conviction of a second offense of possessing or owning an unregistered assault weapon, however, the offender may be charged with a misdemeanor or a felony, depending on the circumstances of the arrest. Upon conviction of a felony, the gun owner would be prohibited from owning or possessing any type of firearm.

The effort to compile evidence that is reliable or indisputable is extremely difficult in uncontrolled or non-experimental situations. Data not subject to controlled group situations or pre- and post-intervention analysis are subject to question. Societal trends that affect assumptions, demographic changes, insufficient data, and the lack of reliable records are some of the principal problems in drawing conclusions. The chief of the California Bureau of Firearms attested to this fact as he spoke on the difficulties of developing indisputable conclusions with regard to the effectiveness of the California ban.

According to the Bureau chief, the question as to whether the program will ever be able to determine that it effectively accomplished its mandated duties may never be answered. Obviously, in terms of the registration objective, the more weapons recorded, the better. However, the question as to whether the program will successfully register all or even a majority of the assault weapons in California may never be clear. Due to the lack of records and since no organization, including police departments and sheriffs offices in the State were ever required to monitor the ownership of assault weapons, it will be impossible to establish an exact figure on the percentage of assault weapons ultimately registered by the program.

Likewise, in terms of compiling reliable evidence regarding the effectiveness of the assault weapons ban in California on reducing the use of such weapons in violent crimes, full data to support or develop such a conclusion may never exist or ever become available. The police departments in California have never been required in the past, nor are they required at the present, to keep records of what type of gun was used in a homicide. At times, determining the type of weapon used may even be impossible. In terms of developing empirical evidence on the effectiveness of the California program, the Bureau chief commented that "you will not be able to come up with empirical data, unless your State is the million in one that required records to be kept."

According to the Bureau chief, the question now being asked by the media and the public is "Well, what are you guys going do about this ?" Candidly, he admits that he doesn't know.

## Conclusion

The effectiveness of gun control laws, like any law, cannot be guaranteed. No amount of research will uncover evidence that guarantees a law will succeed. Evidence of the success or failure of one law or program, however, does not necessarily ensure the same fate for a similar program in Hawaii. Studies and evidence exist to support or attack virtually any position taken or argument made on behalf of or against any issue or proposal discussed in this complex and emotion-laden field. The volume of material on the subject is unlimited, and the consensus non-existent.

## ENDNOTES

1. See e.g., Maryland, Department of Legislative Reference, Research Division, Firearms Violence and Gun Control Strategies, Legislative Report Series, Vol. 7, No. 2 (Annapolis: November 1989) at 14; Franklin E. Zimring & Gordon Hawkins, The Citizen's Guide to Gun Control (New York: Macmillan Pub. Co., 1987) at 121 [hereinafter cited as Zimring].
2. As noted by one prominent gun control researcher, such laws deter only a limited amount of gun violence because there are limits to the police ability to discover persons who violate these laws. Zimring, supra note 1, at 113.
3. Some commentators have characterized Washington D.C. (See D.C. Code Ann. §6-2301 et. seq.) and New York City (See New York City Admin. Code §10-131 et. seq.) as having virtual firearm bans because of their restrictive registration and licensing laws. See e.g., National Rifle Association, Institute for Legislative Action, Gun Law Failures (Washington, D.C.: 1989) at 1.
4. In addition to Morton Grove, Chicago and East St. Louis prohibit handguns within their city limits. U.S. Department of the Treasury, Bureau of Alcohol, Tobacco & Firearms, State Laws and Published Ordinances - Firearms 19th ed. (Washington, D.C.: U.S. Government Printing Office, 1990) at 37 n. 2; University of Hawaii, Social Science Research Institute, Center for Youth Research, Gun Control: A Youth Issue (Honolulu: 1990) at 22 [hereinafter cited as Gun Control: A Youth Issue].
5. The definition of "assault weapon" is found at Cal. Penal Code §12276 (Deering). Also included are any other models by the same manufacturers that are identical to the listed firearms except for slight modifications or enhancements and any other firearms that have been redesigned from, renamed, renumbered, or patterned after one of the listed or modified weapons regardless of the manufacturer, distributor, or country of origin; and any firearm manufactured or sold by another company under a licensing agreement to manufacture or sell an identical or nearly identical weapon to one that is so listed or described. Id. at §12276.5.
6. Id. at §12275.5.

FIREARMS BANS: ARE THEY EFFECTIVE?

7. Id.
8. Id. at §12280(a).
9. Id. at §12280(b). However, if a first-time violator lawfully possessed an assault weapon prior to it being illegal and has since either registered it or surrendered it, the person shall be guilty only of an infraction punishable by a fine of up to \$500 but not less than \$350. Id.
10. Id. at §12285.
11. Id. at §12286.
12. For a discussion of the court's ruling in *Fresno Rifle & Pistol Club, Inc. v. Van De Kamp*, see Chapter 2, notes 84-94 & accompanying text.
13. N.J. Rev. Stat. §2C:39-5(f).
14. The term "assault firearm" is defined at id. §2C:39-1(w).
15. See e.g., "New Jersey Votes the Strictest Law in the Nation on Assault Weapons." *New York Times* (May 18, 1990) at A1.
16. N.J. Rev. Stat. at §2C:58-5(a). The court is required to refer the application to the county prosecutor for investigation and recommendation. The prosecutor's report, together with a copy of the notice of hearing on the application, is sent to the superintendent and chief of police of every municipality in which the applicant intends to carry the assault firearm. Id.
17. Id. at §2C:58-5(b).
18. This is a new section of Chapter 58 of the New Jersey Revised Statutes that has yet to be codified. See Section 11 of Senate Bill No. 166 as approved May 30, 1990. The section also provides that membership in the rifle or pistol club is not valid unless the person joined the club no later than 210 days after the law's effective date and unless the rifle and pistol club files its charter with the superintendent of the state police no later than 180 days following the law's effective date.
19. This also is a new section to Chapter 58 of the New Jersey Revised Statutes. See id. at Section 12.
20. Preamble, Maryland House Bill No. 1131, signed by the Governor on May 23, 1988.
21. The board members were to be appointed by the governor and were to consist of:
  - (1) The superintendent of public safety and correctional services, to serve as chairperson;
  - (2) Representatives of the Association of Chiefs of Police, the Maryland State's Attorneys' association, the NRA or its affiliated state association, and Marylanders Against Handgun Abuse;
  - (3) A handgun dealer, gunsmith, or handgun manufacturer; and
  - (4) Three public members.Md. Ann. Code art. 27, §36J(a).



22. Each handgun manufactured, sold, or offered for sale shall be considered a separate violation. Id. at §36I.
23. Id. at §36J(b)(2).
24. Id. at §36J.
25. Minn. Stat. Ann. §624.716.
26. Id. at §624.712.4.
27. See e.g., Gun Control: A Youth Issue, supra note 4, at 22: "Handguns get blame for high crime rates," Star Bulletin (May 9, 1988) at A-1 [hereinafter cited as Star Bulletin].
28. See e.g., James D. Wright, "Second Thoughts about Gun Control," 91 The Public Interest 23, 32 (Spring 1988) [hereinafter cited as "Second Thoughts"], in which the author writes:

Comparing the United States with other civilized nations in terms of guns, crime, and violence is the "service revolver" in the *pro-control* armament, the first line of defense against all disputation. The essentials are well known: there are, in the United States, no strict federal controls over civilian arms, vast numbers of firearms in private hands, and an enormous amount of gun crime and violence. In other nations (England and Japan, for example), there are strict national controls, few guns, and little or no gun crime. Is this not conclusive evidence that strong gun laws reduce gun violence? One would be hard-pressed to find a single example of *pro-control* writing in which these points are not featured prominently.

29. At the time of Handgun Control Inc.'s publication, this was the latest year for which statistics were available. See note 30 infra.
30. Handgun Control Inc., "You Can Do Something About Handgun Violence" (undated pamphlet); accord, Gun Control: A Youth Issue, supra note 4, at 27, which presents the following comparison of firearm homicides for 15-19 year olds, based on 1986 data:

<u>Country</u>	<u># of Deaths</u> <u>15-19 years old</u>	<u>Population of</u> <u>15-19 year olds</u>
United States	1,043	21,168,124
France	12	4,255,223
Australia	6	1,259,040
Canada	6	1,935,500
West Germany	5	4,902,100
Japan	2	8,979,947
England and Wales	0	3,964,600
Sweden	0	569,057

FIREARMS BANS: ARE THEY EFFECTIVE?

31. Star Bulletin, *supra* note 27.
32. Id.
33. J.H. Sloan, et. al., "Handgun Regulations, Crime, Assaults, and Homicide: A Tale of Two Cities," New England Journal of Medicine 1256-62 (November 10, 1988).
34. Id. at 1259.
35. Id.
36. See e.g., Illinois General Assembly, Legislative Research Unit, "Gun Control Issue Rises Again," 4 First Reading 1, 3 (April 1989) in which the author concludes: "The problem with these comparisons is that they cannot adjust for cultural differences. Americans, with many contrasting cultures and a frontier history, are far more violent than the settled, rather isolated nationalities such as British and Japanese that are often cited as examples of the value of tight gun control." Cf. James D. Wright, et.al., Weapons, Crime, and Violence in America: A Literature Review and Research Agenda (Washington, D.C.: U.S. Department of Justice, National Institute of Justice, 1981) at 216 [hereinafter cited as Wright], in which the authors note that a second serious problem with taking these international comparisons as evidence for a casual relationship between private gun ownership and crime is that the "[c]ases for comparison are chosen purposively and selectively; different choices lead to different conclusions."
37. David B. Kopel, "Japanese Gun Laws and Crime," American Rifleman 28, 29 & 73 (December 1988).
38. Id. at 29.
39. Id. at 75.
40. G. Jan Colijn, David Lester, & A. Slothouwer, "Firearms and Crime in the Netherlands: A Comparison with the United States of America," 9 International Journal of Comparative and Applied Criminal Justice 49-55 (Spring 1985).
41. Laws prohibit the import or export, manufacture, possession, or supply of firearms without an official certificate, which is issued only under specific conditions. Id. at 49.
42. Id. at 51-52.
43. Id. at 54.
44. Id.
45. One comparison of the United States with England and Wales found that the United States rate of gun homicides was forty times higher than in England and Wales and the United States gun robbery rate was over sixty times higher. Zimring, *supra* note 1, at 5.

46. See e.g., Don B. Kates, Jr. ed., Restricting Handguns: The Liberal Skeptics Speak Out, (Croton-on-Hudson, N.Y.: North River Press, 1979) at 33 [hereinafter cited as Kates]; "Second Thoughts", supra note 28, at 33.
47. Robert J. Mundt, "Gun Control and Rates of Firearms Violence in Canada and the United States," 32 Canadian Journal of Criminology 137, 152 (January 1990) [hereinafter cited as Mundt]. Among other things, the 1977 law mandated a firearms acquisition certificate for the purchase of any firearm, strengthened the registration requirements for handguns and other restricted weapons, and placed automatic weapons and sawed-off shotguns and rifles in a prohibited category. The law also imposed mandatory prohibitions on the acquisition of firearms by those convicted of serious crime and imposed stiffer penalties on those convicted of firearm-related offenses. Id. at 138.
48. Id. at 152. Contra, Catherine F. Sproule & Deborah J. Kennett, "Killing With Guns in the United States and Canada 1977-1983: Further Evidence for the Effectiveness of Gun Control," 31 Canadian Journal of Criminology 245-251 (1989), in which the authors found a clear demonstration of the effectiveness of Canadian gun control and concluded there was no evidence that restrictive gun control measures encouraged the use of other weapons to commit homicide. Mundt criticizes this study and its findings because the data relied upon is only from 1977 to 1982 (the law did not take effect until 1978, with some provisions not effective until 1979). Mundt, supra note 47, at 139.
49. See e.g., Kates, supra note 46, at 38-39 & 115-16; David B. Kopel & Stephen D'Andrilli, "The Swiss and Their Guns," American Rifleman 38 (February 1990) [hereinafter cited as Kopel]; Wright, supra note 36, at 216.
50. The Swiss suicide rate, however, is almost double that of the United States. Guns are used in approximately 1/5 of all Swiss suicides compared to 3/5 of suicides in the United States and 1/3 of suicides in Canada. Kopel, supra note 49, at 74.
51. Id. at 39.
52. Id.
53. Id. at 81.
54. "Second Thoughts," supra note 28, at 33.
55. Wright, supra note 36, at 217.
56. As this report was being finalized, it was reported (on January 17, 1991) that only an estimated 18,000 gun owners had applied to register their guns before the January 1, 1991 deadline. The California Attorney General expressed concern that the law was not adequately publicized. It further was reported that Senator David Roberti, one of the sponsors of the assault weapons ban bill, would introduce legislation to extend the registration deadline because of the low compliance rate. "California may extend gun deadline," Honolulu Star-Bulletin (January 17, 1991) at A-20.

## Chapter 4

### IMPACT OF FIREARMS BAN ON LAW ENFORCEMENT

S.C.R. No. 227, S.D. 1, requested the Bureau to include a description of the "planning and commitment of resources required of the State and counties in order to implement an effective firearms ban." The description was to be based upon information provided by the county police departments and prosecuting attorneys and the department of the attorney general. Accordingly, the Bureau sent an initial letter to these agencies on July 3, 1990, soliciting input in estimating the resources and planning required by each office. (See Appendix H for the list of agencies contacted and Appendix I for a copy of the July letter.) A follow-up letter, dated September 6, 1990, was sent to the offices that had not yet responded. (See Appendix J for a copy of the September letter.) To date, all agencies have responded except those on Maui.<sup>1</sup> An attempt has been made in this chapter to summarize the information received from the law enforcement agencies. For additional details, the reader is referred to the individual letters from each agency, which follow at the end of the chapter.

#### Summary of Responses From Law Enforcement Agencies

An initial point raised by several agencies was that it is unclear exactly what is contemplated by the term "firearms ban" as used in the resolution. The senate concurrent resolution refers ambiguously to "a firearms ban" without any further elaboration. Consequently, it is uncertain what type, or types, of firearms the Legislature might consider banning<sup>2</sup> and whether the ban would be prospective only (in reality a "freeze") or would apply retroactively (a true ban). Given this uncertainty of what the firearms ban would entail, the agencies understandably had difficulty estimating the impact of a ban on their offices. Some agencies dealt with this dilemma by making a general response; others noted that their estimates were premised on certain assumptions they had made in order to respond to the resolution.

In addition to pointing out the need to address the obvious question raised by the prospect of a ban, i.e., what category or categories of firearms would be covered by a ban, a number of agencies also suggested that the Legislature address, at a minimum, the following issues in defining the parameters of any ban on firearms:

- (1) What categories of exemptions, if any, would exist under a ban?; examples might include members of the law enforcement community or armed services;
- (2) Would the ban be prospective only and thus not apply to existing, legally registered firearms or would it be retroactive?;

- (3) Would owners receive compensation for surrendered firearms, if the ban is retroactive?;
- (4) Would there be a grace period to allow for adequate notice and time for gun owners to comply with the law, and if so, how much time?;
- (5) Would gun owners surrendering unregistered or otherwise illegal firearms be granted amnesty during the grace period?;
- (6) Who would be responsible for collecting and destroying the banned firearms, and in what manner would they be destroyed?;
- (7) What penalties would be imposed for non-compliance with the law?; and
- (8) *Who would bear primary responsibility for informing the public of the new law?*

The responses of the county police departments indicated that, regardless of a ban or a freeze, additional police personnel would be required to check each firearm registration individually to determine the level of compliance with the law. If a true ban were imposed, owners should be granted an adequate grace period during which they could surrender any prohibited firearm. Police personnel would have to match the registration records with a surrendered firearm to verify which owners had complied with the law. In the event of a freeze on firearms, it was suggested that, during the grace period, owners be allowed either to bring their firearm registration records up to date or to surrender unwanted firearms. Police personnel would have to check all firearm registration records for accuracy and completeness and to ensure the registered owner was still in possession of the firearm.

Merely checking current registration records would be an enormous job. For example, the Honolulu police department estimated that checking and updating the registration records on the approximately 465,000 firearms registered in Honolulu would require 100 clerks for a year. This estimate was based on the assumption that it takes twenty minutes to check each registration. Checking and verifying information on the approximately 390,000 currently registered handguns was estimated to occupy over 70 clerks for a year. Furthermore, registering a new firearm is likely to take more than twenty minutes, and the Honolulu police department estimated there may be as many as 100,000 unregistered firearms on Oahu alone. It should be noted that the Honolulu police department currently employs only four clerks to handle firearm registrations; presumably the neighbor islands, with smaller police departments, assign even fewer personnel to this task.

It would be important, particularly in the event of a freeze, to ensure statewide access by law enforcement agencies to all firearm registration records. Presently, in an effort to

## IMPACT OF FIREARMS BAN ON LAW ENFORCEMENT

provide access to all records, copies of the neighbor island firearm registration records are sent to the Honolulu police department, where they are stored in their manual form. It was suggested that statewide access could best be accomplished through a completely computerized data base of firearm registration records; however, considerable computer equipment and personnel would be needed to accomplish this. All Honolulu firearm records have been computerized since 1982,<sup>3</sup> and the Honolulu police department indicates that the present computer system is adequate. However, new computer terminals would have to be acquired for the additional personnel working with the firearm registration records, and additional physical facilities would be needed to house the new equipment and personnel.

None of the neighbor island firearm registration records currently are computerized. Thus, in addition to checking the accuracy of the registration records, personnel would have to input the records into the data base. Also, the counties would have to obtain new computer equipment and possibly additional space in which to house the equipment. Accordingly, although the number of firearms on the neighbor islands appear to be considerably smaller than in Honolulu,<sup>4</sup> computerization of the neighbor islands' firearm registration records nevertheless could entail expenditure of considerable resources.

In addition, as one agency pointed out, all firearm registration forms and procedures would need to be standardized across the State. Section 134-3(b) Hawaii Revised Statutes currently specifies that all "registration shall be on forms prescribed by the attorney general, which shall be uniform throughout the State ...."<sup>5</sup> Apparently, however, the attorney general has never prescribed a uniform firearm registration form, and consequently, each county has continued to use its own form. The agency pointed out that either the State would have to take on the task of standardizing the forms and procedures or the various law enforcement agencies would have to agree on standard procedures and forms to be used. The agency estimated that, as the former option appeared unlikely,<sup>6</sup> it would take twelve months to conduct necessary meetings between the agencies, obtain appropriate understandings and agreements, and revise the forms and procedures.<sup>7</sup>

At the end of the grace period, all firearms prohibited under a ban or all unregistered firearms prohibited under a freeze would have to be confiscated. It is anticipated that additional police personnel would be needed to assist with enforcement, although exact numbers would depend upon the type of weapons prohibited,<sup>8</sup> whether a true ban was imposed or only a freeze, and the extent of non-compliance with the law. Also, additional personnel might be required to interdict and monitor means by which the prohibited firearms could be illegally imported into the State. Finally, if the county police departments were to assume the responsibility for accepting and destroying the prohibited firearms, extra personnel would be needed for this task as well. For example, the Kauai county police department indicated that such a task would be monumental for the one officer responsible for their Property and Evidence Section.

For the most part, the prosecuting attorneys agreed that, in terms of resources and personnel, the effect of a firearms ban on their offices would be minimal as their role would only be to prosecute those cases referred by the police. Although they conceded that their offices might experience an increased caseload as a result of a ban, they presumed that the majority of cases would arise as a result of the commission of other crimes, such as murder or robbery. Presently this is the case with most firearm violation charges, and the illegal weapons case is then prosecuted along with the underlying charge.

The response from the attorney general's office suggests the possibility of a more aggressive approach to enforcement in the event a true ban were to be imposed. Once it was determined through the registration and licensing records which firearms had not been surrendered voluntarily, search warrants would be drafted and approved to allow for confiscation of those weapons. The attorney general's office suggested that obtaining a search warrant in this instance may be difficult, however. An application for a search warrant must meet a two-prong test to justify issuance of the warrant: the application must allege sufficient facts upon which to conclude a firearm is being possessed illegally and there must be a reasonable probability that the firearm will be found in the particular location alleged in the application. The second prong of this test may be difficult to satisfy unless the firearm was recently registered or licensed.

Furthermore, even if search warrants are secured for the prohibited firearms, execution of the warrants presents several difficulties. First, the number of warrants involved alone could be overwhelming, depending upon the type of weapon prohibited, whether the law imposed a ban or a freeze, and the amount of non-compliance. Also, because of the possibility of danger whenever firearms are involved, it would be exceedingly unwise to send a single officer to execute the warrant. Accordingly, several police officers would be needed to provide adequate backup in executing each search warrant. As a consequence, the number of additional police personnel required for effective enforcement could be considerable.

Agencies that addressed separately an assault weapons ban indicated that the impact on the expenditure of resources by law enforcement agencies would depend upon what firearms were defined as "assault weapons"<sup>9</sup> and whether a ban or a freeze was imposed on these weapons. Several agencies felt that a freeze only on assault weapons should have less of an impact on resources and personnel because of the fewer number of weapons involved. For example, the Honolulu police department estimated that, with the addition of one more officers and two more clerks and possibly with the addition of more computer terminals and space, the checking and updating of the registration information for assault weapons could be completed within twelve months. This estimate was based upon the assumption that, if owners are permitted to keep all currently registered assault weapons, only about 10,000 weapons would be affected.

## IMPACT OF FIREARMS BAN ON LAW ENFORCEMENT

Finally, one respondent proposed that, instead of imposing some type of ban on firearms, the legislature should convene a task force to discuss gun control problems and proposed alternatives to a ban, such as requiring owners to register their firearms on a periodic basis by bringing in their weapons for a visual inspection to assure actual possession and ensure proper registration. He suggested that the task force be composed of law enforcement officials, hunters, National Rifle Association members, gun collectors, and match shooting competitors.



## Letters From Law Enforcement Agencies

JOHN WAIHEE  
GOVERNOR



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July 27, 1990

Ms. Charlotte A. Carter-Yamauchi  
Legislative Reference Bureau  
State of Hawaii  
State Capitol  
Honolulu, Hawaii 96813

Dear Ms. Carter-Yamauchi:

This is in response to your letter of July 3, 1990, requesting input from our Department concerning the planning and resources necessary to implement a firearms ban in the State.

Answering your request is somewhat difficult in that what the firearm ban will entail is uncertain at this point.

If the firearms ban is to be a prospective ban on firearms, i.e., people will be able to retain the guns already properly registered and licensed, and no firearms may from the approval of legislation henceforth be legally brought into the State, the planning and resources needed to implement the ban would be relatively minimal. Law enforcement, including the Attorney General's Office, would simply need to investigate and prosecute cases as they surfaced. There probably would not be any need to devote extra resources to what law enforcement presently has available, unless gun-running became a problem.

If the firearm ban is to entail a complete ban on firearms, i.e., not only prohibiting future importation of weapons, but retrieving all firearms in the possession of anyone in the State, the planning needed, and resources which would have to be committed, would be tremendous. The difficulty would be in retrieving the firearms from their owners.

More than likely there would initially have to be an amnesty program. All firearms turned in voluntarily would preclude any prosecution.

Ms. Charlotte A. Carter-Yamaguchi  
July 27, 1990  
Page 2

However, if firearms are not voluntarily turned in, efforts would have to be made to ascertain, through registration and licensing records on hand, which weapons were not turned in. Search warrants would then have to be drafted and approved for the weapons which had not been surrendered. Properly justifying a search warrant may be a problem in that there must be sufficient facts in the application for a search warrant to conclude that a firearm is being illegally possessed, and that there is a reasonable probability that it will be found in a particular location. Thus, unless the firearm was recently registered or licensed, it may not be able to satisfy the second prong of what the search warrant would require.

If the problem of obtaining a search warrant is resolved, each search warrant would have to be personally served on the premises where the firearm was believed to be. If there are, as the resolution indicates, 400,000 registered firearms in the State, conceivably 400,000 search warrants might have to be applied for, and served.

Because firearms are involved, it would be unwise to send a single officer to serve a search warrant. Backup in the form of additional officers would be needed. Therefore, teams of officers would be needed to serve what could be as many as 400,000 search warrants.

While definite numbers could not be supplied, it is hoped that the foregoing may give you a feel of the dimensions of what a firearm ban may entail.

Very truly yours,



Warren Price, III  
Attorney General

WP/LAG:fk  
000133/pc



## Police Department

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Larry S. Tanimoto

Mayor

Victor V. Vierra

Chief of Police

Francis C. DeMoraes

Deputy Chief of Police

July 18, 1990

Ms. Charlotte A. Carter-Yamauchi  
Researcher  
Legislative Reference Bureau  
State of Hawaii  
State Capitol  
Honolulu, HI 96813

Dear Ms. Carter-Yamauchi:

This is in response to your letter of July 3, 1990 concerning banning firearms pursuant to S.C.R. No. 227, S.D. 1.

Legislation enacted to implement a ban on all handguns will need to address the fact that a large number of Island residents already have lawfully registered handguns in their possession. From 1987 to 1989 the County of Hawaii registered 3,929 handguns alone.

Should a bill be enacted which would prohibit the ownership and possession of all handguns, including those legally registered, certain issues will need to be addressed:

1. Exemptions to ban: law enforcement personnel, military personnel, bank guards, etc.;
2. Responsibility in informing the public of the ban and the penalties for non-compliance;
3. Reimbursement or "bounty" paid for handguns turned in--many gun enthusiasts have investments made in their collection of handguns;
4. Time period allotted before enforcement takes effect; and
5. Responsibility for collection/destruction of handguns turned in.

Ms. Charlotte A. Carter-Yamauchi  
Page 2  
July 18, 1990

Logistics in formulating any enforcement programs will vary depending on the compliance with the ban. Personnel will be required to individually check each registration and determine if the registered owner had complied with the ban. The amount of non-compliance will indicate the problem in enforcing the ban and the required personnel to see this through.

As in the enforcement of illegal drugs, personnel will also be required to interdict and monitor any means that handguns may be illegally imported to Islands.

A ban on assault type weapons will generally involve the same problems as would a ban on handguns.

Thank you for the opportunity to comment on this matter.

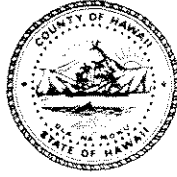
Sincerely,

  
VICTOR V. VIERRA  
CHIEF OF POLICE

WDP:gs

JON R. ONO  
PROSECUTING ATTORNEY

JAY T. KIMURA  
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OFFICE OF THE PROSECUTING ATTORNEY

July 10, 1990

Charlotte A. Carter-Yamauchi  
Researcher  
Legislative Reference Bureau  
State Capitol  
Honolulu, HI 96813

Dear Ms. Carter-Yamauchi:

RE: Effectiveness of banning firearms pursuant to  
S.C.R. No. 227, S.D. 1 (Regular Session 1990)

As the resolution was vague regarding what information was being requested of our office, we will respond generally.

To implement a total ban of firearms would require an enormous amount of resources to notify, collect and dispose of the existing firearms in the State. A grace period of adjustment would be needed to ensure proper notification, etc.

Rather than seek a total ban of firearms or even particular types of weapons, a task force made up of law enforcement officials, hunters, National Rifle Association members, gun collectors, and match shooting competitors should be convened to discuss this problem. After talking to several private citizens that are very interested in responsible gun control, we believe a reasonable compromise could be reached. For example, requiring gun owners to register their weapons on a periodic basis by bringing their weapons for inspection would assure actual possession and ensure proper registration.

This group may also be able to determine a compromise position regarding banning assault-type weapons and certain types of handguns vs. hunting and match competition weapons and firearms for self-defense.

Basically what we are saying is that this issue is not easily answered because of the Constitutional and emotional issues involved. The entire gun law could be revised with stricter, but more rational and responsible rules governing ownership, use and possession of firearms.

If this does not answer your question, please do not hesitate in contacting me.

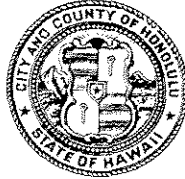
Sincerely,

  
\_\_\_\_\_  
JON R. ONO  
Prosecuting Attorney

POLICE DEPARTMENT  
**CITY AND COUNTY OF HONOLULU**

1455 SOUTH BERETANIA STREET  
HONOLULU, HAWAII 96814 TEL. AREA CODE (808) 943-3111

FRANK F. FASI  
MAYOR



MAROLO KAWASAKI  
CHIEF

OUR REFERENCE **ES-LK**

July 26, 1990

Mr. Samuel Chang  
Legislative Reference Bureau  
State of Hawaii  
State Capitol  
Honolulu, Hawaii 96813

Attention: Ms. Charlotte Carter-Yamauchi

Dear Mr. Chang:

This is in response to your letter of July 3, 1990, requesting an estimate of the resources and planning required to implement and enforce a firearms ban.

To make the estimates that follow, we have assumed certain things. These assumptions are spelled out in the sections below, along with some of the logic involved in making the estimates. The first section contains the greatest amount of explanation. The other sections contain much less explanation because the logic is basically the same throughout. The estimates are crude; they would have to be reviewed and revised to suit any specific ban.

General Ban on Firearms

For a general ban on firearms, we have assumed that all legally registered firearms would be allowed to remain in the hands of their current owners. (It would probably be more accurate to call this a "freeze.") There would be a grace period in which firearm owners would be able to bring the registration of their weapons up to date. Unregistered firearms and firearms in the possession of unauthorized persons would then be turned in or confiscated.

To make a ban like this possible, we believe that procedures and forms for registering firearms would have to be standardized across the state. We would also have to ensure that registration information for each firearm is current and accurate and that all police departments have access to all registration information. This involves several steps.

First, to ensure standard procedures and forms across the state, either one of two things would have to happen: (1) the state would have to take over the process, or (2) there would have to be agreement on standard procedures among all the agencies involved (police departments, corporation counsels, and state attorney general). There seems to be little likelihood that the state will take over this function; therefore, there will have to be agreement among the other agencies. We believe that six to twelve months would be required to conduct the necessary meetings, obtain the appropriate understandings and agreements, and revise the forms and procedures. To be on the safe side, we assume 12 months for this task.

Second, we would have to ensure that we have a computerized data base on firearms that permits access by all four county police departments. A cursory examination suggests that the current computer system for firearm registration is adequate for this purpose. However, additional terminals would be needed on Oahu if there were any increase in the staff working on registration.

Third, we would have to ensure that all firearm registration information is current, accurate, and complete, and that the registered owner is still in possession of the weapon. This means checking the registration information for each firearm and updating/adding/purging as necessary. This will be an enormous problem: there are already about 465,000 firearms registered in Honolulu, and there may be as many as 100,000 unregistered. The unregistered weapons would have to be either registered or confiscated. Checking the registration of existing weapons is likely to take up to 20 minutes per weapon; registering a new weapon is likely to take more than 20 minutes. Assuming an average of 20 minutes apiece, checking and registering over half a million firearms would require us to employ over 100 clerks for a year. (We now employ four.) It would also require us to find a new building and many more computer terminals to accommodate them.

(It should be pointed out that there will be an additional problem getting the registration information from the neighbor islands into the data base. All Honolulu firearm records since 1982 have been computerized. However, the neighbor islands keep only manual records on firearms. They do not enter any of this information into the data base.)

In summary, it seems unrealistic to think in terms of the resources required for a general ban on firearms of the sort suggested above.

Ban on Handguns

If the ban were only on handguns, the situation is not a lot better. Again, we are assuming that all currently registered handguns (about 390,000) would remain with their owners.

The same standardization of forms and procedures across the counties would be required. Again, we assume 12 months would be needed to do this.

Checking and updating the registration information and verifying possession of some 390,000 handguns (at about 20 minutes apiece) would occupy over 70 clerks for a year. Again, we would have the concomitant problems of providing space and computer terminals for them.

It also seems unrealistic to think in terms of the resources required for a handgun ban of this sort.

Ban on Assault Weapons

The resources required to implement a ban on assault weapons would depend on the range of weapons covered by the term. Some of the definitions we have seen suggest that the range could be anywhere from a few thousand to over 100,000. For the current purpose, let's assume that all currently registered assault weapons would remain in place, and that there are only about 10,000 of them.

Again, we would need standardization of procedures and forms across the counties, which should take no more than 12 months.

Checking and updating the registration information could be completed in 12 months; one more officer and two more clerks would be needed during that period. Some additional space and computer terminals might be required.

In summary, we think that about 24 months would be required to implement a ban on assault weapons (given the assumptions about the number of weapons involved and the nature of the ban). We believe that three more personnel would be needed for one year to assist with administration and confiscation. There might be a need for some additional space and computer terminals as well.



Mr. Samuel Chang

-4-

July 26, 1990

Other Considerations

All of these estimates assume a rather cordial process and general compliance by the public. However, if the ban were to be complete--for instance, if the law required that already registered firearms be turned in or confiscated--then the problems would increase greatly. Then we would presumably have to deal with compensation for the owners who turn in their weapons. We would also have to deal with confiscation on a large scale and all the attendant legal complexities (e.g., search warrants) and liabilities. Such a ban would invalidate all of the above estimates and require us to rethink everything.

For obvious reasons, this subject is of great interest to us. If we can provide any additional information, please contact Major James Femia of the Records and Identification Division at 943-3295.

Sincerely,

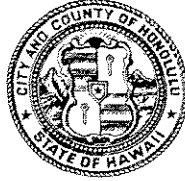
HAROLD KAWASAKI  
Chief of Police

By   
EUGENE UEMURA  
Assistant Chief of Police

DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

1164 BISHOP STREET, HONOLULU, HAWAII 96813  
AREA CODE 808 • 523-4511

KEITH M. KANESHIRO  
PROSECUTING ATTORNEY



CORA K. LUM  
FIRST DEPUTY  
PROSECUTING ATTORNEY

October 5, 1990

Hand Delivered

Ms. Charlotte A. Carter-Yamauchi  
Researcher, Legislative Reference Bureau  
Hawaii State Capitol  
Honolulu, Hawaii 96813

Dear Ms. Carter-Yamauchi:

Thank you for the opportunity to comment on S.C.R. No. 227 S.D. 1.

The Office of the Prosecuting Attorney anticipates no insurmountable prosecution problems should the legislature enact a constitutional ban on the use of handguns or assault weapons. The Office of the Prosecuting Attorney currently enforces, among others, the ban on automatic weapons (HRS 132-8) and the ban on possession of firearms by convicted felons (HRS 134-7).

Should additional weapons be banned, one consequence may be an increased caseload. However, it is not possible to accurately predict how many additional cases would be generated should handguns and/or assault weapons be banned. Currently many of our weapons cases arise from the commission of other crimes, such as murder or robbery. The illegal weapons case is then prosecuted along with the underlying charge. The prosecutor's office expects that should additional weapons be banned that many of the cases generated would be tried with the underlying criminal offenses and would not generate numerous completely separate cases.

A copy of our testimony on S.B. 2870, RELATING TO FIREARMS, which dealt exclusively with a proposed ban on semi-automatic weapons is enclosed.

Please do not hesitate to contact my Special Assistant Doug Woo at 527-6453 if you have any further questions.

Very truly yours,

A handwritten signature in cursive script that reads "Keith M. Kaneshiro".

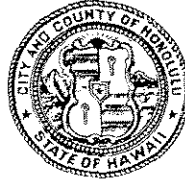
KEITH M. KANESHIRO  
Prosecuting Attorney

Enclosure

DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

1164 BISHOP STREET, HONOLULU, HAWAII 96813  
AREA CODE 808 • 523-4511

KEITH M. KANESHIRO  
PROSECUTING ATTORNEY



CORA K. LUM  
FIRST DEPUTY  
PROSECUTING ATTORNEY

**The Honorable Ron Menor, Chairman  
Senate Committee on Judiciary  
Fifteenth State Legislature  
Regular Session 1990  
State of Hawaii**

February 21, 1990

**Re: S.B. 2870, Relating to Firearms**

Chairman Menor and members of the Senate Committee on Judiciary, the Office of the Prosecuting Attorney of the City and County of Honolulu supports the intent and purpose of Senate Bill Number 2870.

The purpose of this bill is to amend Chapter 134, by prohibiting the ownership of semi-automatic firearms. Additionally Chapter 706 is amended, by setting mandatory minimum terms of imprisonment for persons convicted of using automatic or semi-automatic firearms in the commission of a crime.

In 1989 the Honolulu Police Department began to replace all of its standard police-issue .38 caliber revolvers with 9mm semi-automatic pistols. Semi-automatic firearms are capable of greater firepower because unlike the revolver, a firearm which must be manually reloaded, the semi-automatic firearm reloads automatically giving it a greater firepower. This change was initiated because the Honolulu Police Department feared that its officers were being outgunned by the superior firepower of criminals. We believe that only those individuals with a legitimate law enforcement or military interest should possess these high firepower weapons.

The Honorable Ron Menor, Chairman  
Senate Bill Number 2870  
February 21, 1990  
Page 2

The proliferation and use of semi-automatic weapons, particularly by those engaged in drug trafficking, poses a threat to the health, safety and security of all citizens of this State. Semi-automatic weapons fire at such a high rate of speed and possess such great firepower that their limited function as legitimate sports or recreational firearms is substantially outweighed by the fact that they are designed and intended principally to kill and injure human beings.

We believe that if we do not ban these weapons they will end up in the hands of criminals in increasing numbers. In Hawaii we do have a serious problem with both gangs and drugs. Individuals involved in drug trafficking or in gang related activity use guns to protect their criminal interests. We don't want these individuals to have access to high firepower weapons.

In the interest of clarity, we suggest several amendments to the bill. First, that references to assault firearms and the separate listing of individual weapons be omitted. These sections, as currently written, are ambiguous. Not all weapons which are intended to be prohibited are listed and this may lead someone to believe that weapons not specifically listed are permitted. Second, some of the weapons listed are technically in the wrong category. For instance, some of the weapons listed in S134-1(g) as rifles are technically not rifles but are carbines.

We believe that these problems would be addressed if the definition section is amended to track the definitions used in the National Firearms Act. Under this scheme, semi-automatic firearm would be defined in the following manner:

"Semi-automatic firearm" means any firearm that shoots or is designed to shoot one shot for each single function of the trigger without manual reloading. This term shall also include the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into

The Honorable Ron Menor, Chairman  
Senate Bill Number 2870  
February 21, 1990  
Page 3

semi- automatic firearm, and any combination of parts from  
which a semi-automatic firearm can be assembled if such  
parts are in the possession or under the control of a person.

We urge you to extend the current ban on automatic weapons to  
include a ban on semi-automatic weapons.

Thank you for your time and consideration.



# POLICE DEPARTMENT

COUNTY OF KAUAI

3060 UMI STREET  
LIHUE, HAWAII 96766  
TELEPHONE 245-9711



ADDRESS ALL  
COMMUNICATIONS TO  
CALVIN C. FUJITA  
CHIEF OF POLICE

OUR REFERENCE  
YOUR REFERENCE

July 11, 1990

Ms. Charlotte A. Carter-Yamaguchi  
Researcher  
Legislative Reference Bureau  
State Capitol  
Honolulu, HI 96813

Re: Information on Firearms.

Dear Ms. Carter-Yamaguchi:

We do not have an accurate count of firearms in possession of Kauai residents, although we do have the number of firearms registered over the past twenty years. In any event, if we were to prorate the number of firearms on Kauai based on the estimate that 250,000 residents in the state possess 400,000 weapons, Kauai's prorated share would be in the neighborhood of 18,000 firearms.

Based on these numbers, should it be mandated that handguns be relinquished to this department, the task would be monumental for our one-officer Property and Evidence Section. The receipt of assault type weapons would not, however, pose too much of a problem.

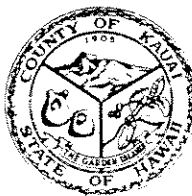
Ultimately, we can only estimate at this point in time, as the specifics of what is involved is relatively unknown, that additional personnel and equipment will be needed to handle the receipt of the estimated 18,000 weapons banned on Kauai.

Sincerely,

CALVIN C. FUJITA  
Chief of Police

CCF:jt

RYAN E. JIMENEZ  
Prosecuting Attorney



ALFRED B. CASTILLO, JR.  
First Deputy Prosecuting Attorney

COUNTY OF KAUAI  
OFFICE OF THE PROSECUTING ATTORNEY  
4193 HARDY STREET UNITS 6 & 7  
LIHUE, HAWAII 96766  
TELEPHONE: 808-245-7791

**MEMORANDUM**

**DATE:** September 25, 1990  
**TO:** Charlotte A. Carter-Yamauchi  
Researcher  
**FROM:** Ryan E. Jimenez  
**RE:** S.C.R. No. 227, S.D. 1

The following is submitted in response to your letters of July 3, 1990 and September 6, 1990:

I do not favor a ban on all handguns. I do favor a ban of certain firearms to limit availability and reduce violent crimes.

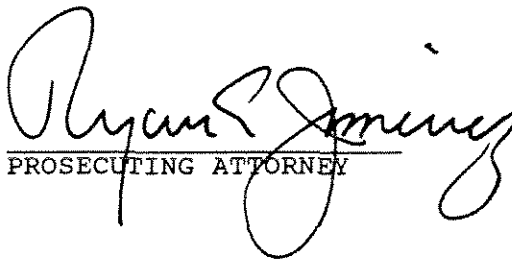
I suggest a plan that prohibits the sale or importation into the State of assault type weapons that are obviously anti-personnel. By anti-personnel, I mean weapons designed primarily for the police or military and not normally used for hunting or target shooting. For example, military assault rifles, machine pistols, and machine guns altered to fire in a semi-automatic mode for civilian consumption. These are to be distinguished from firearms that are commonly used for hunting or target shooting.

Such a ban would not apply to possession of legally owned weapons already in the State. The ban would prohibit, from a certain date, the trading, selling, or importation into Hawaii of prohibited firearms. This scheme would presuppose mandatory registration of designated weapons already in the State.

A difficult part of this plan would be to decide what firearms to prohibit. A possible starting point would be current federal laws that prohibit the importation of certain named firearms into the U.S.

The police would require sufficient resources to devise and implement registration procedures. Expenditure of resources by this office would be minimal as our role would be primarily reactive. Generally, we would only prosecute those cases referred by the police. Those cases would be similar to present cases where a person is found in possession of an unregistered or prohibited firearm. Most often this occurs when the firearm is inadvertently discovered during a criminal investigation.

Please let me know if you have any questions or need additional information. My apologies for the delay.

  
PROSECUTING ATTORNEY



## ENDNOTES

1. In response to the Bureau's July 3rd letter, the Maui prosecuting attorney wrote the Bureau to request an extension of time in which to respond as he intended to be away from his office from July 13 - August 5, 1990. However, no further correspondence has been received from his office, despite the September 6th follow-up letter.
2. Several possibilities exist: conceivably a ban could be imposed upon only a certain category of firearm, such as assault weapons or all handguns, or on all firearms including rifles and shotguns. Bills introduced during the 1990 legislative session proposing a firearms ban focused primarily on the categories of assault weapons and handguns. As these seemed the likely categories the Legislature might consider in imposing a ban, the Bureau requested each agency to address separately a ban on handguns and a ban on assault weapons. Some respondents complied with this request, while others did not.
3. The neighbor island records sent to the Honolulu police department are not computerized along with the Honolulu records, but are stored separately in manual form.
4. Hawaii county indicates 3,929 handguns have been registered from 1987 to 1989 alone, and Kauai estimates that there are approximately 18,000 firearms within its jurisdiction.
5. The requirement that the attorney general develop the firearm registration form dates back to 1968. The uniformity provision was enacted by Act 168, Session Laws of Hawaii, 1982.
6. This opinion may well be based on the fact that the attorney general has neglected thus far to prescribe the uniform registration records despite the statutory mandate to do so.
7. In the agency's response, it initially estimated between six to twelve months, but then concluded that it would be safer to assume twelve months to complete the task.
8. Obviously, banning all firearms or even just handguns could involve hundreds of thousands of weapons whereas banning only assault weapons would involve a relatively fewer number of weapons.
9. One respondent indicated that, depending upon the definition of "assault weapon," anywhere from a few thousand to over 100,000 weapons could be affected.

## Chapter 5

### FEDERAL FIREARMS CONTROL LAW AND RECENT LEGISLATION

#### Introduction

This chapter briefly summarizes some of the most important laws enacted by Congress with regard to the regulation of firearms in the United States. This chapter also reviews the status of several important firearms control measures that were considered by the 101st Congress of the United States. Particular focus will be placed on S 1970, the Omnibus Anti-crime Act of 1990 which proposed an amendment to temporarily ban the manufacture and sale of certain semi-automatic weapons in the United States.

#### Federal Firearms Laws

Federal regulatory involvement in the manufacture and sale of firearms in the United States began with the establishment of a ten per cent manufacturers' excise tax on firearms by Congress under the War Revenue Act of 1919.<sup>1</sup> The excise tax, which remains in effect today, was established in part to mitigate the financial pressures placed on the American economy as a result of the country's involvement in World War I.<sup>2</sup> Because the principal administrative function established under the War Revenue Act was the collection of a tax, the United States Department of the Treasury took on the primary responsibility for administering the law at the federal level.<sup>3</sup>

The next action of Congress to regulate firearms was taken primarily in the interest of helping the states control the flow of firearms from jurisdictions with less-restrictive firearms regulations to states or localities with more stringent laws. The 1927 act of Congress prohibited private individuals from receiving concealable firearms through the mail and set several requirements for dealers of firearms.<sup>4</sup>

The era of Prohibition and the rise of gangsterism and organized crime in America brought about the National Firearms Act of 1934.<sup>5</sup> The law was passed mainly to control the use and ownership of sawed-off shotguns and machine guns by gangsters. The law imposed a transfer tax and a registration requirement on the weapons and gave the federal government the authority to monitor transactions involving such weapons.<sup>6</sup> The law also contained a provision requiring the registration of all weapons on which a transfer tax was paid, including weapons obtained illegally, but this section was later struck down as unconstitutional on the grounds that it abridged a person's right against self-incrimination.<sup>7</sup>

Four years later, Congress passed the Federal Firearms Act of 1938<sup>8</sup> which prohibited dealers from selling guns across state lines and made it illegal to ship a firearm through interstate commerce to any individual under indictment, any fugitive from justice, any individual not in possession of the necessary license, and to certain convicted felons. The responsibility to administer the law was once again placed upon the Department of the Treasury.<sup>9</sup>

For the next thirty years, no significant piece of legislation relating to firearms was passed by Congress. However, in the wake of the tumultuous urban riots that followed the assassinations of Senator Robert F. Kennedy and the Reverend Martin Luther King, Jr. in 1968, Congress passed the Omnibus Crime Control Act of 1968,<sup>10</sup> establishing sweeping new requirements for firearms regulation.<sup>11</sup> Among the most important provisions of the law was the prohibition of handgun sales across state lines. The law also barred interstate shipment of firearms and ammunition and established licensing procedures for individuals who made, imported, sold, and collected guns. The law also prohibited sales of firearms to minors, drug addicts, people with mental disorders, and felons. Another key provision of the law was a requirement that made it unlawful for a person to transfer a firearm or ammunition without keeping a record of the name, age, and address of the recipient.<sup>12</sup>

Under the pressure of various gun organizations, Congress, in 1986, reversed several restrictions passed under earlier laws. Public Law 99-308<sup>13</sup> lifted the ban on interstate sales of rifles and shotguns. The law also lifted the restriction on transporting firearms in a vehicle and transporting them interstate.<sup>14</sup> During the same year, however, Congress also passed P.L. 99-408 to ban the manufacture, importation, and sale of armor-piercing or "cop killer" bullets.<sup>15</sup>

In 1988, Congress passed HR 4445 which banned the manufacture, importation, and sale of plastic weapons. The law called for Congress to review the ban after a ten year period. The underlying concern for the passage of the law was the fear that undetectable weapons could be smuggled aboard airplanes and into government buildings.<sup>16</sup>

### **Legislation Before The 101st Congress**

The underlying genesis of the majority of bills appearing before Congress in the past ten years to limit, freeze, ban, or regulate the importation, sale, possession, or ownership of certain firearms in the United States can be traced to one or more of the following incidents or factors which transpired during the decade of the 1980s: (1) the near assassination of President Ronald Reagan and White House press secretary James Brady in 1981 by John Hinckley with a handgun; (2) the January 17, 1989 slaying of five children and wounding of thirty others in a Stockton, California schoolyard by Patrick Purdy with a Chinese AK-47 rifle; (3) the September 14, 1989 slaying of seven workers and wounding of thirteen others at the

Standard Gravure Corp., in Louisville, Kentucky by Joseph T. Wesbecker with an AK-47, two MAC-11 semi-automatic pistols, a 9mm automatic pistol, and a .38 caliber handgun; and (4) the steady rise in the level of drug-related firearms violence in various cities across the country. The impact of these events on the consciousness of the nation is evident in view of the fact that two of the most prominent pieces of legislation to appear before Congress in the past several years include the "the Brady Handgun Violence Prevention Act," which proposed to establish a seven day federal waiting period requirement for the purchase of handguns, and the "Crime Control Act of 1990" which contained an amendment to temporarily ban the sale and manufacture of nine types of semi-automatic weapons.

Barely two months in the wake of the slayings at Stockton, California, at least five bills calling for freezes or bans on the sale, importation or ownership of certain semi-automatic assault weapons had been offered in the U.S. House of Representatives for consideration.<sup>17</sup> On March 1, 1989, Representative Pete Stark (D California) and a bipartisan coalition of 33 co-sponsors introduced HR 1190 to limit the importation and sale of certain semi-automatic assault rifles and certain smaller semi-automatic weapons, including the Uzi pistol. The Stark bill also called for the registration of all semi-automatic assault weapons in private ownership. Other measures addressing the issue of firearms included: HR 669 Representative Howard Berman, (D California), HR 1154 Representative Sam Gibbons, (D Florida), and HR 825 Representative Robert Torricelli, (D New Jersey).<sup>18</sup>

Among the first measures to appear before the United States Senate in 1989 were S 386, offered by Senator Howard Metzenbaum (D Ohio), and S 747, offered by Senator Dennis DeConcini (D Arizona). The Metzenbaum bill proposed to ban the importation, sale, and possession of guns classified as assault weapons. The bill also called for the prohibition and surrender of ammunition belts and detachable magazines with capacities of ten rounds or more.<sup>19</sup>

Although the newly elected President--a lifetime member of the National Rifle Association (NRA)--promoted himself throughout the campaign as a staunch ally of the organization, the slayings at Stockton three days prior to his inauguration presented the administration with a particularly difficult situation. Also on the administration's list of presidential commitments was a pledge to the law enforcement community to reduce violent crime in the streets of America. Despite the escalating call for stricter controls of access to semi-automatic weapons, President Bush reiterated his pledge to oppose all efforts to restrict the public's access to the ownership of semi-automatic weapons. On March 14, however, in a complete turnaround on his month-old promise, President Bush issued an order to suspend indefinitely the importation of several types of foreign-made semi-automatic assault weapons into the United States.<sup>20</sup> Following several months of internal debate, five categories of assault rifles that failed to meet the "particularly suitable for, or readily adaptable to, sporting purposes" clause of the 1968 Gun Control Act, were declared unfit for domestic sale by the Bush administration. Among the weapons identified in the foreign importation ban were the

AKS-type (AK-47), Uzi Carbines, the FN-FAL-type, the FN-FNC-type, and the Steyr Aug.<sup>21</sup> The weapons identified in the initial administrative ban reportedly represented 80 percent of all foreign imports.<sup>22</sup> Much of the impetus to establish the ban came from the newly-appointed "Drug Czar" William Bennett, who, in the first two days of his tenure questioned the President's policy on assault weapons.<sup>23</sup> Directed by the President to study the issue, Bennett pointed to the rising rate of entry of foreign-made semi-automatic weapons into the United States over the preceding three year period: 4,000 in 1986; 40,000 in 1987; and, 44,000 in 1988. Bennett also noted that by March of 1989, the Bureau of Alcohol, Tobacco, and Firearms received 113,732 applications to import the AKS-type alone.<sup>24</sup>

As expected, the announcement was viewed by members of the NRA as a broken promise. Indeed, after barely three months in office, the President, who as a candidate declared to the organization that "we will never compromise," handed the members a stunning setback in an unprecedented series of setbacks. NRA members, unhappy with the imminent passage of semi-automatic weapons prohibition bills in California, New Jersey, and several other states, encouraged their officers to exert even greater pressure to stem the tide of anti-gun proposals, which in their view were largely the result of the fears, emotions, and hysteria generated in the aftermath of the Stockton killings. NRA executives declared that "We are not making compromises. We don't believe that crime control is the same thing as gun control." A resolution adopted by the organization stated that the highest priority of the NRA would be the defense of "the American citizen's right to keep and bear arms." The resolution also declared that the NRA "shall not soon forgive and shall never forget the betrayals of those politicians who once sought our support and will need it again."<sup>25</sup>

Although the Bush administration's action was viewed as a step in the right direction by gun control advocates, many remained skeptical of the limited scope of the action. While the import ban would postpone the applications of nearly 110,000 foreign-made assault-style weapons pending before the Bureau of Alcohol, Tobacco and Firearms, the ban was also viewed by some as being cosmetic, inadequate, and even meaningless.<sup>26</sup> Proponents of tighter gun restrictions claimed that most of the semi-automatic weapons sold domestically were manufactured domestically, and that many models with firepower equal to that of the Chinese-made AK-47 used in the Stockton killings would remain available for purchase in the United States.<sup>27</sup>

The incident at Stockton was having its effect on the domestic firearms manufacturing industry as well. On March 15, 1989, Colt Industries suspended sales of its model AR-15, the civilian equivalent of the military M-16 rifle.<sup>28</sup> Reports of voluntary moratoria on the sale of para-military items at various retail sporting goods and firearms outlets began to appear at this juncture as well. As expected, however, the market reflex in response to the projected scarcity caused the price of unsold goods in retail inventories, as well as items placed for sale on the resale market, to skyrocket. Sales of semi-automatic weapons at sporting goods

outlets soared as consumer speculation over the passage a federal import ban incited a run-on-the-market for these items.<sup>29</sup>

The pressure on Congress steadily increased as congressional offices reportedly received thousands of letters and telephone calls in support of, as well as in opposition to, stricter gun control laws. Tempers among members of Congress during this period were described as frayed, and debates on the issue were characterized as acrimonious. Although not a single bill calling for a ban on semi-automatic assault weapons had made its way out of committee by late March, several sponsors expressed optimism on the prospects of passing their proposals. The level of urgency shared by the gun control proponents was conveyed by Senator Metzenbaum when he declared to the Senate that "There is a time to pass legislation, and this is the time, while the memory of Stockton, California is still fresh." The Senator further stated that "I think the pendulum is swinging so far away from the NRA that they could be hurt worse by their failure to cooperate."<sup>30</sup>

In the opinion of the gun enthusiasts, however, the level of anti-gun rhetoric generated in the aftermath of the Stockton killings did not come as a complete surprise, and failure on the part of their organization to stand up to the hysteria would be equivalent to submitting to the idea that stricter gun control laws would necessarily result in the safer streets in the future. Representative John D. Dingell (D Michigan) noted that "In the wake of the emotional outcries to ban semi-automatic rifles, shotguns and pistols, it is useful to keep in perspective that Mr. Purdy is not your ordinary law-abiding citizen."<sup>31</sup>

At the advice of his own administration, President Bush, in early April, expanded the ban on foreign-made assault weapons into the United States. According to the White House, the administration did not want to give a market edge to foreign gun manufacturers not covered under the scope of the original ban. The new restrictions were expected to apply to an additional 24 foreign-made models.<sup>32</sup>

On April 19, 1989, the Senate Judiciary Subcommittee on the Constitution voted to send S 386, the Metzenbaum bill, along with S 747, the DeConcini bill, to the full Judiciary Committee for review.<sup>33</sup> While the bills garnered the support of a majority of the members, the panel was said to be sharply divided. The Metzenbaum bill, with its provision to ban both foreign and domestic semi-automatic assault weapons was generally regarded as the most far reaching measure before Congress at that time.

Meanwhile, in the House Ways and Means Trade Subcommittee, HR 1154, the Gibbons bill, was passed amid considerable discontent. The Gibbons bill, as introduced, would have banned the importation of twelve specific types of assault weapons and any other semi-automatic weapon equipped with large capacity magazines. The bill, which originally defined the term "large capacity magazine" as a magazine that carried more than ten rounds, was amended to redefine the term to mean cartridges which held five rounds or more. The

amended version of the bill would also give the Treasury Secretary the discretion to ban other imported models that were primarily designed for military purposes.<sup>34</sup>

Testimony against the measure was delivered by Representative Richard Schulze (R Pennsylvania). Representative Schulze criticized supporters of the bill for blaming "inanimate objects" for violent crimes and attempted repeatedly to attach various amendments to defeat the purpose of the bill.<sup>35</sup> The partisan atmosphere of the debate led most Republicans to vote in favor of the Schulze amendments and most Democrats to vote negatively. On May 4, 1989, HR 1154 was passed to the full House Ways and Means Committee minus all amendments offered by Representative Schulze.<sup>36</sup>

On May 15, 1989, President Bush unveiled the highly-touted \$1.2 billion "new offensive" on violent crime in America. In addition to the massive anti-crime spending initiatives and calls for the death penalty on certain aggravated federal offenses, the Bush proposal also called for a permanent ban on all foreign-made assault weapons not suited for sporting purposes.<sup>37</sup> The Bush plan also called for a permanent ban on all magazine cartridges designed to carry more than fifteen rounds. In defense of the provision, the President stated that "One thing we do know about these assault weapons is that they invariably are equipped with unjustifiably large magazines."<sup>38</sup> Criticism of the Bush proposal, once again, was delivered from skeptics at opposite ends of the argument. Gun enthusiasts opposed the concept of imposing across the board uniform restrictions that carried no assurance of impacting persons predisposed to behave in criminal manner in the first place; and proponents of stricter controls questioned the effectiveness of a ban that focused entirely on foreign-made weapons. Wayne LaPierre, an official of the NRA, questioning the objective of the Bush plan, asked "Does the Bush administration seriously think that criminals who smuggle tons of cocaine and marijuana into our country won't also smuggle in as many firearms and high-capacity magazines as they want"?<sup>39</sup>

Speaking from the opposite perspective, Senator Howard Metzenbaum, author of S 386, observed that "I have yet to hear any police officer say that domestic assault weapons are somehow less dangerous than imported ones."<sup>40</sup> According to the Senator, some 75 percent of all assault weapons in the United States are manufactured domestically.

Following several months of review, the Bush administration, on July 7, 1989, announced its intention to convert the temporary ban in effect since the early spring, into a permanent ban. According to the Director of the Bureau of Alcohol, Tobacco, and Firearms, the Bureau (BATF) reviewed 50 semi-automatic weapons imported into the country and decided to permanently ban 43 models. (See Appendix K). The BATF estimated that the ban would affect about 750,000 weapons awaiting entry into the United States.<sup>41</sup>

On July 13, 1989, following several attempts to move the measures out of committee, the Metzenbaum and DeConcini bills, once again, failed to gather the necessary quorum for

the Senate Judiciary Committee to vote on the measures. Occupied with other issues such as "flag burning" and the impeachment trial of U.S. District Judge Alcee Hastings, the attention of committee members was said to be diverted.<sup>42</sup>

On July 20, however, the DeConcini bill was moved out of committee by the narrowest of margins. Senator Strom Thurmond, (R South Carolina) attempted to block the DeConcini bill by offering several substitute amendments. Instead of placing limitations on firearms, the Thurmond amendments proposed to broaden the federal death penalty, build new prisons, and increase law enforcement.<sup>43</sup> Divided along partisan lines, the committee struck down the Thurmond amendments and proceeded to move on to the matter of considering the measure at hand. Sensing that a vote on the measure was imminent, however, Republican members on the committee appealed to chairman Joseph Biden (D Delaware), to delay the roll call until an absent Republican colleague holding the critical vote they needed to stop the bill in committee could be summoned to the hearing. Although Senator Biden remarked "I get the impression he's not anxious to get here," the vote was delayed until the senator could be located. On arrival, however, Senator Arlen Specter (R Pennsylvania) declined to cast a vote, stating that he was not ready to decide. S 747, the first measure of its kind to reach the floor of either chamber of the Congress, was reported out of the Judiciary Committee by a margin of one vote.<sup>44</sup>

Although the DeConcini bill was by no means the farthest-reaching firearms control measure to appear before the Senate in 1989, it was certainly among the most stringent measures capable of moving out of the committee. Identified on the list of banned assault weapons were the: Street Sweeper and Stryker 12; Norinco, Mitchell, and Poly Technologies' Avtomat Kalashnikovs (AKs); Action Arms Israeli Military Industries' Uzi and Galil; Berretta AR-70 (SC-70); Colt AR-45 and CAR-15; Fabrique Nationale FN/FAL, FN/LAR and FNC; MAC 10 and MAC 11; Steyr AUG; and INTRATEC TEC-9.<sup>45</sup> The bill required all owners of assault weapons to obtain a proof of ownership form from a licensed dealer. The bill also called for a ten year minimum prison term for anyone convicted of a crime of violence involving an assault weapon.<sup>46</sup> Among the amendments added to the bill to mitigate opposition was a "sunset provision" calling for a study after three years to determine the effectiveness of the law on reducing the level of drug-related violent crime. Another compromise was the elimination of a provision authorizing the prohibition of weapons "nearly identical" to those listed in the bill.<sup>47</sup>

Although the gun control lobby remained optimistic, the conviction with which Congress had taken on the issue just a few months earlier seemed to fade by late summer. As always, the powerful influence of the NRA played a major role in shaping the outlook for firearms-related legislation during the 1989 term of Congress. Representative William Hughes (D New Jersey), a strong advocate of gun control, remarked that the NRA is an organization "that can put 15,000 letters in your district overnight and have people at your townhall meetings interrupting you."<sup>48</sup>



On September 14, 1989, Joseph T. Wesbecker, armed with an AK-47, two MAC-11 semi-automatic pistols, a .38 caliber handgun, a 9mm automatic pistol, and a bayonet killed seven former co-workers and wounded thirteen others at the Standard Gravure Corp. printing plant in Louisville, Kentucky before killing himself.<sup>49</sup> Although he acknowledged that the deaths were "horrible," President Bush reiterated his opposition to a law by Congress, as opposed to an order by the administration, to ban semi-automatic assault-style weapons.<sup>50</sup> Instead, the President continued to support the administrative ban on foreign-made assault weapons being enforced by his administration.

On November 21, 1989, former White House press secretary James S. Brady, in his first appearance before Congress since being injured by a bullet to the brain in 1981, spoke from a wheelchair in support of S 1236 before the Senate Judiciary Committee on the Constitution. In his presentation before the committee, James Brady accused members of Congress of being "gutless" because of their reluctance and failure to approve a national seven day handgun purchase waiting period requirement.<sup>51</sup> Senators opposed to S 1236, better known as "the Brady Bill," were conspicuously absent from the proceedings as James and Sarah Brady urged the committee to approve the bill the Bradys had been supporting for the past three years.<sup>52</sup> While many states, including Hawaii, have laws requiring waiting periods for handgun purchases, the Brady Bill would establish a national waiting period requirement. Although the bill received the full support of most gun control groups and many law enforcement organizations, Congress consistently fell short of placing sufficient support behind the measure.

By the end of 1989, most prominent measures relating to the control of semi-automatic weapons were incorporated as amendments to large omnibus anti-crime packages. Among the most important anti-crime packages containing provisions on semi-automatic weapons were: S 1225 (the Bush anti-crime plan); S 1970 (the Biden package containing the DeConcini amendment and provisions of the Bush anti-crime plan); S 1971 (the Thurmond death penalty proposal); and, S 1972 (the Biden anti-crime package). Aptly nicknamed "omnibus" bills, these lengthy measures contained provisions relating to issues concerning the death penalty, the savings and loan crisis, money laundering, and international drug smuggling. At the time of their introduction, the major anti-crime packages contained the following provisions on semi-automatic, assault-style weapons:<sup>53</sup>

- S 1970:** A three year freeze on the manufacture, sale, and possession of five foreign and four domestic semi-automatic weapons. The provisions were essentially that of S 747 (the DeConcini amendment) as reported out of the Senate Judiciary Committee.
  
- S 1971:** A ban on the domestic assembly of weapons from illegally-imported parts and stricter penalties for the use of semi-automatic firearms in the course of committing violent crimes.

**S 1972:** A ban on the manufacture, sale, and possession of nine weapons, increased penalties for firearms offenses, and a prohibition on the export of certain domestically-manufactured assault weapons.

Well into the second quarter of the 1990 election year, the stakes of not passing a widely-publicized anti-crime initiative were extremely high for the Bush administration as well as both parties of Congress. S 1970, the Biden anti-crime package containing provisions of the Bush anti-crime proposal and the DeConcini assault weapons ban, became the primary vehicle for the Senate's 1990 anti-crime initiative.

While public support for the semi-automatic assault weapon ban seemed positive, the NRA was actively working to slow the momentum. In an address before the Senate, Senator J. Robert Kerrey (D Nebraska) inserted into the *Congressional Record*, a copy of an NRA letter sent to members in his district. In reference to a position the senator apparently failed to keep, the letter declared to the senator that "your gun ban vote is a double-cross and if you think gun control is the same thing as crime control you have no business being in the U.S. Senate."<sup>54</sup> The letter also stated that the senator's vote in favor of the DeConcini assault weapon amendment "sets America on the road to universal gun confiscation."<sup>55</sup> Senator Kerrey stated for the record that he felt that the NRA letter had misrepresented the intent and scope of the DeConcini amendment. In Arizona, the home state of Senator Dennis DeConcini, gun enthusiasts initiated a recall petition against the senator for his position on the issue of assault weapons.<sup>56</sup>

Following weeks of highly-charged partisan debate, the outlook for the provision to ban several types of assault weapons began to look less than promising. However, on the night of May 23, 1990, the debate to remove the amendment from the anti-crime bill ended in a surprising result. While the gun control provision was not the only topic of controversy in the measure, it was widely viewed as one of the primary targets for elimination by Republican members of the Senate. Repeated efforts to excise the ban from the bill were defeated by Democratic maneuvering. Rumors of a filibuster and the attachment of "killer amendments" began to circulate among the Republican members of the Senate.<sup>57</sup> With no end to the debate in sight, Senate negotiators agreed in advance to consider the possibility of invoking cloture or terminating debate on June 5, 1990.<sup>58</sup>

On the eve of Congress' scheduled adjournment for the Memorial Day recess, the NRA was predicting victory. Despite a major lobbying effort by members of the law enforcement community to pass the assault weapons provision, supporters of the NRA's position in Congress seemed unswayed. The Democrats themselves were uncertain of their ability to secure the votes to preserve the ban. Only one day earlier, an amendment offered

by Senator Metzenbaum (D Ohio) to include twelve additional types of assault weapons to the DeConcini list of banned weapons was soundly rejected.<sup>59</sup>

In an effort to remove the entire assault weapon provision from the bill, Senator Orrin Hatch (R Utah) submitted an amendment to place the question of the ban to the full Senate vote. By a narrow four vote margin, however, the Hatch amendment to eliminate the ban from the bill was rejected by the Senate. With nine Republican members casting votes along with the majority of Democrats to reject the Hatch amendment, however, the Republican leadership of the Senate sensed that the victory for the gun control provision was less than secure. Following two hours of internal negotiation and strategy-making within the Senate Republican ranks, the question was once again submitted before the Senate for consideration. Senator Robert Dole (R Kansas) submitted a motion to reconsider the vote which earlier rejected the Hatch amendment. Although the maneuver succeeded in narrowing the margin to within an inch of success, supporters of the assault weapon ban in the Senate, once again, prevailed. The Dole amendment was defeated by a vote of 50 to 49. By the close of business on the night of May 24, 1990 for the Memorial Day recess, 87 Democratic and 184 Republican potential amendments remained pending before the anti-crime package.<sup>60</sup>

Although the vote in the Senate represented one of the most stunning victories for proponents of the measure, the bitter division over the issue cast a cloud of uncertainty over the fate of the entire anti-crime package. The resolve of supporters as well as opponents of the gun control provision in Congress to stick to their positions would now be put to test in light of talk that the entire anti-crime package could be shelved or even vetoed because of the semi-automatic assault-style weapons ban.<sup>61</sup> President Bush had already announced that he would veto a bill containing such a restriction, and the NRA vowed to halt further progress of the gun control amendment.

As Senate negotiators had predicted, the debate over the anti-crime bill failed to subside over the Memorial Day recess and the day of the prescheduled vote to consider cloture arrived with no resolution to the controversy in sight. By early June of 1990, Democratic and Republican negotiators were attempting to pare down nearly 330 proposed amendments to the anti-crime bill to a total not greater than twelve per party.<sup>62</sup> The mood of the debate over cloture was once again highly partisan, with the Democrats accusing Republican members of being afraid to cast a vote against crime. Republicans declared that a vote for cloture was a vote to stifle their opinions. On June 5, the motion to invoke cloture failed to muster the required three-fifths majority of the full Senate (60 votes) by a deficit of six votes (54 to 37), with most Democrats voting to limit debate and most Republicans voting against the cloture motion.<sup>63</sup> A second attempt to invoke cloture on June 7 likewise failed, but by a closer margin (57 to 37).<sup>64</sup> Without sufficient support to invoke cloture, the maneuvering and debate over the semi-automatic assault weapons provision and various other provisions of the bill carried on.

With the memory of the May 24 defeat in the Senate still fresh in their minds, opponents of stricter gun control regulations were handed yet another defeat on June 12 in the House. HR 4225, offered by Representative William J. Hughes (D New Jersey), was reported from the House Judiciary Committee by a vote of 21 to 15.<sup>65</sup> As reported out of the committee, HR 4225 would require the Secretary of the Treasury to publish a list of all domestically-produced semi-automatic assault weapons failing to conform to the "sporting purposes" criteria of the law within 60 days of the enactment of the law. Factors that would be considered in determining the sporting legitimacy of a semi-automatic weapon would include the capacity of the magazine and the existence of adapters for launching grenades or the fixing of bayonets.<sup>66</sup> Those domestically-manufactured weapons that failed to meet the sporting test criteria could not be bought, sold, or exported in the future, but people owning such weapons at the time of the enactment of the law would be permitted to keep their weapons.<sup>67</sup> While he expected a battle in the House, Representative Hughes noted that the idea of outlawing domestically-manufactured assault weapons was a natural extension of the President's ban on foreign-manufactured weapons. He observed that there is no difference in "either their firepower or the devastation they can create."<sup>68</sup>

According to a study performed earlier by the Bureau of Alcohol, Tobacco and Firearms, approximately 12 domestically-manufactured types of semi-automatic rifles would be affected by the Hughes bill. While the NRA called the bill "a far more dangerous piece of legislation" than the Senate bill because of the discretionary powers it gave to the Treasury secretary, Sarah Brady of Handgun Control, Inc., proclaimed that Congress had shown that "they're ready to help our law enforcement officers win the drug war by taking killing machines off America's streets."<sup>69</sup>

Following several unsuccessful attempts to invoke cloture in June in the Senate, the omnibus anti-crime package, on July 11, 1990, was finally brought before the full Senate for a floor vote. Having weathered all attempts to strip it from the bill, the DeConcini semi-automatic weapons provision remained intact. Although the gun control ban continued to be a point of controversy with some members of the Senate, the level of acrimony that characterized the discussions on previous occasions had all but vanished. Resigned to the fact that the provision would remain within the bill, Senator Orrin Hatch, a strong opponent of the DeConcini amendment, stated on the floor of the Senate that:

Although I am disappointed in the DeConcini amendment--and I am not happy with that--the balance of this bill really makes up for that amendment. The balance of this bill is a tremendous effort on the part of everybody concerned and one of the most significant bills with regard to our criminal laws that we have come up with in the last 14 years.<sup>70</sup>

Similar testimony was delivered by Senate Minority Leader Robert Dole who pointed out that although he opposed the DeConcini amendment, he realized that:

We are now facing a new phenomenon in both urban and rural areas, in that the young people, children really, are now armed to the teeth and dangerous ... but the proposed solution merely to ban a few assorted firearms which are improperly referred to as assault weapons in my view will do little if anything to correct the problem. But I guess in the long run I am perfectly willing to accept the DeConcini amendment as part of this package and I intend to support the bill and vote for the bill.<sup>71</sup>

Among the many issues discussed during the lengthy floor deliberations on S 1970 were stricter penalties for persons convicted of savings and loan fraud and the controversial provision concerning the writ of habeas corpus for prisoners on death-row. At the call of the roll, S 1970 was approved by an overwhelming majority of the full Senate: 94 ayes and 6 nays.<sup>72</sup>

Although the outlook for the assault weapons provision in the anti-crime package appeared secure by the middle of 1990, the latter half of the year brought on a problem that seemed to grow more intractable as time progressed. This time, however, the problem was completely unrelated to the controversy over the gun control provision. By midsummer of 1990, it became apparent that the Bush administration's initial forecast for the federal fiscal situation was far too optimistic. Congressional and White House negotiators began meeting daily to decide how to increase revenues, curb federal spending, and reduce the government's widening fiscal deficit. The issue relative to the omnibus anti-crime package became one of securing the funds to support its ambitious and costly anti-crime initiatives. According to the Senate's projections at the time, the anti-crime package would require an outlay of nearly \$2 billion, in total, to implement. Approximately half, or about \$900 million, of the expenditures proposed in the bill would be allocated to state and local law enforcement agencies to combat the problem of illegal drugs.<sup>73</sup> According to reports, the White House was opposed to many of the big expenditure items in the bill.<sup>74</sup>

While the gun control provision was one of only two items in the omnibus package that did not hinge directly on the appropriation of funds, this particular aspect of the measure offered little consolation to those who fought so long to keep it within the protective security of a bill which, in itself, would become meaningless to pass without access to the massive outlay of funds it required to implement its crime control initiatives. Expressing hope and optimism, Senate Judiciary Committee chairman Joseph Biden assured in July that "We will get the money, it will come late in the budget process."<sup>75</sup>

As negotiations over the budget carried on without resolution, another issue of concern for gun control proponents was brought to light toward the end of the summer of 1990. According to several gun control groups, the Bush ban on the importation of certain foreign-made semi-automatic weapons was effectively being circumvented by way of the loopholes that had developed in the ban over the course of the year.<sup>76</sup> According to these groups, weapons of equivalent firepower to the ones that had been recently banned were now being approved for importation by the Bureau of Alcohol, Tobacco and Firearms on the grounds that they had been "sporterized."<sup>77</sup>

One example of a sporterized rifle approved by the BATF was the Heckler and Koch SR-9 Orion. Patterned after the Heckler & Koch HK-91, the SR-9 Orion retained the semi-automatic firepower of its predecessor except that the para-military features of the HK-91 such as the bayonet attachment, the flash suppressor or the silencer adapter, and the bipod mount had been eliminated. The pistol grip of the HK-91 had been replaced with a shoulder stock, and the 30 round magazine was replaced with a five round detachable magazine.<sup>78</sup>

Members of the Firearms Policy Project, a gun control group in Washington D.C., noted that the five round magazine could be interchanged with any other magazine acceptable by the HK-91, and that the protectors that blocked the attachment of the flash suppressor were merely glued on.<sup>79</sup> The concern expressed by members of the Firearms Policy Project was that the BATF's acceptance of sporterized versions of banned models would lead to the popularization of "accurizing packages" or kits to expand the capabilities of the weapons. According to the Project, kits have long been available to convert semi-automatic weapons to fully-automatic.<sup>80</sup> The NRA responded that the controversy over the issue was an example of the gun control lobby's misguided concern over the "military appearance" issue, and that, ultimately, debate over the issue would bring out the lobby's real agenda to ban all semi-automatic weapons.<sup>81</sup>

The effort to finalize and pass a federal budget deficit reduction package dominated the agenda of Congress and the focus of the national media in the closing months of the 101st session. Although speculation over the prospects of S 1970 continued throughout the entire session, the likelihood of passing the multi-billion dollar spending initiative as an entire package seemed to diminish amid the disarray of Congress over the question of the budget. Likewise in the House of Representatives, HR 5269, the House version of the omnibus crime bill, faced major obstacles. The Bush administration promised to veto the measure if it were approved by Congress without substantial revisions.<sup>82</sup> According to the administration, because of the strict standards it set for sentencing defendants of capital offenses to death row, the bill, if passed by Congress, would prove tougher on law enforcement than on crime.<sup>83</sup>

On October 4, 1990, HR 5269 was passed by the House by a 257 to 172 vote.<sup>84</sup> Included in the bill, however, was a floor amendment offered by Representative Jolene Unsoeld (D Washington) which would conflict with the Senate ban on nine types of foreign and domestic semi-automatic rifles. *The Unsoeld amendment, strongly backed by the NRA, would allow domestic gun manufacturers to assemble semi-automatic rifles with domestically manufactured parts identical to the foreign models currently banned. Only weapons manufactured with foreign parts would be illegal. The amendment stirred considerable controversy following disclosures by Common Cause that Representative Unsoeld and members who voted in support of the measure had received a total of \$1,395,963 in campaign contributions from the NRA in the preceding three election cycles.*<sup>85</sup> The NRA and Representative Unsoeld disputed all charges that the contributions had any effect on her position.<sup>86</sup>

The upcoming fall elections kept alive the expectation that members of Congress, in line with their tradition, would exercise considerable effort to deliver to their constituents a "tough-on-crime" package to enhance their prospects for re-election in November. Many Senators and Representatives confided, however, that the irreconcilable differences remaining between the respective versions of the bill were probably not worth fighting over as Congress struggled to adjourn.<sup>87</sup>

With time running out for the 101st Congress, House and Senate conferees on H 5269 and S 1970 abandoned their efforts to resolve their differences on gun control, the death penalty, and the changes in habeas corpus procedures to expedite executions of condemned prisoners and excluded many of these provisions from the bill. The omnibus anti-crime bill of 1990, which two key Senators from opposite parties had praised in speeches before Congress several months earlier as "the toughest, most comprehensive crime bill in our history" and "one of the greatest pieces of legislation [Congress would] ever pass,"<sup>88</sup> now contained only a mixture of titles and subtitles relating to anabolic steroids, international money laundering, bankruptcy, bank fraud, child abuse, and certain drug offenses.

Republicans criticized the Democrats for opposing the amendment to expedite federal court procedures to execute death row inmates and the Democrats criticized the Republicans for refusing to support the semi-automatic weapons ban provision to help protect members of the law enforcement community.<sup>89</sup> Still intact in the conference bill, however, was the Unsoeld amendment (see Appendix L for final text of the Unsoeld amendment) allowing domestic firearms manufacturers to assemble nonimportable semi-automatic weapons with domestic parts. The conference bill, which was re-numbered to S 3266, was passed by Congress on October 27, 1990.

The action stripping the semi-automatic assault weapons ban from the bill reportedly infuriated gun control advocates and members of the law enforcement community. The National Association of Police Officers charged that Congress had ducked its responsibility to

help curb violent crime and safeguard police.<sup>90</sup> While previous debates over the issue of semi-automatic weapons had generally been divided along partisan lines, much of the responsibility for the procedural maneuvering to block the semi-automatic weapons ban as well as the Brady handgun waiting period provision in the House was attributed to House Speaker Thomas Foley (D Washington), a supporter of the gun lobby. According to the Speaker, however, he was merely acting to prevent the House from becoming embroiled in a highly divisive debate over the issue of gun control.<sup>91</sup>

The removal of the semi-automatic weapons import ban amendment from the conference version of the anti-crime bill was viewed as a major accomplishment for the NRA and a major setback for the gun control lobby. Although their lobbying tactics were often criticized by their opposition, methods such as the NRA's "membership alerts," which released as many as 10 million mailings urging members to voice their disapproval of the semi-automatic weapon import ban provision, apparently proved to be highly effective in final days of the 101st Congress.<sup>92</sup>

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7. See American Enterprise Institute for Public Policy Research, supra note 2.
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9. Supra note 7.
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11. See CQWR supra note 6.



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## Chapter 6

### SUMMARY AND RECOMMENDATIONS

#### Part I. Summary of Arguments For and Against the Banning of Firearms

##### The Right to Bear Arms Under the Second Amendment

Pro-gun advocates claim the Second Amendment protects their individual right to bear arms and any ban on firearms would contravene that right. The other side of this argument is that the right expressed in the Second Amendment runs only to the states to preserve their right to organize and maintain a militia; furthermore, the limitation expressed in the amendment applies only to the federal government and has no application to the states. Modern courts have unanimously adopted this latter interpretation, and the constitutionality of bans on handguns and assault weapons have been upheld on this basis. This issue is discussed in detail in Chapter 2.

##### Effect of Gun Control Laws on Reducing Violence and Deaths

###### The Problem

The statistics for firearm related homicides, suicides, and other violent crimes in the United States are staggering. Firearms were used in approximately 60 percent of all homicides and suicides in the United States in 1988 (this is the latest year for which figures are available). Statistics for 1988<sup>1</sup> are as follows:

- (1) 11,084 persons were murdered with guns, representing 61 percent of all homicides;<sup>2</sup>
- (2) 18,153 persons committed suicide with firearms, representing 59 percent of all suicides nationally;
- (3) Firearm accidents represented only 1.5 percent of all accidents;
- (4) 33 percent of the 542,968 robberies were committed with firearms;<sup>3</sup>
- (5) 21 percent of the 912,092 aggravated assaults were committed with firearms;<sup>4</sup>

## SUMMARY AND RECOMMENDATIONS

- (6) Overall, firearms were used in 30,689 deaths and in over 370,000 robberies and aggravated assaults.

The figures for those under the age of 19 are even more shocking. As the Center for Youth Research reports in a 1990 study:

In 1987, 11% of the youth under the age of 19 who died from any cause were killed with firearms. This rate varied by age from 1% of all deaths for those under 4 to 17.3% for those between 15 and 19. The overwhelming majority of the firearm deaths of those 15-19 were homicides and suicides. Nationally, homicide and suicide are the second and third leading causes of death among children and youth under the age of 21 (accidents are the leading cause). The death rates for homicide, 14 per 100,000, and suicide, 13 per 100,000, are more than double that for the next leading cause, cancer, which is 5.4 per 100,000.

By the teen years, most homicides and suicides occur through the use of guns. For example, in 1987 only 12% of the homicides for those 1-4 years of age were by gun, compared to 39% for 5-9 year olds, 65% for 10-14 years olds, and 71% for those 15-19. In 78% of the homicides, the type of gun used was a handgun. In addition, about 60% of all youths 15-19 who commit suicide use a gun.

Fingerhut and Kleinman (1989) compared firearm death rates with those by all other means for both homicide and suicide from 1968 through 1987. For 15-19 year olds, gun death rates are markedly higher and have increased more than the rates for all of the other means combined. During this time homicide rates by all other means increased 32%, while gun homicide rates rose 52%. The corresponding increases for suicide rates were 83% and 126%. These greater increases for gun death rates have raised their level to a point that is much higher than those for deaths by all other means. This is most clearly the case for suicide rates. They were about the same for gun and non-gun deaths in the late 1960's and early 1970's. Currently the rate of gun suicide is dramatically higher than is the rate without guns....

All of the above rates include both males and females. However, firearm death rates are approximately six times higher for males than for females.... [W]hile non-gun homicide rates [for

males] actually declined 5% between 1968 and 1987, the firearm homicide rate increased 36%; while the suicide rate without a gun increased 94%, the rate with a gun increased 150%. In addition, F.B.I. data show an increase in gun homicides in 1988 for teenage victims aged 15 to 19. Homicides by all other means declined.<sup>5</sup>

A 1988 report to the American Academy of Pediatrics (AAP) indicated that since 1986 there had been a 300 percent increase in the number of children age 16 and below, in major urban areas, who have suffered gunshot wounds.<sup>6</sup> Also, the Center to Prevent Handgun Violence reports that in 1987 gun accidents ranked as the fourth leading cause of accidental death among children, with 270 children dying as a result of an accidental shooting.<sup>7</sup>

Furthermore, according to a recent report by Knight-Ridder Newspapers, within a single day in America:

- (1) 10 children die from gunshot wounds;
- (2) 30 children are wounded by gunfire; and
- (3) 135,000 children bring a gun to school.<sup>8</sup>

There is overwhelming evidence that children are getting these guns from their homes. For example, a study of more than 500 accidental shootings of children revealed that:

- (1) 91 percent of the handguns involved in these shootings come from the homes where they occur;
- (2) 50 percent of the shootings take place in the victim's homes;
- (3) 38 percent of the shootings take place in the homes of friends and relatives;
- (4) 45 percent of the handguns are found in the bedrooms;
- (5) 80 percent of the victims are boys;
- (6) 90 percent of the shooters are boys;
- (7) Nearly 70 percent of the shootings occur when children are at home alone; and

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- (8) Most of the shootings occur during times when children are out of school, especially around vacations and holidays.<sup>9</sup>

Similarly, an AAP survey found that 62 percent of gun-related injuries treated by its members occurred during unsupervised play with a gun found in the home.<sup>10</sup>

### The Arguments

Gun control advocates contend that firearms cause violence, and consequently, restricting the availability of firearms (variations of the argument include all guns, only handguns, only Saturday Night Specials, and only assault weapons) would reduce the incidence of violence and death. Much of the research to examine the effects of gun control to prove or disprove this theory has focused on the effect of gun laws on crime rates. No doubt this is due to the general public's perception of crime as a major problem facing contemporary society.<sup>11</sup> One prominent gun control researcher, adhering to the view that gun control laws do affect crime rates, concludes as follows:

In the first place, there is overwhelming evidence that the handgun is the principal weapon of criminal misuse. Second, periods of increase in handgun acquisition appear to be associated with increases in firearms violence. Third, samples of handguns confiscated in a variety of urban areas implicate newer handguns as a disproportionate contributor to the offenses that lead to gun confiscation. Fourth, there appear to be significant links between general handgun availability and the use of handguns in violent crimes.<sup>12</sup>

On the other hand, pro-gun advocates maintain that gun control laws simply do not work. The conclusions of a second prominent gun control researcher support this position: "[N]one of the [some 20,000 firearms regulations] so far enacted has significantly reduced the rate of criminal violence. Under the Gun reviewed several dozen research studies that had attempted to measure the effects of gun laws in reducing crime; none of them showed any conclusive long-term benefits."<sup>13</sup> The researcher's further comments are illustrative of the continuing debate that exists:

As it happens, both sides of the gun-control debate grant this point; they disagree, though as to why there is no apparent connection between gun-control laws and crime rates. The NRA maintains that gun laws don't work because they can't work. Widely ignored (especially by criminals) and unenforceable, gun-control laws go about the problem the wrong way. For this reason the NRA



has long supported mandatory and severe sentences for the use of firearms in felonies . . . . .

The pro-control forces argue that gun laws don't work because there are too many of them, because they are indifferently enforced, and because the laws vary widely from one jurisdiction to the next. What we need, they would argue, are federal firearms regulations that are strictly enforced all across the nation. They would say that we have never given gun control a fair test, because we lack an aggressive national firearms policy.<sup>14</sup>

Studies purporting to examine the effectiveness of gun control laws are numerous.<sup>15</sup> The focus of these studies concern various gun control measures that are less restrictive than banning firearms.<sup>16</sup> The conclusions reached in the studies have been conflicting: with a few claiming that restricting access to firearms reduces some crime; some concluding that gun control laws do not affect crime rates; and others, while finding no "statistically significant" correlation between firearm availability and violent crime, nevertheless concluding that the evidence is inconclusive. Some commentators have suggested that the lack of statistical evidence of any effect of gun control laws on violent crime rates does not necessarily mean that the laws do not work, but may be due to other factors, including:

- (1) Lax enforcement of existing laws;
- (2) The "spill over" effect of easily available weapons in neighboring jurisdictions that spoil the effect of tough laws in other jurisdictions;<sup>17</sup>
- (3) The fact that existing gun laws are not sufficiently restrictive to make an impact on violent crime;<sup>18</sup> or
- (4) Regional, racial, and cultural factors that completely swamp the effects of gun-control laws.

Moreover, studies of gun control have been routinely criticized for employing inadequate or incorrect research methodology and analysis by other researchers and commentators, particularly those holding an opposite view.<sup>19</sup> One commentator, writing several years ago, characterized the state of gun control research as follows:

The few attempts at serious work are of marginal competence at best, and tainted by obvious bias. Indeed, the gun-control debate has been conducted at a level of propaganda more appropriate to social warfare than to democratic discourse.

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The debate between the "gun controllers" (as the interdictionists are generally identified) and the "gun lobby" (as the organized gun owners have been labeled by a hostile media) has been incredibly virulent. In addition to the usual political charges of self-interest and stupidity, participants in the gun-control struggle have resorted to implications or downright accusations of mental illness, moral turpitude, and sedition. The level of debate has been so debased that even the most elementary methods of cost-benefit analysis have not been employed. One expects advocates to disregard the costs of their programs, but in this case they have even failed to calculate the benefits.<sup>20</sup>

Finally, some researchers point out that methodological barriers and the lack of reliable data essentially prevent any decisive test of the effectiveness of gun control measures. As one commentator explains:

[I]t is not possible to make any sort of estimate as to whether [gun laws] do any good in reducing crime. Attempts have been made to correlate gun ownership and/or gun-control laws with gun-related crimes, but they are singularly unconvincing for the very simple reason that the data are so miserable--we have no firm estimate even of the number of guns available nationwide, much less in any given community, and it seems that the gun laws now on the books are rarely enforced. Some ingenious attempts to use regression analyses are easy to demolish.<sup>21</sup>

Similarly, another commentator concludes: "the arguments in favor of 'stricter gun control' fail nearly every empirical test, although in many cases, I hasten to add, the 'failure' is simply that the appropriate research is not available."<sup>22</sup> Given this current state of affairs, the most one can say with any assurance is that the evidence of the effect of gun control laws on violent crime is inconclusive and it is likely that evidence or studies could be found to support or attack virtually any position taken relative to the issue of gun control.

Some of the studies referenced above also include the effect of gun laws on accidents and suicides. In addition, there is an enormous body of literature examining the impact of gun control laws on accident and suicide rates; a number of these focus specifically on firearm accident and suicide rates among children. Time constraints precluded adequate review of these studies.

However, the following observations can be made. The lack of adequate data and many of the same methodological barriers noted earlier hamper these studies as well. For example, with respect to suicides, one study notes that "much of the available data are inadequate for indicating more than a suggested causal relationship [between the rise in suicides and the increased availability of firearms], in part because statistics on suicide are underestimated."<sup>23</sup> Likewise, with respect to firearm injuries: "Because of errors and reporting system incompatibilities, there are virtually no reliable data available on the numbers of nonfatal firearm injuries. Existing data are often misclassified or incompatible between systems. *Nonfatal injuries from firearms are presumed to greatly outnumber fatal injuries from firearms.*"<sup>24</sup> Similarly, a report on children and guns states: "Since no national reporting and tracking system for firearm injuries exists, there are, at best, estimates by researchers that for every firearm fatality there are three to five injuries. Even the fatality numbers, especially in terms of suicides, may be vastly underreported."<sup>25</sup> Despite the data problems, it seems clear (especially considering that numbers are underreported) that the number of accidental deaths and suicides involving firearms for minors under the age of nineteen is approaching a national tragedy. A report to the American Medical Association calls the number of firearm deaths and injuries an "epidemic of modern times" and states that: "There is unquestionably a need to treat this public health matter with as much urgency as any dread disease."<sup>26</sup>

Based upon the very limited review of the studies conducted, it appears that most studies concluded no statistical evidence exists to indicate a correlation between firearm accidents and existing gun control laws. For example, in one study, the authors found that states with strict gun laws had a lower incidence of accidental firearm deaths, but that they also had lower accidental death rates for poisoning and drowning, which could not be due to the gun laws. Based upon these findings, the authors were unable to conclude that stricter gun laws would reduce accidental firearm deaths.<sup>27</sup>

Suicide seems to be the area of study where researchers have found the most correlation between death and the availability of firearms.<sup>28</sup> Several commentators have contended that suicide, particularly among teenagers, is impulsive and spontaneous, not planned out, and that those who cannot get a gun may not necessarily use another means or, if they do, it will probably be a less lethal method which will increase the chances of intervention and rescue.<sup>29</sup> Several studies have suggested that restricting access to firearms might reduce the suicide rate, especially for teenagers and adolescents.<sup>30</sup>

One study focusing on the problem of children and guns included among its recommendations that:

- (1) Child and youth protection standards relating to gun safety be developed;

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- (2) Guns in the home be kept unloaded and locked up, with the ammunition kept locked separately; and
- (3) State health departments study the issue of children and guns and recommend policies regarding education and safety.<sup>31</sup>

### Conclusion

Based upon the empirical studies reviewed, there appears, at present, to be little conclusive evidence of the effect of existing gun control laws on crime or homicide rates; although, a few studies have suggested a correlation between suicides and the availability of firearms. However, the reader once again is reminded that these studies, and their conclusions, focus primarily on measures less restrictive than a firearms ban. At this time, empirical evidence of the effectiveness of banning firearms in the United States is not available, and international comparisons purporting to show the effectiveness of more restrictive gun laws are problematic.<sup>32</sup> With respect to where public policy makers should go from here, the following comments are worth noting:

This example illustrates an important point that I have learned and relearned throughout my career in applied social research: the policy consequences of a scientific finding are seldom obvious. On this particular point, the science is reasonably clear-cut: gun control laws do not reduce crime. But what is the implication? One possible implication is that we should stop trying to control crime by controlling guns. The other possible implication is that we need to get much more serious than we have been thus far about controlling guns, with stricter, nationally-standardized gun-control policies. There is little or nothing in the scientific literature that would allow one to choose between these possibilities; either could well be correct.

....

In the "Great American Gun War" ... as in most other areas of public policy, relatively little turns on factual matters that could be resolved through more and better research; most of what is at issue turns on values, ideologies, and world views that are remarkably impervious to refutation by social science research. No one who believes deeply that gun control would make this a better world--or that it wouldn't--will be persuaded otherwise by any of the research I or anyone else has done.

Applied social research can often describe a problem well, but it can seldom suggest a viable solution.... What to do about guns, crime, and violence in America is a question that has occupied many intelligent and capable people for decades, and no one has yet come up with a compelling, workable, legal answer. It is unlikely that "research" will provide that answer. As for social scientists with an interest in the topic, I think we ought simply to resign ourselves to doing what we do best--capable, informative research--and leave the search for "solutions" to the political process itself.<sup>33</sup>

### **If Guns Are Outlawed, Only Outlaws Will Have Guns**

Related to the argument that gun control laws have no effect on reducing crime rates is the contention, embodied in the pro-gun slogan "If guns are outlawed, only outlaws will have guns," that any law banning the possession of guns will be ignored by criminals.<sup>34</sup> Pro-gun advocates contend that, by definition, only law abiding citizens obey laws; who would expect criminals to comply with gun control laws when they readily violate laws prohibiting murder, robbery, and assault? Evidence from criminals themselves suggest that a firearms ban would pose little impediment to their obtaining firearms.<sup>35</sup> Even law enforcement personnel<sup>36</sup> and gun control researchers<sup>37</sup> concede that criminals will continue to find ways to obtain firearms despite imposition of strict gun control laws. Thus a ban may do little to limit access to firearms by criminals intent on obtaining and using a gun.

### **Crimes of Passion**

Related to the guns cause crime argument is the contention that many murders are committed not by real criminals but by ordinary people in the "heat of the moment." The theory is that these so-called crimes of passion would not turn so injurious or lethal but for the ready availability of a firearm.<sup>38</sup> However, a number of commentators question the validity of this argument on the basis that such homicides are rarely the culmination of a single, isolated outburst of rage.

For example, one gun control researcher cites a Kansas City study of family homicides, which found that 85 percent of the family homicides occurring within a single year had a history of prior violence and abuse (defined as the police having been called to the home within the prior five years to break up a domestic quarrel) and, in 50 percent of the

cases, the police had been called to the home at least five or more times.<sup>39</sup> He cautions that it would "be misleading to see these homicides as isolated and unfortunate outbursts occurring among normally placid and loving individuals. They are, rather, the culminating episodes of an extended history of violence and abuse among the parties."<sup>40</sup> Likewise, another major commentator, borrowing from a number of other sources, writes that:

[H]omicide studies uniformly refute the "myth that the typical offender is just an ordinary person who slipped once ...." "A more accurate description would be to say that, with comparatively few exceptions, homicide reflects a long-standing pattern [of the perpetrator's prior violent] behavior." Domestic homicide particularly is "just one episode in a long-standing syndrome of violence;" "...not an isolated occurrence or outbreak, but rather is the culminating event in a pattern of interpersonal abuse, hatred and violence that stretches back well into the histories of the parties involved."<sup>41</sup>

#### **The Substitution Theory: Knives Versus Long Guns**

Related to the foregoing argument and also to the guns cause crime argument is the contention that banning handguns (the firearm most often used in homicides) would result in the use of less-deadly weapons, such as knives, clubs, etc., which, in turn, would result in fewer deaths. As pointed out by one advocate of this theory:

[F]irearms are not only the most deadly instrument of attack, but also the most versatile. Firearms make some attacks possible that simply would not occur without firearms. They permit attacks at a greater range and from positions of better concealment than other weapons. They also permit attacks by persons physically or psychologically unable to overpower their victim through violent physical contact....

In addition to providing greater range for the attacker ... firearms are more deadly than other weapons. The fatality rate of firearms attacks ... [is] about five times higher than the fatality rate of attacks with knives, the next most dangerous weapon used in homicide.<sup>42</sup>

Pro-gun advocates counter this argument by claiming that a ban on handguns would have the opposite effect: that is, if successful, a handgun ban would more likely result in the use of shotguns and rifles instead, which do more damage to human tissue and are more

likely to kill than just injure.<sup>43</sup> As a consequence, the number of firearm homicides would increase, not decrease, as a result of a handgun ban.

One researcher supporting this contention estimates that large knives kill only about 2.4 percent of those they wound, whereas handguns are 1.31 to 3 times deadlier;<sup>44</sup> however, rifles are 15 times more lethal than knives and therefore 5 to 11.4 times deadlier than handguns.<sup>45</sup> And shotguns are "so much deadlier that in medical studies they are not to be 'compared with other bullet wounds.... At close range they are as deadly as a cannon.'"<sup>46</sup> He further estimates that, "if a handgun ban caused only 50 percent of the wounds now inflicted by handguns to be inflicted by long guns instead, the number of dead would double—even if not one victim died in the other 50 percent of these cases in which (hypothetically) knives would be substituted."<sup>47</sup> The researcher's assumption that long guns could be substituted in 50 percent of homicidal attacks is based on a finding that 54 to 80 percent of homicides occur in circumstances that would allow the use of a long gun.<sup>48</sup> Furthermore, survey data of 2,000 felons indicate that it would be easy for a criminal who wants a handgun but cannot get one to saw a long gun off to make it concealable.<sup>49</sup>

Because of the expected increase in firearm homicide deaths that would result if a handgun ban led to substitution of long guns, at least two prominent gun control researchers contend that any ban upon firearms should be applied equally to all firearms to avoid inadvertently encouraging the substitution of deadlier weapons.<sup>50</sup>

### **The Armed Citizen: The Use of Guns for Self-Protection**

A major argument of pro-gun advocates is that the individual citizen has a right to possess a firearm for self-protection and for the protection of home and family. The defensive use of firearms involves two aspects: the actual use of a firearm in self-defense and the deterrent effect of private gun ownership on criminal activity.

Pro-gun commentators contend, based on survey data, that "handguns are used as or more frequently (and with equal success) in repelling crime as in attempting it, about 645,000 handgun defensive uses annually versus about 580,000 handgun criminal attempts."<sup>51</sup> While acknowledging that actual shootings represent only a fraction of the defensive uses of guns, one researcher estimates that civilians, using firearms, kill between two and one-half to seven times as many criminals as are killed by law enforcement officers.<sup>52</sup> Researchers also claim that "[v]ictim gun use in crime incidents is associated with lower rates of crime completion and of victim injury than any other defensive response, including doing nothing to resist."<sup>53</sup> Pro-gun advocates, arguing the deterrent effect of gun ownership, point to recent survey evidence of 2,000 felons which reveals that:

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- (1) 34 percent indicated they had been "scared off, shot at, wounded, or captured by an armed victim";
- (2) 60 percent had at least one acquaintance who had had this experience;
- (3) 34 percent said that, in contemplating a crime, they either "often" or "regularly" worried they might be shot at by a victim; and
- (4) 57 percent agreed that "most criminals are more worried about meeting an armed victim than they are about running into the police."<sup>54</sup>

Finally, a few commentators have argued that a handgun ban would discriminate against minority members of society who live in poor urban areas with high crime rates by denying them the ability to protect themselves.<sup>55</sup> In view of the foregoing, pro-gun advocates contend that restrictive gun laws would "interfere more with potential victims than criminals, reducing the crime-control effects of non-criminal gun ownership."<sup>56</sup>

Gun control advocates, on the other hand, dispute the figures of defensive gun uses cited by pro-gun researchers and argue that any real evidence of a deterrent effect is lacking. For example, one researcher writes:

It is also argued that the most important deterrent effect of private weaponry is likely to be the generalized deterrence that results from the high overall possession rate of firearms among U.S. households. In other words, there may be large number of potential criminals who do not commit crimes because they know that many citizens are armed and they fear the possibility of getting shot. It is argued that the crime rates might be still higher were it not for firearms, and that the widespread ownership of guns keeps crime and violence below the level it might otherwise reach.

There is no evidence to support this hypothesis, and its proponents acknowledge that this effect could never be detected even in the largest and most sophisticated research effort.<sup>57</sup>

On a similar note, a commentator who questions the effectiveness of restrictive gun laws has this to say on the issue of deterrence:

The organized gun owners also claim that the widespread possession of firearms in itself deters crime; criminals are likely to be restrained by an armed citizenry. Perhaps--but consideration of criminal tactics suggests the idea is limited in application....



It is true that areas with high gun ownership tend to have less crime against property, but this is probably largely the result of cultural factors. In any event the low quality of data on crime rates and gun ownership makes rigorous examination impossible.<sup>58</sup>

Even a pro-gun advocate acknowledges that:

[D]eterrence is not an absolute bar but only a disincentive to confrontation crime, varying according to the individual felon's personality and opportunities for non-confrontation crime. As the NIJ Felon Survey summarizes its data: "Beyond all doubt, criminals clearly worry about confronting an armed victim"--but to "worry" is not necessarily to be deterred. While fear of the armed victim probably causes less hardy and dangerous felons to specialize in non-confrontation crime, it is much less effective with the distinctive subset of felons who are the major perpetrators of violent crime. Although sometimes dubbed "violent predators" for their tendency to extreme violence, they do not specialize in any particular crime, but rather are "omnibus felons" whose daily routines are characterized by "more or less any crime they had the opportunity to commit." Clearly worry about being shot had not deterred many in the NIJ felon survey from a life of confrontation crime. After all, if it had they would not have been in prison to answer the survey.<sup>59</sup>

Gun control advocates also contend that the risk of accidental or intentional death from a gun in one's home is far greater than the chances that the gun will save life. One researcher, stating that "it is absolutely clear that the handgun in your house is more likely to kill you or a member of your family than to save your life," cites as an example Detroit, Michigan where more people died in one year from handgun accidents than were killed by home invading robbers or burglars in four and a half years.<sup>60</sup> Similarly, an American Medical Association (AMA) report notes that a 1986 study of all firearm deaths in Washington State during 1978-83 revealed that 54 percent occurred in the home where the firearm was kept and only 2.3 percent were justifiable homicide. The report concludes that "for every firearm homicide related to self-protection, there were 1.3 accidental deaths, 4.6 criminal homicides, and 37 suicides."<sup>61</sup>

Even more troubling were the statistics cited in the AMA report of firearm fatalities among children. Gun accidents have been found to be the fifth leading cause of all deaths in young children, and most of the unintentional firearm deaths among children under the age of

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fifteen "resulted from guns used in play that had been left loaded and not locked up."<sup>62</sup> A study of firearm deaths in California from 1977-83 found 88 cases of unintentional firearm deaths among children, which represented 64 percent of all the unintentional firearm deaths and 19 percent of all the firearm deaths for that period. The gun wielder was another family member in 24 percent of the cases, a playmate in 35 percent, and in 70 percent of the cases was a male between the ages of 10 to 14.<sup>63</sup> Furthermore, the California study found that "unintentional deaths of friend and family members in the home were up to 6 times more common than shootings of criminals."<sup>64</sup> The AMA report also cites a survey of 150 families attending the pediatric clinic at the University of Texas Medical Branch in Galveston, that found: 38 percent of the families had at least one gun in the home; the guns were always loaded in 55 percent of these homes; and 10 percent of the gun owners said their guns were loaded, unlocked, and within reach of a child.<sup>65</sup>

The results of public opinion surveys are interesting in view of the foregoing discussion. A 1986 *Media General/Associated Press* poll showed that 28 percent of the respondents indicated that having a gun in their home made it a safer place, 36 percent indicated it was a more dangerous place, and 29 percent indicated it made no difference. (See Appendix M.) Perhaps more noteworthy is a 1989 survey taken for *Time/CNN* of 605 gun owners which revealed that 42 percent felt safer with a gun in their house, 2 percent felt less safe, and 56 percent felt no difference. Thus a solid majority of gun owners thought having a gun in their home made no difference in the safety of their home or made them feel less safe. Furthermore, only 27 percent indicated that protection from crime was their main reason for owning a gun, and only 9 percent said they had fired their gun for self-protection. In addition, 41 percent knew someone who had been shot in a gun accident. Perhaps more disturbing, only 45 percent indicated their gun is usually kept locked up, and 36 percent indicated they sometimes (12 percent) or always (24 percent) keep their gun loaded.<sup>66</sup> (See Appendix N.)

A final point worth noting is made by one commentator at the conclusion of his discussion of the self-defense issue:

With all the controversy over the costs and benefits of guns for household self-defense, there is one aspect of the matter--on which experts are in unanimous agreement--that has not achieved the recognition we think it deserves: Almost all authorities from gun-control advocates to the National Rifle Association counsel that the loaded gun easily accessible in the bedroom dresser is an invitation to disaster. The risks, from children playing or showing off, from adults who are drunk or frightened or both, or from burglars themselves, are just too great.

The unanimous advice of experts is to store guns in the house in a locked area that is separate from where ammunition for the gun is kept. This warning from manufacturers and gun owner groups should play a far more prominent role in dialogue about guns and self-defense than has been the case in recent years.<sup>67</sup>

### **Is A Firearms Ban Enforceable?**

Pro-gun advocates maintain that a firearms ban will not work because it is unenforceable. As it is, existing gun control measures are not strictly enforced in many jurisdictions. A number of reasons could account for this lax enforcement, including but not limited to: the restraints imposed by constitutional considerations on the police to discover firearm violations;<sup>68</sup> priorities set by law enforcement agencies to handle increasing caseloads of major crimes, drugs, and youth gangs with limited resources; or reluctance on the part of some law enforcement members to go after persons perceived as otherwise law abiding citizens.

Another enforcement problem relates to the sheer number of guns already in private hands. As one commentator put it, "the existing stock is adequate to supply all conceivable nefarious purposes for at least the next century."<sup>69</sup> Estimates of the number of guns in private hands vary widely from over 100 million<sup>70</sup> to upwards to a billion.<sup>71</sup> Several commentators suggest that a sensible estimate is 150 million guns in private hands.<sup>72</sup> Furthermore, survey evidence dating back to at least 1959 has routinely shown that close to fifty percent of all American households possess at least one firearm, with the average number of firearms possessed being three.<sup>73</sup> (Appendix O shows the number of respondents reporting a firearm in their home for the years 1973-1988. Appendix P, which shows respondents reporting the type of weapon in their home in 1989, indicates that forty-seven percent of respondents answered affirmatively when asked if they had any guns in their home.) A December 1989 survey of 605 gun owners reveals that the mean number of guns owned by those surveyed is 4.41. (See Appendix N.)

Given these figures, one has to conclude that, whatever the exact number, there obviously are a great number of firearms in private hands. The problem has been summarized as follows:

If there are 140 million privately owned firearms in the United States and guns can last centuries with minimum maintenance, merely cutting off the supply will have little or no effect for generations, and if the supply is not cut off entirely (which no serious person believes it can be), an interdiction policy is hardly likely to have a major effect even over the very long run.

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To my knowledge, no interdiction advocate has given a plausible answer to the very simple question of how to get 140 million firearms out of the hands of the American people.<sup>74</sup>

Even gun control advocates concede that the real difficulty in restricting firearms is whether any law can reduce the number of firearms already in circulation enough to have any effect on gun violence:

Under the best conditions, collecting the vast arsenal of civilian [firearms] would be neither easy nor swift.... How many citizens would turn in their guns when the law took effect? How long would it take to remove the guns from the streets, where they do the most harm? Should urban households be left fearfully defenseless? Is it desirable to add yet another victimless and unenforceable crime ... to the depressingly long list of such crimes that have already accumulated? These are not easy questions to answer.<sup>75</sup>

Still another enforcement problem concerns the level of voluntary compliance by gun owners. The low compliance rate, to date, with California's Roberti-Roos Assault Weapons Control Act has been discussed previously.<sup>76</sup> However, it is worth reiterating that this resistance is in response only to a registration requirement that would permit persons already owning assault weapons to retain them. One can only wonder at the level of resistance to a total ban aimed at eliminating possession of all firearms. Finally, law enforcement officials have noted possible enforcement problems relating to search warrants and firearm confiscation in the event gun owners were to resist a firearms ban.<sup>77</sup>

Related to the problem of compliance is the level of public support for a ban on firearms. As one author notes:

A basic limitation on gun control policy, however sound, is that continuing and substantial majority support is required for initial adoption and for allocation of the long term resources necessary to enforcement. What this means in a country which, by the 1970's, had guns in 50 percent of its households (handguns in 25 percent), is that proposals to generally ban all guns, or even just handguns, are doomed ....<sup>78</sup>

Again, public opinion surveys shed some light on these issues. Since at least 1959, surveys have shown that a large majority of the those surveyed support licensing and or registration of firearms.<sup>79</sup> (See Appendices Q, R, S, T, and U which show responses to surveys soliciting attitudes toward licensing and registration requirements.) Surveys also show that 70 percent of those polled think the laws covering the sale of firearms should be

made more strict.<sup>80</sup> (See Appendix V.) According to one poll, even a large majority of gun owners are in favor of mandatory registration (particularly for semi-automatic weapons, handguns, and pistols) and a federal law requiring a seven-day waiting period and background check prior to the purchase of handguns, despite the fact that they do not think stricter gun laws would reduce violence in the United States. (See Appendix W.)

Even more noteworthy is a recent survey showing a large percentage of respondents favoring a ban on: the manufacture, sale, and possession of cheap handguns known as Saturday night specials (71 percent); plastic guns (75 percent); and assault guns (72 percent). (See Appendix X.) However, bans on the manufacture, sale, or ownership of handguns are rejected by a majority of respondents. (See Appendices Y and Z.)

### **Assault Weapons: The Gun of Choice of Criminals**

Assault weapons have become the focus of much of the gun control debate in recent years. Efforts to ban or restrict assault weapons and the events that have served as an impetus to this action are detailed elsewhere.<sup>81</sup> The argument for gun control is that assault weapons have no legitimate sporting purpose, are the preferred weapon of choice of criminals and terrorists, and therefore ought to be banned. Pro-gun advocates contend that:

- (1) Semi-automatic firearms are used extensively by millions of citizens for legitimate sporting purposes;
- (2) Proposed bans are so broadly written that virtually all semi-automatic rifles, shotguns, and handguns could be restricted or banned; and
- (3) Criminals generally prefer handguns (.38 and .357 magnum revolvers) to long guns or semi-automatic rifles, and even in the largest and most crime ravaged cities, semi-automatics constitute only about one-half to three percent of the crime guns.<sup>82</sup>

Not all gun owners agree with this first contention. For example, the manager of a gun store on Kauai was quoted, with reference to the assault weapons banned for importation by the Bush administration, as saying: "There is no hunting value to those guns. I think the demand is mostly in urban areas."<sup>83</sup> Similarly, the manager of the Honsport store in Hilo was quoted as saying: "We will not carry these paramilitary weapons in our stores. These are not sporting arms.... I think [the Bush administration's ban] is a great idea."<sup>84</sup> Honsport reportedly is following the policy of its parent company, Oshman's Sporting Goods (the

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country's second largest sporting goods dealer), which prohibits the sale of military-style assault weapons.<sup>85</sup>

As to the second contention, those advocating banning assault weapons have acknowledged the difficulty of defining assault guns. Legislative proposals to ban assault weapons have attempted to clear this hurdle by naming the specific gun models to be restricted.<sup>86</sup>

Finally, recent statistics about the *criminal use of assault weapons dispute the third* contention of pro-gun advocates. According to a study by Cox Newspapers of gun trace requests:

An assault gun is 20 times more likely to be used in crime than a conventional firearm .... While assault guns account for 1 million -- or 0.5 percent -- of the 200 million privately owned firearms in the United States, they were used in one of every 10 crimes that resulted in a firearms trace last year ....<sup>87</sup>

The study also found that nearly 30 percent of all firearms traced to organized crime, gun trafficking, and crimes committed by terrorists in the United States in 1988 and the first quarter of 1989 were assault weapons. Furthermore, of the thousands of gun models sold, "just 10 of them -- all members of the so-called assault gun family -- account for 12.4 percent of the nation's drug-related crime ...."<sup>88</sup>

Other major findings of the study include:

- (1) Two-thirds of assault guns traced to crime are produced domestically and are not affected by the ban on importation of foreign-made assault guns;
- (2) The use of assault weapons in crime rose more than 78 percent in 1988 over 1987, and figures for the first quarter of 1989 show this trend is continuing to grow;
- (3) Just 10 assault gun models accounted for 90 percent of the crimes involving assault guns, and one of every five of those was a TEC-9 (See Appendix AA);
- (4) Use of semiautomatic pistols in crime outnumbers revolvers for the first time since records of firearms used in crimes have been kept, and overall, the figures "reveal a clear trend on the part of criminals to upgrade their arsenals with weapons that fire faster and hold more ammunition."<sup>89</sup>

The authors of the study note that the findings "appear to document for the first time what police across the nation have asserted for months -- that a minute number of semiautomatic guns patterned after military firearms are the favored weapon of a growing number of criminals, especially violence-prone drug gangs that infest larger U.S. cities."<sup>90</sup> The chief of the Los Angeles Police Department agrees: "[G]ang members love these weapons because they don't have to be marksmen, they don't have to be sportsmen, they don't have to aim at anything; they just spray everything."<sup>91</sup> This increased criminal use of assault weapons has prompted police departments across the country to upgrade their own arsenals as a means of protecting the public and themselves.<sup>92</sup> As one law enforcement publication reports:

There appears to be a need at this point for police departments to arm themselves as well as they can to protect their officers and the citizens who they are sworn to serve. The foreseeable future holds no promise for a decrease in the escalation of semi-automatic/automatic weapons among criminals or the general population.<sup>93</sup>

Another point to be made about the increasing criminal use of assault weapons is that their use is more likely to result in death than other firearms. Reports from hospital emergency rooms indicate that the number of gunshot wounds per victim has increased dramatically since 1985, and one commentator contends that the "number of bullets [assault weapons] fire, the speed they travel and the damage they do is driving the homicide rate up."<sup>94</sup> The chief of detectives for the Chicago police department agrees: "People used to use Saturday night specials, which were cheap and small and didn't do as much damage as these big guns are doing. More people are dying from their wounds because a semiautomatic or a 357 magnum really tears up the body."<sup>95</sup>

A number of public opinion polls on the banning of assault weapons have been conducted recently, and the results indicate broad public support for a ban. (See Appendix BB which contains the survey results of a number of national and state polls.) For example, a Gallup poll taken during February and March of 1989 of 1,000 adults nationwide indicated 72 percent favored federal legislation banning the manufacture, sale, and possession of semi-automatic assault guns. The results of nationwide polls by CBS News/48 Hours (73 percent in favor), NBC/Wall Street Journal (74 percent in favor), Hotline/KRC (73 percent in favor) are remarkably similar. A Hawaii poll taken for The Honolulu Advertiser and Channel 2 News during November 1989 also produced similar figures: 76 percent indicated there should be a total ban on assault weapons in Hawaii compared to 20 percent who disagreed (4 percent either refused to answer or didn't know).<sup>96</sup> According to a Harris Poll (which surveyed 1,248 adults between March 23-29, 1989), even among non-NRA member gun owners, 64 percent favored banning the sale of assault rifles made abroad and 58 percent favored banning the sale of all assault rifles made in the United States.

## Part II. Conclusions and Recommendations

Present empirical evidence of the effect of banning firearms on violence and crime appears inconclusive at best. It may be that the roots of violence and crime are too deeply embedded into American society's socio-economic fabric for the banning of guns, or any single solution for that matter, to have any measurable effect. As several commentators have pointed out, until lawmakers, and the general public, are willing to commit the necessary resources to solving the real roots of crime, little can be done to reduce the level of violence and crime in our society; banning guns alone won't do it.<sup>97</sup> Moreover, as one prominent gun control researcher has observed, the decision whether to ban firearms is not a question that currently can be answered scientifically, but is a policy decision best left to public policy makers.<sup>98</sup>

In terms of public policy, a strong case may be made for the banning of assault weapons. Clearly the evidence shows their use in crime is on the increase. Also clear, given their awesome firepower capability, is their potential for inflicting greater injury and death indiscriminately and in a matter of seconds. Unlike the arguments in support of handguns, and conventional rifles and shotguns, the arguments seeking to justify the private possession of assault weapons are singularly unconvincing. Exceptions could be made for private possession for purposes of competitive shooting (the most persuasive of the arguments made), as was done in New Jersey. Furthermore, a ban on assault weapons has overwhelming public support and is a prime objective of the Hawaii law enforcement community. Finally, in view of the applicable caselaw, it seems likely that an assault weapons ban enacted in Hawaii would pass constitutional muster. **Accordingly, the Bureau recommends that the Legislature give serious consideration to the assault weapons ban being proposed by the local law enforcement community.**

There appears to be some evidence of a correlation between suicides and the availability of firearms. Moreover, evidence from studies and from survey data show that there is a glaring failure on the part of many gun owners to observe minimal firearm safety precautions. It bears reiteration that the unanimous advice of gun experts, including representatives of the NRA, is to store guns in the home unloaded and in a locked area that is separate from where the ammunition is kept. As seen from survey data, a substantial number of gun owners admit that they do not follow this common sense precaution. Even the most ardent gun advocates admit that leaving a loaded firearm in a place easily accessible to children is an open invitation to disaster.

In 1989, the State of Florida, in response to a spate of accidental shootings in the home which left five children dead, enacted a law requiring that all firearms be kept in locked cases or be stored with trigger locks in homes where minors could gain access to the firearm.



(A copy of the Florida law appears as Appendix CC.) Violations of the Florida law are second-degree misdemeanors (punishable by sixty days in jail and a \$500 fine). However, owners who fail to store safely a weapon that is obtained by a minor who then uses it in an accidental shooting could be charged with a felony and sentenced to five years in prison and fined \$5,000. (These provisions do not apply where a gun is stolen.) The prosecutor must wait seven days after an accident to weigh all aspects of the case before determining whether to file charges. Sellers or transferors in a retail commercial sale or retail transfer must give written notice of the law to the purchaser or transferee. The law also required the Florida department of education to develop a gun safety program and implementing legislation to be submitted to the legislature by March 1, 1990. The NRA has gone on record in support of such legislation.<sup>99</sup> Furthermore, advocates on both sides of the gun control issue agree that increasing gun safety will decrease accidental shooting deaths.<sup>100</sup> During 1990, Connecticut and Iowa also passed laws requiring gun owners to store firearms in a safe manner to prevent children from gaining access to them.

**Accordingly, the Bureau strongly recommends that the Legislature consider and enact a law, similar to Florida's, requiring the safe storage of firearms on premises where children reasonably could have access to them and imposing liability on gun owners who fail to adhere to these safety requirements.** A bill requiring proper storage of firearms was introduced in the House last year by Representative Brian Taniguchi, but died in the House Judiciary Committee without a hearing.<sup>101</sup> (A copy of H.B. No. 2980 appears as Appendix DD.) House Bill No. 2980, introduced last year, could serve as a starting point for such a law, but should be redrafted to include the Florida notice requirement and the development of a firearm safety program, perhaps by the Department of the Attorney General in conjunction with the Department of Education, to promote public awareness and understanding of the safe use and storage of firearms.

Finally, in terms of firearm safety, it seems more than a little ironic that successful completion of a hunter education program that includes instruction in safety is a prerequisite to obtaining a hunting license in Hawaii<sup>102</sup> and yet no safety training is required prior to a person obtaining a firearms permit.<sup>103</sup> Although the hunter education program requirement will apply to a substantial number of persons who acquire a firearm, it obviously will not apply to everyone since not everyone who acquires a firearm (particularly a handgun, which is the weapon most often used in homicides and suicides) also applies for a hunting license. **Consequently, the Bureau also recommends that the Legislature consider requiring the completion of a firearms education program, focusing on firearm safety, as a prerequisite to obtaining a permit to acquire a firearm.**

## ENDNOTES

1. These statistics are from the U.S. Department of Justice, Federal Bureau of Investigation, Uniform Crime

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Reports for the United States: Crime in the United States, 1988, (Washington D.C.: U.S. Government Printing Office, 1989) as reported in University of Hawaii, Social Science Research Institute, Center for Youth Research, Gun Control: A Youth Issue (Honolulu: 1990) at 6-9 [hereinafter cited as Gun Control: A Youth Issue].

2. Of these homicides, 75% were committed with handguns, 10% with shotguns, 7% with rifles, and 8% with "other or unspecified guns." Gun Control: A Youth Issue, *supra* note 1, at 6.
3. 43% involved strong-arm tactics, 14% knives and other cutting instruments, and 10% other weapons. *Id.* at 9.
4. Blunt objects or other dangerous weapons were used in 31%, followed by physical force in 27%, and knives in 21%. *Id.*
5. *Id.* at 9-10 (citations omitted). See also Lois Fingerhut & Joel Kleinman, "Firearm Mortality Among Children and Youth," Advance data from vital and health statistics, No. 178, U.S. Department of Health and Human Services, National Center for Health Statistics, (November 3, 1989).
6. "Youngster and gun can be a fatal duo." Star-Bulletin (August 11, 1989) at A-1 [hereinafter cited as "Youngster and gun"].
7. *Id.*
8. L. Stanley Chauvin Jr. "Startling Statistics About Children," American Bar Association Journal (February 1990) at 8 (The report was based on Knight-Ridder's collection of statistics from the Children's Defense Fund, the 1988 Census Report, annual crime reports and other information); Accord, "Youngster and gun," *supra* note 6, at A-8 (Every day ten youths age 18 and under are killed in handgun suicides, homicides, and accidents with three to four times as many wounded).
9. See "Firearms and youngsters: Deadly, tragic mix," USA Today (June 15, 1989) (citing a study by the Center to Prevent Handgun Violence).
10. "Youngster and gun," *supra* note 6, at A-8.
11. In contrast, accidental deaths and suicides are not seen as major concerns by the general public, although researchers in the medical and related fields most certainly would disagree. See generally Marjolijn Bijlefeld, William Treanor, & Michael Beard, Kids and Guns: A Child Safety Scandal The National Coalition to Ban Handguns and The American Youth Work Center (1988) [hereinafter cited as Kids and Guns]; American Medical Association, Council on Scientific Affairs, "Firearms Injuries and Deaths: a Critical Public Health Issue," 104 Public Health Reports 111 (March/April 1989) [hereinafter cited as "Firearms Injuries and Deaths"].
12. Franklin E. Zimring & Gordon Hawkins, The Citizen's Guide to Gun Control (New York: Macmillan Pub. Co., 1987) at 53 [hereinafter cited as Zimring].

13. James D. Wright, "Second Thoughts About Gun Control," 91 The Public Interest 23, 27 (Spring 1988) [hereinafter cited as Wright, "Second Thoughts"].
14. Id. (emphasis added).
15. Such studies are difficult to categorized neatly. The methodology employed ranges from using simplistic comparisons to employing various methods of mathematical analyses. The focus of the studies vary from a specific law aimed at limiting possession of firearms among the general public or a segment thereof (such as requiring a license or permit to purchase, own, or possess a gun or imposing a registration requirement and waiting period to allow law enforcement to check on an applicant's background) to the combined impact of a variety of gun control measures in effect in a particular jurisdiction. Time and space constraints preclude any in-depth discussion of such studies beyond what is covered in the text of this report.

However, for an examination of these studies and their findings, the adventurous reader is referred, as a starting point only, to the following: P.J. Cook, "The Effects of Gun Availability on Violent Crime Patterns," 455 Annals of the American Academy of Political and Social Science 63-79 (May 1981); S.J. Deutsch & F.B. Alt, "The Effect of Massachusetts' Gun Control Law on Gun-Related Crimes in the City of Boston," 1 Evaluation Quarterly 543-86 (1977); Martin Geisel, Richard Roll, & R. Stanton Wettick, Jr., "The Effectiveness of State and Local Regulation of Handguns: A Statistical Analysis," 1969 Duke Law Journal 647 (1969); David Lester, "Availability of Guns and the Likelihood of Suicide," 71 Sociology & Social Research 287 (1987); David Lester, Gun Control: Issues and Answers (Springfield, Ill.: Charles C. Thomas, Pub., 1984) [hereinafter cited as Lester]; Don B. Kates, Jr., "Firearms and Violence: Old Premises and Current Evidence," Violence in America: The History of Crime, ed., Ted Robert Gurr, Violence Cooperation, Peace: An International Series, vol. I, (London: Sage Publications, 1989) [hereinafter cited as Kates, "Firearms and Violence"]; Don B. Kates, Jr. "The Battle Over Gun Control," 84 The Public Interest 42 (Summer 1986); Don B. Kates, Jr., ed., Restricting Handguns: the Liberal Skeptics Speak Out (Croton-on-Hudson, N.Y.: North River Press, 1979); Don B. Kates, Jr., ed., Firearms and Violence: Issues of Public Policy (San Francisco: Pacific Institute for Public Policy Research, 1984); Gary Kleck, "Policy Lessons From Recent Gun Control Research," 49 Law & Contemporary Problems 35 (Winter 1986) [hereinafter cited as Kleck]; Douglas R. Murray, "Handguns, Gun Control Laws and Firearms Violence," 23 Social Problems 80 (1975); Wright, "Second Thoughts," supra note 13; James D. Wright & Peter H. Rossi, Armed and Considered Dangerous: A Survey of Felons and Their Firearms (Hawthorne, N.Y.: Aldine Pub. Co., 1986) [hereinafter cited as Wright, Armed and Considered Dangerous]; James D. Wright, Peter H. Rossi, & Kathleen Daly, Under the Gun: Weapons, Crime, and Violence in America (Hawthorne, N.Y.: Aldine Pub. Co., 1983) [hereinafter cited as Under the Gun]; James D. Wright, et. al., Weapons, Crime and Violence in America: A Literature Review and Research Agenda U.S. Department of Justice, National Institute of Justice, (Washington D.C.: U.S. Government Printing Office, 1981); Franklin E. Zimring, "Firearms and Federal Law: The Gun Control Act of 1968," 43 Journal of Legal Studies 133 (1975); Franklin E. Zimring & George D. Newton, Firearms and Violence in American Life: A Staff Report to the National Commission on the Causes and Prevention of Violence (Washington, D.C.: Government Printing Office, 1970); Zimring, supra note 12;

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16. As noted previously in this report, laws banning certain categories of firearms are of too recent an origin to permit empirical evaluation. See Chapter 3.
17. B. Bruce-Briggs, "The Great American Gun War," 45 The Public Interest 37, 46 (Fall 1976) reprinted, "The Great American Gun War," National Rifle Association, Institute for Legislative Action, (Pamphlet, July 1989) [hereinafter cited as Bruce-Briggs].
18. Cf. Lester, supra note 15, at 130, in which the author states that it "would be very surprising if such minimal restrictions [as permits to purchase and waiting periods] did have an impact on the role of guns in crime and death," but suggests that banning the sale of all guns and forbidding the ownership of all guns "would obviously have an impact on violent crime and death rates due to firearms ...."
19. Examples are readily available: see e.g., Zimring's criticism of the research by Wright, et. al., by Kates, and by Kleck in Zimring, supra note 12, at 94-99 and Kleck's criticism of Zimring's research in Kleck, supra note 15, at 38-39. Also see criticism of research by Geisel, et. al., and by Zimring in National Rifle Association, Institute for Legislative Action, Gun Law Failures (Washington D.C.: June 1989) (pamphlet) [hereinafter cited as Gun Law Failures].
20. Bruce-Briggs, supra note 17, at 37.
21. Id. at 45; accord, Wright, Under the Gun, supra note 15, at 124-28.
22. Wright, "Second Thoughts," supra note 13, at 37.
23. "Firearms Injuries and Deaths," supra note 11, at 113; accord, Kids and Guns, supra note 11, at 20 (Number of suicides underreported because many suicides are not cited as such to spare families' embarrassment).
24. "Firearms Injuries and Deaths," supra note 11, at 114.
25. Kids and Guns, supra note 11, at 5-6.
26. "Firearms Injuries and Deaths," supra note 11, at 111. The report goes on to criticize the lack of government funding for research in this area. Referring to a comparison of National Institutes of Health (NIH) research grants for firearm injuries versus five "low-frequency infectious diseases" (LID) (cholera, diphtheria, poliomyelitis, congenital rubella syndrome, and rabies), the report notes that "[t]here were more than 198,000 firearm injuries compared to 17 cases of LID, yet LIDs were the subject of 19 NIH grants while firearm injuries were the subject of none. Id. at 114 (citing J. Jagger, "Death and injury by firearms: Who cares?" 255 Journal of American Medical Association 3143-3144 (June 13, 1986).
27. Lester, supra note 15, at 15-16.
28. See e.g., Kids and Guns, supra note 11, at 16-21 (Reviewing a number of studies of youth suicides); Lester, supra note 15, at 17-25; "Firearms Injuries and Deaths," supra note 11, at 113-114.

29. See e.g., Kids and Guns, supra note 11, at 20-21; Robert J. Mundt, "Gun Control and Rates of Firearms Violence in Canada and the United States," 32 Canadian Journal of Criminology 137, 145-46 (January 1990); "Firearms Injuries and Deaths," supra note 11, at 114.
30. Kids and Guns, supra note 11, at 21-22. After reviewing a number of studies, the authors conclude that: "Although American research correlating the firearm accessibility and suicide rates cannot be adequately conducted until firearms are restricted, there is strong evidence that, ultimately, restrictions on access to guns would significantly lower the suicide risk to this nation's children." Accord, Lester, supra note 15, at 25 (Concludes, after reviewing a number of studies, that evidence exists to suggest restricting the availability of guns might have an impact on the suicide rate).
31. Kids and Guns, supra note 11, at 29-30.
32. See Chapter 3, Part II.
33. Wright, "Second Thoughts," supra note 13, at 27-28 & 38.
34. See id. at 30; Zimring, supra note 12, at 111-12.
35. A survey of 2,000 prison inmates, in ten prisons across the country, found that most criminals acquire their guns predominantly through private, second-hand transfers involving friends, family, street sources, or various black market sources; only about one-sixth of those surveyed had obtained their most recent gun through a customary retail transaction involving a licensed firearms dealer. Theft also played a major role in supplying criminals with firearms: 40 to 70% of the most recent guns owned by those surveyed were stolen weapons (these figures include guns felons knew or believed to be stolen as well as guns felons themselves stole.) James D. Wright, "The Armed Criminal In America," Research in Brief Series, U.S. Department of Justice, National Institute of Justice, (November 1986) at 2-3 [hereinafter referred to as "The Armed Criminal"] (summarizing the findings of Wright, Armed and Considered Dangerous, supra note 15). Furthermore, the majority of those surveyed indicated it would be "no trouble at all" to acquire a gun upon their release from prison. Id. at 2. The primary author of the survey concludes: "The message these men seem to be sending is that their felonious activities would not suffer for lack of appropriate armament. Their intent, it seems, would be to find substitutes that might be somewhat less convenient, but would be at least as effective as their current weaponry. Id. at 5.
36. The NRA reports that a 1989 nationwide survey by the National Association of Chiefs of Police of command officers found that:
- (1) 90% agreed that criminals obtain their weapons from illegal sources;
  - (2) 90% believe that banning all firearms would not reduce the ability of criminals to obtain firearms; and
  - (3) 88% believe that a ban would not produce a reduction in gun-related crime.
- National Rifle Association, Institute for Legislative Action, Ten Myths About Gun Control, 20 (revised April 1990) (pamphlet) [hereinafter cited as Myths].

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37. Bruce-Briggs, supra note 17, at 51 ("No serious person believes that an interdiction program will be effective enough to keep guns out of the hands of organized crime, professional criminals, or well connected terrorist and assassins.") Accord, Wright, "Second Thoughts," supra note 13, at 209 ("Serious gun control advocates concede [strict gun control laws] cannot avail against professional or political criminals or, indeed, anyone who really wants a gun").
38. See e.g., Zimring, supra note 12, at 15-16, in which the author, reviewing studies of fatal and non-fatal assaults, concludes that "the circumstances in which most homicides were committed suggested that they were committed in a moment of rage and were not the result of a single-minded intent to kill."
39. Wright, "Second Thoughts," supra note 13, at 31.
40. Id. at 31-32.
41. Kates, "Firearms and Violence," supra note 15, at 203 (footnotes omitted).
42. Zimring, supra note 12, at 15; accord, Jeffery H. Goldstein, Aggression and Crimes of Violence (New York: Oxford University Press, 1986) at 143.
43. See e.g., Kates, "Firearms and Violence," supra note 15, at 205; Kleck, supra note 15, at 48-50; "Handgun Ban May Do More Harm Than Good," The Honolulu Advertiser (March 29, 1986) at A-9. Accord, Wright, "Second Thoughts," supra note 13, at 36-37.
44. But see note 42 supra.
45. Kates, "Firearms and Violence," supra note 15, at 205.
46. Id. (footnotes omitted).
47. Id.
48. Id. (citing Gary Kleck, "Handgun-only Control--A Policy Disaster in the Making," in Kates, ed., Firearms and Violence, supra note 15, at 186-94.
49. The Armed Criminal, supra note 35, at 5.
50. Kleck, supra note 15, at 59; accord, Kates, "Firearms and Violence," supra note 15, at 206 ("A cardinal rule is to apply any restriction against handguns at least equally rigorously against the ultra-lethal long gun").
51. Kates, "Firearms and Violence," supra note 15, at 207; Gun Law Failures, supra note 19, at 13.
52. Gun Law Failures, supra note 19, at 13 (Citing Gary Kleck, "Crime Control Through the Private Use of Armed Force," 15 Social Problems 1 (1988).

53. Id. at 14; accord, Kates, "Firearms and Violence," supra note 15, at 207 (Citing national victim survey data showing a gun-armed victim resisting criminal attack is 50% less likely to be injured than a victim who does nothing; in contrast, knife-wielding resisters were twice as likely to be injured as non-resisters and much more likely to be injured than gun-armed resisters).
54. As reported in Kates, "Firearms and Violence," supra note 15, at 207.
55. See George Will, "The class bias of gun control," The Honolulu Advertiser (March 23, 1989). It is argued that the need for self-protection is great because the government has either failed or abdicated its responsibility to protect these people.
56. Gun Law Failures, supra note 19, at 14.
57. Zimring, supra note 12, at 33 (emphasis supplied).
58. Bruce-Briggs, supra note 17, at 55.
59. Kates, "Firearms and Violence," supra note 15, at 208-09 (Quoting from Wright, Armed and Considered Dangerous, supra note 15, at 50-54, 71, 76-77, & 150).
60. Zimring, supra note 12, at 30. Zimring acknowledges, however, that the real use in the great majority of gun owning households is to make the owners "feel less uneasy about the possibility that hostile strangers will invade [their] home." And he further admits that this "feeling of well-being, although a statistical illusion, is an emotional reality. People will resist the statistics that show otherwise because, if their guns do not give them any real measure of protection, they have no other way to deal with their fears." Id. at 32.
61. "Firearms Injuries and Deaths," supra note 11, at 112 (Citing A.L. Kellerman & D.T. Reay, "An analysis of firearm-related deaths in the home," 314 New England Journal of Medicine 1557-60 (June 12, 1986)).
62. Id. at 113.
63. Id. (Citing G.J. Wintemute, "When children shoot children: 88 unintended deaths in California," 257 Journal of American Medical Association 3107-09 (June 12, 1987)).
64. Id.
65. Id. (Citing P.J. Patterson & L.R. Smith, "Firearms in the home and child safety," 141 Am. J. Dis. Child 221-23 (1987)).
66. In addition, 38% indicated there are children in the household, yet only 15% said they very often (3%) or sometimes (12%) worry about someone in the house being injured by the gun. See Appendix N.
67. Zimring, supra note 12, at 35.

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68. See Chapter 3 at note 2 & accompanying text.
69. Wright, "Second Thoughts," supra note 13 at 29.
70. Zimring, supra note 12, at 94.
71. See Wright, "Second Thoughts," supra note 13 at 29.
72. Id. In making this guess, Wright reasons that:  
Most of the published estimates are produced by advocates and thus are not to be trusted, most of all since both sides have vested interests in publishing the largest possible numbers: the pro-gun people, to show the vast number of people whose rights would be infringed by stricter gun controls; the anti-gun people, to show the obvious urgency of the situation.
- Id.
73. Id.
74. Bruce-Briggs, supra note 17, at 52.
75. Zimring, supra note 12, at 118-19.
76. See Chapter 3, Part III.
77. See Chapter 4 for a discussion of these concerns.
78. Kates, "Firearms and Violence," supra note 15, at 210.
79. Wright, "Second Thoughts," supra note 13, at 33-34 (The percentage favoring such laws has seldom dropped below 70%).
80. One commentator points out, however, that, since two-thirds of the American population live in jurisdictions in which licensing or permit requirements similar to those posed in the survey are already in force, this "majority sentiment may only represent an endorsement of the status quo, not a demand for bold new gun control initiatives." Id. at 34.
81. See Chapter 5 and the discussion of recent legislation in California and New Jersey in Chapter 3.
82. See e.g., Myths, supra note 36, at 11-12; National Rifle Association, Institute for Legislative Action, Semi-Auto Firearms: The Citizen's Choice (Washington, D.C.: March 1990) (pamphlet).
83. "Gun ban expected to raise local prices," Star Bulletin (March 16, 1989).
84. Id.
85. Id.



86. See the definitions under California's and new Jersey's law discussed in Chapter 3 at notes 5 & 14 & accompanying text.
87. See "Deadly assault guns are 'in' with criminals," Star Bulletin (May 20, 1989) [hereinafter cited as "Deadly assault guns"]. The findings are based upon a comprehensive examination of 42,758 gun trace requests submitted to the federal Bureau of Alcohol, Tobacco & Firearms from police departments around the nation. The forms covered the period from January 1, 1988 to March 27, 1989. See also Cox Newspapers, Firepower: Assault Weapons in America (Washington, D.C.: 1989) (special reprint) [hereinafter cited as Firepower].
88. "Deadly assault guns," supra note 87.
89. Id.
90. Id. Cf. "Number of Killings Soars in Big Cities Across U.S.," The New York Times (July 18, 1990) at A1 [hereinafter cited as "Number of Killings Soars,"], which indicates that: the Philadelphia police confiscate assault weapons in about half their drug raids; and police in Chicago and Atlanta are seeing a lot more semiautomatic weapons in homicide cases. Accord, "Cops Under Fire," U.S. News and World Report 33 (December 3, 1990) (Says one Cleveland patrolman, "Every situation I go through I assume right away I'm going to be outgunned." Id. at 36.)
91. Jim Stewart & Andrew Alexander, "Senators Hear Victims, Police Plead for Limits on Weapons," (February 11, 1989), reprinted in Firepower, supra note 87, at 20-21.
92. According to the acting executive director of the International Association of Chiefs of Police, "the return to semi-automatic pistols and heavier weapons by police departments all around the country is "in response to the firepower they're seeing out on the streets today." Jim Stewart, "Weapons Are High-Powered, Deadly and Easy to Buy," (Cox Washington Bureau, January 22, 1989) reprinted in Firepower, supra note 87, at 19.
93. Arthur G. Sharp, "Who Outarms Whom?" Law and Order 101, 103-04 (August 1989).
94. "Number of Killing Soar," supra note 90.
95. Id. Also see the pro-gun argument that the use of a more powerful gun is more likely to result in a victim's death than the use of a handgun, at notes 43-49 supra & accompanying text.
96. "76% want to ban all assault guns." The Honolulu Advertiser (November 9, 1989) (only Oahu residents were surveyed).
97. See e.g., Kleck, supra note 15, at 61-62.
98. See note 33 supra.
99. See "Gun control advocates gain momentum," Boston Globe (June 25, 1989); "NRA backs gun-safety law," Wisconsin State Journal (August 30, 1989).

## SUMMARY AND RECOMMENDATIONS

100. See "Youngster and gun," supra note 6, at A-8.
101. H.B. No. 2980, State of Hawaii, Fifteenth Legislature, 1990 (the bill did not contain Florida's notice requirement or the requirement that a gun safety program be developed).
102. Section 183D-28, Hawaii Revised Statutes requires the Department of Land and Natural Resources to establish a hunter education program to provide instruction in hunter safety, principles of conservation, and sportsmanship. Possession of a valid hunter education certificate showing successful completion of the program is a prerequisite to obtaining a hunting license. Exemptions are provided for persons born before January 1, 1972 who previously possessed a hunting license and can provide satisfactory proof thereof and for persons who provide proof of successful completion of a hunter education or safety program in another state or a program approved by the North American Association of Hunter Safety Coordinators.
103. The point has been made a number of times that it also is ironic that states require the successful completion of a driving test prior to one obtaining a driver's license, but few, if any, require demonstration of a person's skill and knowledge of safety with respect to the handling of firearms prior to obtaining a firearm.

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## SENATE CONCURRENT RESOLUTION

REQUESTING A STUDY ON THE EFFECTIVENESS OF IMPLEMENTING A BAN ON FIREARMS IN HAWAII.

WHEREAS, in recent years, the number of violent crimes and accidental injuries or deaths involving the use of a firearm has led to a growing concern that firearms should be banned in this State; and

WHEREAS, as a result of this concern, Hawaii's firearms registration law was amended in 1988 and is now among the strongest in the nation; and

WHEREAS, despite the more stringent firearms registration law, the incidences of violent crimes involving firearms and accidents involving the misuse of firearms remain a problem; and

WHEREAS, during the 1990 Regular Session, the Senate held a hearing on proposed legislation which would ban certain firearms; and

WHEREAS, during this hearing, the proposed bans were supported primarily by law enforcement agencies and a few private citizens; and

WHEREAS, those in favor of a firearms ban believe that limiting the availability of firearms will help to reduce the incidence of violent crime and of accidental shootings involving misuse of firearms; and

WHEREAS, the opponents of any type of firearms ban came out in force to testify against the implementation of a ban on the basis of their constitutional right to bear arms to protect themselves and to enjoy sporting and recreational activities involving firearms; and

WHEREAS, according to police estimates, there are approximately 250,000 residents who have registered firearms numbering about 400,000; and

WHEREAS, because many of these firearm registrants are law-abiding citizens who are properly trained and who exercise

precautionary measures in the use of their firearms, there must be a compelling reason for the implementation of a ban to ensure that the rights of these citizens are not unjustly curtailed; and

WHEREAS, the bills proposing the firearms ban were held by the Senate Judiciary Committee because the Committee felt that the evidence presented was insufficient to ascertain whether or not a ban on certain firearms would effectively reduce violent crimes and accidental shootings; and

WHEREAS, given the public interest on the issue of gun control, the Legislature has an obligation to the general public to continue its investigation and to collect more meaningful and objective information on the firearms ban issue to determine if a ban would be effective in reducing violent crimes and accidental shootings in this State; now, therefore,

BE IT RESOLVED by the Senate of the Fifteenth Legislature of the State of Hawaii, Regular Session of 1990, the House of Representatives concurring, that the Legislative Reference Bureau is requested to conduct a study on the impact of a ban on firearms in Hawaii in reducing the incidences of violent crime and accidental shootings; and

BE IT FURTHER RESOLVED that the study include, but not be limited to the following:

- (1) A summary of all the arguments for and against the banning of firearms;
- (2) An examination of the experiences of other states and countries that have a firearms ban to ascertain, to the extent information is available, the degree of effectiveness those bans have had in reducing violent crimes (with particular emphasis on violent crimes involving firearms) and accidental shootings, including a consideration of other factors that may have contributed to any reduction;
- (3) An analysis regarding the constitutionality of a firearms ban, including a review of court challenges made on laws banning firearms and the status of those cases;

- (4) A description, based on information provided by the county police departments and the county prosecuting attorneys and the Department of the Attorney General, of the planning and commitment of resources required of the State and counties in order to implement an effective firearms ban;
- (5) An examination of any legislation pending in the United States Congress to ban firearms; and
- (6) A summary of existing empirical evidence, if any, of the effectiveness of banning only a certain category of firearms, or enacting lesser restrictive alternatives in lieu of a ban, on reducing violent crime and accidental shootings;

and

BE IT FURTHER RESOLVED that the county prosecutor's offices, the county police departments, the Attorney General, the Hawaii Rifle Association, and any other interested organizations are requested to fully cooperate with the Legislative Reference Bureau in the conduct of this study; and

BE IT FURTHER RESOLVED that the Legislative Reference Bureau is requested to submit a report of its findings and recommendations to the Legislature no later than twenty days prior to the convening of the Regular Session of 1991; and

BE IT FURTHER RESOLVED that certified copies of this Concurrent Resolution be transmitted to the Director of the Legislative Reference Bureau, the Prosecutor of each county, the Police Chief of each county, the Attorney General, and the President of the Hawaii Rifle Association.

"State Constitutional Right to Bear Arms Provisions"

APPENDIX

STATE CONSTITUTIONAL PROVISIONS ON  
THE RIGHT TO KEEP AND BEAR ARMS

Thirty-nine (39) states have constitutional provisions on the right to keep and bear arms.

*Alabama*: "That every citizen has a right to bear arms in defense of himself and the state." ALA. CONST. art. I, § 26.

*Alaska*: "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." ALASKA CONST. art. I, § 19.

*Arizona*: "The right of the individual citizen to bear arms in defense of himself or the State shall not be impaired, but nothing in this section shall be construed as authorizing individuals or corporations to organize, maintain, or employ an armed body of men." ARIZ. CONST. art. II, § 26.

*Arkansas*: "The citizens of this State shall have the right to keep and bear arms for their common defense." ARK. CONST. art. II, § 5.

*Colorado*: "The right of no person to keep and bear arms in defense of his home, person and property, or in aid of the civil power when thereto legally summoned, shall be called in question; but nothing herein contained shall be construed to justify the practice of carrying concealed weapons." COLO. CONST. art. II, § 13.

*Connecticut*: "Every citizen has a right to bear arms in defense of himself and the state." Conn. Const. art. I, § 15.

*Florida*: "The right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state shall not be infringed, except that the manner of bearing arms may be regulated by law." FLA. CONST. art. I, § 8.

*Georgia*: "The right of the people to keep and bear arms, shall not be infringed, but the General Assembly shall have the power to prescribe the manner in which arms may be borne." GA. CONST. art. I, § 1, para. 5.

*Hawaii*: "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." HAWAII CONST. art. I, § 15.

*Idaho*: "The people have the right to keep and bear arms, which right shall not be abridged; but this provision shall not

prevent the passage of laws to govern the carrying of weapons concealed on the person nor prevent passage of legislation providing minimum sentences for crimes committed while in possession of a firearm, nor prevent the passage of legislation providing penalties for the possession of firearms by a convicted felon, nor prevent the passage of any legislation punishing the use of a firearm. No law shall impose licensure, registration or special taxation on the ownership or possession of firearms or ammunition. Nor shall any law permit the confiscation of firearms, except those actually used in the commission of a felony." IDAHO CONST. art. I, § 11.

*Illinois*: "Subject only to the police power, the right of the individual citizen to keep and bear arms shall not be infringed." ILL. CONST. art. I, § 22.

*Indiana*: "The people shall have a right to bear arms, for the defense of themselves and the State." IND. CONST. art. I, § 32.

*Kansas*: "The people have the right to bear arms for their defense and security; but standing armies, in time of peace, are dangerous to liberty, and shall not be tolerated, and the military shall be in strict subordination to the civil power." KAN. CONST., Bill of Rights, § 4.

*Kentucky*: "All men are, by nature, free and equal, and have certain inherent and inalienable rights, among which may be reckoned: . . . Seventh: The right to bear arms in defense of themselves and of the State, subject to the power of the General Assembly to enact laws to prevent persons from carrying concealed weapons." KY. CONST. § 1, para. 7.

*Louisiana*: "The right of each citizen to keep and bear arms shall not be abridged, but this provision shall not prevent the passage of laws to prohibit the carrying of weapons concealed on the person." LA. CONST. art. I, § 11.

*Maine*: "Every citizen has a right to keep and bear arms for the common defense; and this right shall never be questioned." ME. CONST. art. I, § 16.

*Massachusetts*: "The people have a right to keep and bear arms for the common defense. And as, in times of peace, armies are dangerous to liberty, they ought not to be maintained without the consent of the legislature; and the military power shall always be held in an exact subordination to the

civil authority, and be governed by it." MASS. CONST. pt. I, art. XVII.

*Michigan*: "Every person has a right to keep or bear arms for the defense of himself and the State." MICH. CONST. art. I, § 6.

*Mississippi*: "The right of every citizen to keep and bear arms in defense of his home, person, or property, or in aid of the civil power where thereto legally summoned, shall not be called in question, but the legislature may regulate or forbid carrying concealed weapons." MISS. CONST. art. III, § 12.

*Missouri*: "That the right of every citizen to keep and bear arms in defense of his home, person and property, or when lawfully summoned in aid of the civil power, shall not be questioned; but this shall not justify the wearing of concealed weapons." MO. CONST. art. I, § 23.

*Montana*: "The right of any person to keep or bear arms in defense of his own home, person, and property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons." MONT. CONST. art. II, § 12.

*Nevada*: "Every citizen has the right to keep and bear arms for security and defense, for lawful hunting and recreational use and for other lawful purposes." NEV. CONST. art. I, § 11(1).

*New Hampshire*: "All persons have the right to keep and bear arms in defense of themselves, their families, their property, and the State." N.H. CONST. pt. I, art. 2a.

*New Mexico*: "No law shall abridge the right of the citizen to keep and bear arms for security and defense, for lawful hunting and recreational use and for other lawful purposes, but nothing herein shall be held to permit the carrying of concealed weapons." N.M. CONST. art. II, § 6.

*North Carolina*: "A well regulated militia being necessary to be the security of a free State, the right of the people to keep and bear arms shall not be infringed; and, as standing armies in time of peace are dangerous to liberty, they shall not be maintained, and the military shall be kept under strict subordination to, and governed by, the civil power. Nothing herein shall justify the practice of carrying concealed weap-

ons, or prevent the General Assembly from enacting penal statutes against that practice." N.C. CONST. art. I, § 30.

*Ohio*: "The people have the right to bear arms for their defense and security; but standing armies, in time of peace, are dangerous to liberty, and shall not be kept up; and the military shall be in strict subordination to the civil power." OHIO CONST. art. I, § 4.

*Oklahoma*: "The right of a citizen to keep and bear arms in defense of his home, person, or property, or in aid of the civil power, when thereunto legally summoned, shall never be prohibited; but nothing herein contained shall prevent the Legislature from regulating the carrying of weapons." OKLA. CONST. art. II, § 26.

*Oregon*: "The people shall have the right to bear arms for the defence of themselves, and the State, but the Military shall be kept in strict subordination to the civil power." OR. CONST. art. I, § 27.

*Pennsylvania*: "The right of the citizens to bear arms in defence of themselves and the State shall not be questioned." PA. CONST. art. I, § 21.

*Rhode Island*: "The right of the people to keep and bear arms shall not be infringed." R.I. CONST. art. I, § 22.

*South Carolina*: "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. As, in times of peace, armies are dangerous to liberty, they shall not be maintained without the consent of the General Assembly. The military power of the State shall always be held in subordination to the civil authority and be governed by it. No soldier shall in time of peace be quartered in any house without the consent of the owner nor in time of war but in the manner prescribed by law." S.C. CONST. art. I, § 20.

*South Dakota*: "The right of the citizens to bear arms in defense of themselves and the state shall not be denied." S.D. CONST. art. VI, § 24.

*Tennessee*: "That the citizens of this State have a right to keep and bear arms for their common defense; but the Legislature shall have power, by law, to regulate the wearing of arms with a view to prevent crime." TENN. CONST. art. I, § 26.

*Texas*: "Every citizen shall have the right to keep and

STATES WITHOUT CONSTITUTIONAL PROVISIONS:

Eleven (11) states do not have a constitutional provision on arms: California, Delaware, Iowa, Maryland, Minnesota, Nebraska, New Jersey, New York, North Dakota, West Virginia, and Wisconsin.

Appears in: Robert Dowlut & Janet Koop, "State Constitutions and the Right to Keep and Bear Arms," 7 *Oklahoma City Univ. L. Rev.* 177, (1982) at 236-241.

bear arms in the lawful defence of himself or the State; but the Legislature shall have power, by law, to regulate the wearing of arms, with a view to prevent crime." *Tex. CONST.* art. I, § 23.

*Utah*: "The people have the right to bear arms for their security and defense, but the Legislature may regulate the exercise of this right by law." *UTAH CONST.* art. I, § 6.

Utah voters in the 1984 elections will decide whether to amend Art. I § 6 to read as follows: The individual right of the people to keep and bear arms for defense of themselves, their families, their property, and for lawful hunting, recreational use and all other lawful purposes, shall not be infringed; but this provision shall not prevent passage of laws to govern the carrying of concealed weapons; nor prevent legislation providing penalties for the possession of firearms by convicted felons, minors, mental incompetents or illegal aliens; nor shall any law permit the confiscation of firearms, except those used in the commission of a felony.

*Vermont*: "That the people have a right to bear arms for the defence of themselves and the State—and as standing armies in time of peace are dangerous to liberty, they ought not to be kept up; and that the military should be kept under strict subordination to and governed by the civil power." *VT. CONST.* Ch. I, art. 16.

*Virginia*: "That a well regulated militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defense of a free state; therefore, the right of the people to keep and bear arms shall not be infringed; that standing armies, in time of peace, should be avoided as dangerous to liberty; and that in all cases the military should be under strict subordination to, and governed by, the civil power." *VA. CONST.* art. I, § 13.

*Washington*: "The right of the individual citizen to bear arms in defense of himself, or the state, shall not be impaired, but nothing in this section shall be construed as authorizing individuals or corporations to organize, maintain, or employ an armed body of men." *WASH. CONST.* art. I, § 24.

*Wyoming*: "The right of citizens to bear arms in defense of themselves and of the state shall not be denied." *WYO. CONST.* art. I, § 24.



## Appendix C

**“READY REFERENCE” TABLE - CERTAIN ELEMENTS OF STATE LAWS (1989)**  
**[Please see footnotes at end and review section citations.]**

STATE (or other) NAME	STATE-PURCHASER WAITING PERIOD	STATE-PURCHASER REQUIREMENTS	STATE-LICENSE /PERMIT TO PURCHASE; TYPE	STATE-LICENSE: DEALER MANUFACTURER, ETC.	STATE-LICENSEE RECORDKEEPING REQUIREMENTS	STATE-LOCAL GOV'T LIMITS [PREEMPTION]	STATE/CITY- SEMIAUTOMATIC ASSAULT WEAPONS
ALABAMA	13A-11-77; 48 hrs. Pistol	13A-11-77 13A-11-79	13A-11-77 Pistol purchase appl.	13A-11-78	13A-11-77 13A-11-79	11-45-1.1	—
ALASKA	—	(11.61.200)	—	—	—	—	—
AMERICAN SAMOA	46.4221, 4229 Any firearm; time n/a	46.4228, 4229	46.4221, 4229 Any	46.4223	46.4224, 4228	—	—
ARIZONA	—	(13-3101.5.)	—	—	—	13-3108	—
ARKANSAS	—	(41-3103)	—	—	41-2163-3164	—	—
CALIFORNIA	12071, 072: 15 days, Concealable	12076(a) 12079	12072: Concealable = purchase appl; 12095 - 98: Movie/TV props = permit; 12230: Machineguns = permit; 12036: Destructive devices = permit	12070 12250 12305	12073 12076 12250 12350	(12071(a)) 53071	STATE: Chap.2.3, 12275, et seq. [Assembly Bill 357, Approved 05-24-89] Los Angeles Palo Alto Stockton
COLORADO	—	(18-12-108)	—	—	12-26-102	—	—
CONNECTICUT	29-33 Handguns-None with permits; 2 weeks without	29-33 (11-1448) 24-904	—	29-28	29-31 53-202(6), (7)	—	—
DELAWARE	—	—	—	24-901	24-904	—	—
DISTRICT OF COLUMBIA	22-3208: 48hrs., Pistols	6-2313 22-3208	6-2311(a): Any firearm	6-2341(b) 22-3209-3210	6-2318 6-2344	NOT APPLICABLE	6-2302(10) 6-2312
FLORIDA	—	(790.17, 18, 23)	—	—	—	790.33	—
GEORGIA	—	(16-11-131)	—	43-16-2	—	—	—
GUAM	—	60106; 60114	60106 [I.D. card] All	60104 60115	—	—	—
HAWAII	134-2(e): Up to 16 days, Any firearm	134-2(a); 134.3 134-7	134-2(a): Any/all [134-2.5: Permits]	134-31	—	—	—
IDAHO	—	18-3302, -3308	—	—	—	31-872; 50-343	—
ILLINOIS	24-3(g): 72 hrs., Concealable; 24 hrs., longguns	83-2 - 83-4	83-2 [I.D. card] All	—	24-4; 83-3(b)	(83-13.1)	—
INDIANA	35-47-2-8(c), -11: 7 work days, Handguns	35-47-2-9(a) (724.3) 724.15	35-47-2-8: Application to transfer handgun 724.15 Pistol; revolver	35-47-2-15	35-47-2-9(b)	35-47-2-13	—
IOWA	—	(21-4204)	—	—	—	—	—
KANSAS	—	(527.040)	—	—	—	—	—
KENTUCKY	—	(14:95.1) 40:1753	[14:95.1.C.: Felons] 40:1787 NFA weapons	40:1787 47:382, 383	40:1754, 1789	65.870	—
LOUISIANA	—	15:15-393 Felons	15:15-393 Any	—	15:17-455	—	Tit.12, Chap.709, § 7406.17.B
MAINE	442(b): 481E(b)(2): 7 days, Handguns, Assault Weapons	379, 442(e), 481E(b)(2)	442 = Transfer applications	443	378, 442(c),(i)	36H: Note ff 406; 442(a), 445(a)	443(1), 481E
MARYLAND	—	140:128B, 129B, 131A	140:129B-D; I.D. Card Pistol/revolver	140:122, 122B	140:123	—	—
MASSACHUSETTS	—	28.92(1)	28.92 Pistol	—	28.92(2)	—	—
MICHIGAN	624.7132(4): Pistol, 7 days	(624.713) 624.7131, 7132	624.7131 Pistol	—	609.67(4)(b) 624.7132	471.633	—
MINNESOTA	—	(97-37-13)	—	—	97-37-11	—	—
MISSISSIPPI	571.090.3: Concealable; not to exceed 7 working days	571.080, 090	571.080: Concealable	—	—	—	—
MISSOURI	—	—	—	—	—	—	—

**"READY REFERENCE" TABLE - CERTAIN ELEMENTS OF STATE LAWS (1989)**  
 [Please see footnotes at end and review section citations.]—Continued

STATE (or other) NAME	STATE- PURCHASER WAITING PERIOD	STATE- PURCHASER REQUIREMENTS	STATE-LICENSE /PERMIT TO PUR- CHASE; TYPE	STATE-LICENSE: DEALER MANUFAC- TURER, ETC.	STATE-LICENSEE RECORDKEEPING REQUIREMENTS	STATE-LOCAL GOV'T LIMITS [PREEMPTION]	STATE/CITY- SEMI-AUTOMATIC ASSAULT WEAPONS
MONTANA	—	45-8-308	—	—	45-8-309	45-8-351	—
NEBRASKA	—	(28-1204, 1206)	—	—	—	—	—
NEVADA	—	(202.360)	—	—	—	—	—
NEW HAMPSHIRE	—	159:9	159:8-a Pistol/revolver	159:8	159:9	—	—
NEW JERSEY	2C:58-3.f. Handgun; Residents: 30 days; Others, 45 days	(2C:39-10.c.) 2C:58-2.d 2C:58-3	2C:58-3 [I.D. card] Handgun	2C:58-1,-2	2C:39-3.g.(2), (3) 2C:58-1.e,-2.b	2C:1-5.d	—
NEW MEXICO	—	(30-7-16)	—	—	—	—	—
NEW YORK	400.00.4-a: Pistol/ revolver-Up to 6 months	(400.00.1) 400.00.3	400.00.1,.6: Pistol/revolver	400.00.2	400.00.12	400.00.6	—
NORTH CAROLINA	14-404, -409.3: Pis- tols, Up to 30 days	(14-415.1) 14-402,-404, 14-409.1,-409.3	14-402,-403,-404, -409.1,-409.2,-409.3 Pistol	14-402,-409.1 105-80,-102.4	14-406,-409.5	(105-80(c))	—
NORTH DAKOTA	—	(62.1-02-01 - 03) 62.1-05-01	—	—	62.1-03-03 62.1-05-01	62.1-01-03	—
COMMONWEALTH OF N. MARIANAS	—	556, 558	555-558 Firearm, device, ammunition 2923.18: Dangerous Ordnance	560, 568, 580	563, 564, 565, 566, 567, 569	(578)	Cleveland, Columbus, Dayton
OHIO	—	2923.18	—	—	2923.20	—	—
OKLAHOMA	—	(1273, 1289.10, 12)	—	—	—	1289.24	—
OREGON	166.430(3) Conceal- able: 120 hrs.	(166.270) 166.420(2)	—	166.430	166.420	—	—
PENNSYLVANIA	6111(a) Any firearm: 48 hrs.	6111(b)	6111(a) Any; Purchase application	6112, 6113	6111, 6113	6120	—
COMMONWEALTH OF PUERTO RICO	—	425, 436	416: Any firearm	432	432, 436, 438	—	—
RHODE ISLAND	11-47-35(a) Pistols/ revolvers - 72 hrs.	11-47-35	11-4-35 Pistol/revolver	11-47-38	11-47-40	11-47-41 11-47-58	—
SOUTH CAROLINA	—	23-31-140	—	23-31-130,-150	23-31-140 23-31-360	HB 2826, signed 06-18-86	—
SOUTH DAKOTA	23-7-9: With permit to carry, none; With no permit, 48 hrs.	23-7-10	23-7-10: Pistol - Purchase appl. or permit to carry	—	23-7-10	7-18A-36 8-5-13 9-19-20	—
TENNESSEE	39-6-1704(c),(d) Handguns: To 15 days	39-6-1704(c)	39-6-1704(c): Certification; sidearms	39-6-1704(g)	39-6-1704(c)	—	—
TEXAS	—	(46.05, 07)	—	—	—	Title 26, Art. 1015p	—
UTAH	—	(76-10-503,-509)	—	—	—	76-10-501(1)(b)	—
VERMONT	—	—	—	—	4006	—	—
VIRGINIA	18.2-308.2:2.B2 & C. Residents: Up to 1 day; Nonresidents: To 10 days	18.2-308.2:2.A.	—	15.1-523,525	15.1-524; 18.2-294,- 295 -304,-308.2:2.B1,C,J; 54.1-4201	(18.2-308.2:2.1.(iv)) 15.1-29.15	Criminal history record information check: 18.2-308.2:2.G
VIRGIN ISLANDS	466 Any, 48 hrs.	466	452, 466: Any	461, 463	465	—	—
WASHINGTON	9.41.090(1) Pistols; Residents: 5 days; Others: To 60 days	9.41.090	9.41.090 Pistol purchase application	9.41.100	9.41.110(4)	(9.41.300(2)) 9.41.110(7) 9.41.290	—
WEST VIRGINIA	—	61-7-9	61-7-8: Machineguns; high powered rifles; ammunition for same.	—	61-7-9	(8-12-5) 8-12-5a	61-7-8
WISCONSIN	175.35 Handguns: 48 hrs.	(941.29)	—	—	941.25	—	—
WYOMING	—	6-8-202,-202	—	—	6-8-201,-202,-203	—	—

## FOOTNOTES

**[Any section citation seen above should be reviewed for ACTUAL impact.]**  
**[A "—" means that the requirement has not been determined to exist.]**

1. **"STATE"** includes the 50 States; the District of Columbia (DC); American Samoa (AS); Guam (GU); Northern Marianas (CM), a Commonwealth; Puerto Rico (PR), a Commonwealth; Virgin Islands (VI); and, any of the possessions of the United States. These possessions are not included in this Table.
2. **"STATE- PURCHASER WAITING PERIOD"** generally refers to the period between purchaser application for type/types of firearms and allowable receipt or delivery. Exceptions exist among the States. However, where there is a requirement to file application to obtain a license or permit to purchase a firearm, a waiting period is often "built in" the processing of the application which may not appear in this Table.
3. **"STATE- PURCHASER REQUIREMENTS"** generally means a positive action the customer must make or take; those section cites in parenthesis [( )] indicate **LISTS**, only, of prohibitions/prohibited persons.
4. **"STATE- LICENSE/PERMIT TO PURCHASE; TYPE"** shows section(s) of State law where required. **"TYPE"** means the type of firearm(s) or a generic term (e.g., concealable).
5. **"STATE- LICENSE: DEALER, MANUFACTURER, ETC."** generally means the person must have **BOTH** a Federal and State license.
6. **"STATE- LICENSEE RECORDKEEPING REQUIREMENTS"** is fairly clear. However, this category may refer to relatively narrow types of firearms or situations.
7. **"STATE- LOCAL GOV'T LIMITS [PREEMPTION]"** means that the State overrides its counties, cities, and/or other local jurisdictions, in whole or in part. Entries in parenthesis [( )] indicate that permission of some type is specifically **GRANTED** to local jurisdictions to enact local ordinances.
8. **"STATE/ CITY- SEMIAUTOMATIC ASSAULT WEAPONS"** is included here to call attention to the growing concern regarding these weapons. The dealer should be aware of any changes in State or local law, particularly since laws are being enacted to restrict these weapons faster than we can timely make entry in this publication.

### DRAFTING INFORMATION

The Compiler of "State Laws and Published Ordinances-Firearms" is ATF Specialist Gary Caplan of the Firearms and Explosives Operations Branch, Compliance Operations, who is responsible for the digests and notes contained herein. **OFFICIAL INTERPRETATION** of any State or local law must, however, be left to officials of the relevant jurisdiction(s).

Materials, advice and information for future editions may be addressed to:

**BUREAU OF ALCOHOL, TOBACCO AND FIREARMS**  
**Firearms and Explosives Operations Branch (C:F:F)**  
Post Office Box 189  
Washington, DC 20044

SOURCE: U.S. Department of Treasury, Bureau of Alcohol, Tobacco and Firearms, State Laws & Published Ordinances Fifth Ed. (1990).

## Appendix D

### "ASSAULT WEAPONS BANS"

#### CITY AND COUNTY ORDINANCES ENACTED IN 1989

##### CALIFORNIA

Alameda County (Oakland)	Banned Assault Weapons
Berkeley	Banned Assault Weapons
Carson	Banned Assault Weapons
Compton	Banned Assault Weapons & Large Capacity Magazines
Davis	Banned Assault Weapons
Gardena	Banned Assault Weapons
Long Beach	Banned Assault Weapons & Large Capacity Magazines
Los Angeles	Banned Assault Weapons
Lynwood	7-day wait on Assault Weapons
Sacramento	Banned Assault Weapons
Santa Clara County (San Jose)	Banned Assault Weapons & Large Capacity Magazines
Stockton	Banned Assault Weapons
Whittier	Banned Assault Weapons

##### COLORADO

Denver	Banned Assault Weapons
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##### GEORGIA

Atlanta	Banned Assault Weapons
Fulton County	Banned Assault Weapons & Large Capacity Magazines

##### ILLINOIS

Lincolnshire	Banned Assault Weapons
Niles	Banned Assault Weapons

##### INDIANA

East Chicago	Banned Assault Weapons
Gary	Banned Assault Weapons

##### MASSACHUSETTS

Boston	Banned Assault Weapons
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##### NEW YORK

Albany	Banned Assault Weapons
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##### OHIO

Brooklyn	Banned Assault Weapons & Large Capacity Magazines plus 10-day waiting period and permit-to-purchase.
Cincinnati	Banned Assault Weapons & 15-day waiting period on all firearms
Cleveland	Banned Assault Weapons
Columbus	Banned Assault Weapons & Large Capacity Magazines 7-day waiting period permit-to-purchase
Dayton	Banned Assault Weapons
Montgomery	Banned Assault Weapons 15-day waiting period on all firearms
Springdale	15-day handgun waiting period

##### TEXAS

Dallas	Resolution urging Texas Legislature to ban Assault Weapons
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*\*Information received from Handgun Control, Inc.*

Appendix E

§ 12276

PENAL CODE

high rate of fire and capacity for firepower that its function as a legitimate sports or recreational firearm is substantially outweighed by the danger that it can be used to kill and injure human beings. It is the intent of the Legislature in enacting this chapter to place restrictions on the use of assault weapons and to establish a registration and permit procedure for their lawful sale and possession. It is not, however, the intent of the Legislature by this chapter to place restrictions on the use of those weapons which are primarily designed and intended for hunting, target practice, or other legitimate sports or recreational activities.

Added Stats 1989 ch 19 sec 3.

Note—For severability of provisions, and legislative findings and declarations, see Note following Pen C § 12275.

§ 12276. "Assault weapon"

As used in this chapter, "assault weapon" shall mean the following firearms known by trade names:

- (a) All of the following specified rifles:
- (1) Avtomat Kalashnikovs (AK) series.
- (2) UZI and Galil.
- (3) Beretta AR-70 (SC-70).
- (4) CETME G3.
- (5) Colt AR-15 series and CAR-15 series.
- (6) Daewoo K-1, K-2, Max 1, and Max 2.
- (7) Fabrique Nationale FN/FAL, FN/LAR, and FNC.
- (8) FAMAS MAS223.
- (9) Heckler & Koch HK-91, H-93, HK-94, and PSG-1.
- (10) MAC 10 and MAC 11.
- (11) SKS with detachable magazine.
- (12) SIG AMT, SIG 500 Series, and SIG PE-57.
- (13) Springfield Armory BM59 and SAR-48.
- (14) Sterling MK-6 and SAR.
- (15) Steyr AUG.
- (16) Valmet M62, M71S, and M78.
- (17) Armalite AR-180 Carbine.
- (18) Bushmaster Assault Rifle (armgun).
- (19) Calico M-900 Assault Carbine.
- (20) Mandall THE TAC-1 Carbine.
- (21) Plainfield Machine Company Carbine.
- (22) PJK M-68 Carbine.
- (23) Weaver Arm Nighthawk.
- (b) All of the following specified pistols:
- (1) UZI.
- (2) Encom MP-9 and MP-45.
- (3) MAC 10 and MAC 11.
- (4) INTRATEC TEC-9.
- (5) Mitchell Arms Specire Auto.
- (6) Sterling MK-7.

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(11 Pen Code)

§ 12250

PENAL CODE

costs of the Department of Justice. After the department establishes fees sufficient to reimburse the department for processing costs, fees charged shall increase at a rate not to exceed the legislatively approved annual cost-of-living adjustments for the department's budget.

Amended Stats 1984 ch 1562 § 8.

Amendments:

1984 Amendment: (1) Designated the former section to be subd (a); and (2) added subd (b).

§ 12251. [Possession of machinegun as nuisance; Surrender and destruction]

Cal Jur 3d (Rev) Criminal Law § 1695.

CHAPTER 23

Roberti-Roos Assault Weapons Control Act of 1989

[Added Stats 1989 ch 19 sec 3; Another chapter 23, also entitled "Roberti-Roos Assault Weapons Control Act of 1989," was added Stats 1989 ch 18 sec 4 and repealed Stats 1989 ch 19 sec 2.5.]

Article 1. General Provisions. § 12275

2. Unlawful Activities. § 12280

3. Registration and Permits. § 12285

4. Licensed Gun Dealers. § 12290

ARTICLE 1

General Provisions

§ 12275. Citation of chapter

§ 12275.5. Legislative findings and declarations

§ 12276. "Assault weapon"

§ 12276.5. Declaration of temporary suspension of manufacture, sale, or importation; Notice; Hearing on permanent declaration

§ 12277. "Person"

§ 12275. Citation of chapter

This chapter shall be known as the Roberti-Roos Assault Weapons Control Act of 1989.

Added Stats 1989 ch 19 sec 3.

Note—Stats 1989 ch 19 also provides:

SEC. 4. If any provision of this act or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

SEC. 5. The Legislature finds and declares that the weapons enumerated in Section 12276 of the Penal Code are particularly dangerous in the hands of criminals and serve no necessary hunting or sporting purpose for honest citizens. It is the intent, therefore, to ban the weapons enumerated in Section 12276 of the Penal Code and any other models which are only variations of these weapons, which are the same as the models manufactured or sold by any company with just minor modifications or new model numbers in order to circumvent the prohibitions of Chapter 23 (commencing with Section 12275) of Title 2 of Part 4 of the Penal Code.

§ 12275.5. Legislative findings and declarations

The Legislature hereby finds and declares that the proliferation and use of assault weapons poses a threat to the health, safety, and security of all citizens of this state. The Legislature has restricted the assault weapons specified in Section 12276 based upon finding that each firearm has such a

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(11 Pen Code)

- (7) Calico M-900.
- (c) All of the following specified shotguns:
  - (1) Franchi SPAS 12 and LAW 12.
  - (2) Gilbert Equipment Company Striker 12 and SWD Street Sweeper.
  - (3) Encom CM-55.
- (d) Any firearm declared by a court pursuant to Section 12276.5 to be an assault weapon.

Added Stats 1989 ch 19 sec 3.

Note—For severability of provisions, and legislative findings and declarations, see Note following Pen C § 12275.

**§ 12276.5. Declaration of temporary suspension of manufacture, sale, or importation; Notice; Hearing on permanent declaration**

(a) Upon request by the Attorney General filed in a verified petition in a superior court of a county with a population of more than 1,000,000, the superior court shall issue a declaration of temporary suspension of the manufacture, sale, distribution, transportation, or importation into the state, or the giving or lending of a firearm alleged to be an assault weapon within the meaning of Section 12276 because the firearm is either of the following:

(1) Another model by the same manufacturer or a copy by another manufacturer of an assault weapon listed in subdivision (a), (b), or (c) of Section 12276 which is identical to one of the assault weapons listed in those subdivisions except for slight modifications or enhancements including, but not limited to: a folding or retractable stock; adjustable sight; case deflector for left-handed shooters; shorter barrel; wooden, plastic or metal stock; larger magazine size; different caliber provided that the caliber exceeds .22 rimfire; or bayonet mount. The court shall strictly construe this paragraph so that a firearm which is merely similar in appearance but not a prototype or copy can not be found to be within the meaning of this paragraph.

(2) A firearm first manufactured or sold to the general public in California after June 1, 1989, which has been redesigned, renamed, or renumbered from one of the firearms listed in subdivision (a), (b), or (c) of Section 12276, or which is manufactured or sold by another company under a licensing agreement to manufacture or sell one of the firearms listed in subdivision (a), (b), or (c) of Section 12276, regardless of the company of production or distribution, or the country of origin.

(b) Upon the issuance of a declaration of temporary suspension by the superior court and after the Attorney General has completed the notice requirements of subdivisions (c) and (d), the provisions of subdivision (a) of Section 12280 shall apply with respect to those weapons.

(c) Upon declaration of temporary suspension, the Attorney General shall immediately notify all police, sheriffs, district attorneys, and those requesting notice pursuant to subdivision (d), shall notify industry and association publications for those who manufacture, sell, or use firearms, and shall publish notice in not less than 10 newspapers of general circulation in geographically diverse sections of the state of the fact that the declaration has been issued.

(d) The Attorney General shall maintain a list of any persons who request to receive notice of any declaration of temporary suspension and shall furnish notice under subdivision (c) to all these persons immediately upon a

superior court declaration. Notice shall also be furnished by the Attorney General by certified mail, return receipt requested (or substantial equivalent if the person to receive same resides outside the United States), to any known manufacturer and California distributor of the weapon subject of the temporary suspension order or their California statutory agent for service. The notice shall be deemed effective upon mailing.

(e) After issuing a declaration of temporary suspension under this section, the superior court shall set a date for hearing on a permanent declaration that the weapon is an assault weapon. The hearing shall be set no later than 30 days from the date of issuance of the declaration of temporary suspension. The hearing may be continued for good cause thereafter. Any manufacturer or California distributor of the weapon which is the subject of the temporary suspension order has the right, within 20 days of notification of the issuance of the order, to intervene in the action. Any manufacturer or California distributor who fails to timely exercise its right of intervention, or any other person who manufactures, sells, or owns the assault weapon may, in the court's discretion, thereafter join the action as amicus curiae.

(f) At the hearing, the burden of proof is upon the Attorney General to show by a preponderance of evidence that the weapon which is the subject of the declaration of temporary suspension is an assault weapon. If the court finds the weapon to be an assault weapon it shall issue a declaration that it is an assault weapon under Section 12276. Any party to the matter may appeal the court's decision. A declaration that the weapon is an assault weapon shall remain in effect during the pendency of the appeal unless ordered otherwise by the appellate court.

Added Stats 1989 ch 19 sec 3.

Note—For legislative findings and declarations, and severability, see Note following Pen C § 12275.

**§ 12277. "Person"**

As used in this chapter, "person" means an individual, partnership, corporation, association, or any other group or entity, regardless of how it was created.

Added Stats 1989 ch 19 sec 3.

Note—For severability of provisions, and legislative findings and declarations, see Note following Pen C § 12275.

**ARTICLE 2**

**Unlawful Activities**

**§ 12280. Manufacture, transportation, importation, or sale of weapons; Felony; Punishments; Exceptions**

(a) (1) Any person who within this state manufactures or causes to be manufactured, distributes, transports, or imports into the state, keeps for sale, or offers or exposes for sale, or who gives or lends any assault weapon, except as provided by this chapter, is guilty of a felony, and upon conviction shall be punished by imprisonment in the state prison for four, six, or eight years.

(2) In addition and consecutive to the punishment imposed under paragraph (1), any person who transfers, lends, sells, or gives any assault weapon to a minor in violation of paragraph (1) shall receive an enhancement of one year.

(b) Except as provided in Section 12288, any person who, within this state, possesses any assault weapon, except as provided in this chapter, is guilty of a public offense and upon conviction shall be punished by imprisonment in the state prison, or in the county jail, not exceeding one year. However, if the person presents proof that he or she lawfully possessed the assault weapon prior to June 1, 1989, or prior to a declaration issued pursuant to Section 12276.5 declaring that firearm to be an assault weapon, and has since either registered the firearm and any other lawfully obtained firearm subject to this chapter pursuant to Section 12285 or relinquished them pursuant to Section 12288, a first-time violation of this subdivision shall be an infraction punishable by a fine of up to five hundred dollars (\$500), but not less than three hundred fifty dollars (\$350), if the person has otherwise possessed the firearm in compliance with subdivision (c) of Section 12285. In these cases, the firearm shall be returned unless the court finds in the interest of public safety, after notice and hearing, that the assault weapon should be destroyed pursuant to Section 12028.

(c) Notwithstanding Section 654 or any other provision of law, any person who commits another crime while violating this section may receive an additional, consecutive punishment of one year for violating this section in addition and consecutive to the punishment, including enhancements, which is prescribed for the other crime.

(d) Subdivisions (a) and (b) do not apply to the sale to, purchase by, or possession of assault weapons by the Department of Justice, police departments, sheriffs' offices, the Department of Corrections, the California Highway Patrol, the California State Police, district attorneys' offices, or the military or naval forces of this state or of the United States for use in the discharge of their official duties; nor shall anything in this chapter prohibit the possession or use of assault weapons by sworn members of these agencies when on duty and the use is within the scope of their duties.

Added Stats 1989 ch 19 sec 3. Amended Stats 1989 ch 959 sec 1.

Note—For severability of provisions, and legislative findings and declarations, see Note following Pen C § 12275.

ARTICLE 3

Registration and Permits

§ 12285. Registration procedure; Fee; Sale or transfer to licensed gun dealer; Conditions for possession; Persons excluded from registration or possession

§ 12286. Permit requirement

§ 12288. Relinquishment of weapon to peace officers

**§ 12285. Registration procedure; Fee; Sale or transfer to licensed gun dealer; Conditions for possession; Persons excluded from registration or possession**

(a) Any person who lawfully possesses an assault weapon, as defined in Section 12276, prior to June 1, 1989, shall register the firearm by January 1, 1991, with the Department of Justice pursuant to those procedures which the department may establish. The registration 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. The department

may charge a fee for registration of up to twenty dollars (\$20) per person but not to exceed the actual processing costs of the department. After the department establishes fees sufficient to reimburse the department for processing costs, fees charged shall increase at a rate not to exceed the legislatively approved annual cost-of-living adjustment for the department's budget or as otherwise increased through the State Budget Act.

(b) No assault weapon possessed pursuant to this section may be sold or transferred on or after January 1, 1990, to anyone within this state other than to a licensed gun dealer, as defined in subdivision (b) of Section 12290, or as provided in Section 12288. Any person who (1) obtains title to an assault weapon registered under this section by bequest or intestate succession, (2) moves into the state in lawful possession of an assault weapon, or (3) lawfully possessed a firearm subsequently declared to be an assault weapon pursuant to Section 12276.5, shall, within 90 days, either render the weapon permanently inoperable, sell the weapon to a licensed gun dealer, obtain a permit from the Department of Justice in the same manner as specified in Article 3 (commencing with Section 12230) of Chapter 2, or remove the weapon from this state. A person who lawfully possessed a firearm which was subsequently declared to be an assault weapon pursuant to Section 12276.5 may alternatively register the firearm within 90 days of the declaration issued pursuant to subdivision (f) of Section 12276.5.

(c) A person who has registered an assault weapon under this section may possess it only under the following conditions unless a permit allowing additional uses is first obtained under Section 12286:

(1) At that person's residence, place of business, or other property owned by that person, or on property owned by another 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 shooting club which is licensed pursuant to the Fish and Game Code.

(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 mentioned in this subdivision, if the assault weapon is transported as required by Section 12026.1.

(d) No person who is under the age of 18 years, no person who is prohibited from possessing a firearm by Section 12021 or 12021.1 of this code, and no person described in Section 8100 or 8103 of the Welfare and Institutions Code may register or possess an assault weapon.

(e) The department's registration procedures shall provide the option of joint registration for assault weapons owned by family members residing in the same household.

Added Stats 1989 ch 19 sec 3.

Note—For severability of provisions, and legislative findings and declarations, see Note following Pen C § 12275.

**§ 12286. Permit requirement**

(a) Any person that lawfully acquired an assault weapon before June 1, 1989, and wishes to use it in a manner different than specified in subdivision (c) of Section 12285, any person that lawfully acquired an assault weapon between June 1, 1989, and January 1, 1990, and wishes to keep it after January 1, 1990, or any person who wishes to acquire an assault weapon after January 1, 1990, shall first obtain a permit from the Department of Justice in the same manner as specified in Article 3 (commencing with Section 12230) of Chapter 2.

Added Stats 1989 ch 19 sec 3.

Note—For severability of provisions, and legislative findings and declarations, see Note following Pen C § 12275.

**§ 12288. Relinquishment of weapon to peace officers**

Any individual may arrange in advance to relinquish an assault weapon to a police or sheriff's department. The assault weapon shall be transported in accordance Section 12026.1.

Added Stats 1989 ch 19 sec 3.

Note—For severability, and legislative findings and declarations, see Note following Pen C § 12275.

ARTICLE 4

Licensed Gun Dealers

**§ 12290. Transportation, display or sale of weapons; "Licensed gun dealer"**

(a) Any licensed gun dealer, as defined in subdivision (b), who lawfully possesses an assault weapon pursuant to Section 12285, in addition to the uses allowed in Section 12285, may transport the weapon between dealers or out of the state, display it at any gun show licensed by a state or local governmental entity, sell it to a resident outside the state, or sell it to a person who has been issued a permit pursuant to Section 12286. Any transporting allowed by this section must be done as required by Section 12026.1.

(b) The term "licensed gun dealer," as used in this article means a person who has a federal firearms license, any business license required by a state or local governmental entity, and a seller's permit issued by the State Board of Equalization.

Added Stats 1989 ch 19 sec 3.

Note—For severability of provisions, and legislative findings and declarations, see Note following Pen C § 12275.

**§ 12301. [Definition]**

(a) The term "destructive device," as used in this chapter, shall include any of the following weapons:

(1) Any projectile containing any explosive or incendiary material or any other chemical substance, including, but not limited to, that which is commonly known as tracer or incendiary ammunition, except tracer ammunition manufactured for use in shotguns.

(2) Any bomb, grenade, explosive missile, or similar device or any launching device therefor.



## Appendix F

§§11-13 -  
C.2C:58-12 to  
2C:58-14  
§13-Note to  
§12 &  
2C:39-1

P.L.1990, CHAPTER 32, *approved May 30, 1990*

1990 Senate No. 166 (*Second Reprint*)

1 **AN ACT** concerning assault firearms, amending <sup>1</sup>[N.J.S.2C:39-1,  
2 2C:39-5, 2C:39-9, 2C:39-10, P.L.1983, c.515, N.J.S.2C:43-6,  
3 2C:43-7, 2C:44-3, 2C:58-5, 2C:39-3] various parts of the  
4 statutory law<sup>1</sup> and supplementing chapter 58 of Title 2C of the  
5 New Jersey Statutes.  
6

7 **BE IT ENACTED** by the Senate and General Assembly of the  
8 *State of New Jersey*:

9 1. N.J.S.2C:39-1 is amended to read as follows:

10 2C:39-1. Definitions. The following definitions apply to this  
11 chapter and to chapter 58:

12 a. "Antique firearm" means any firearm and "antique cannon"  
13 means a destructive device defined in paragraph (3) of subsection  
14 c. of this section, if the firearm or destructive device, as the  
15 case may be, is incapable of being fired or discharged, or which  
16 does not fire fixed ammunition, regardless of date of  
17 manufacture, or was manufactured before 1898 for which  
18 cartridge ammunition is not commercially available, and is  
19 possessed as a curiosity or ornament or for its historical  
20 significance or value.

21 b. "Deface" means to remove, deface, cover, alter or destroy  
22 the name of the maker, model designation, manufacturer's serial  
23 number or any other distinguishing identification mark or number  
24 on any firearm.

25 c. "Destructive device" means any device, instrument or  
26 object designed to explode or produce uncontrolled combustion,  
27 including (1) any explosive or incendiary bomb, mine or grenade;  
28 (2) any rocket having a propellant charge of more than four  
29 ounces or any missile having an explosive or incendiary charge of  
30 more than one-quarter of an ounce; (3) any weapon capable of  
31 firing a projectile of a caliber greater than 60 caliber, except a  
32 shotgun or shotgun ammunition generally recognized as suitable  
33 for sporting purposes; (4) any Molotov cocktail or other device  
34 consisting of a breakable container containing flammable liquid  
35 and having a wick or similar device capable of being ignited. The  
36 term does not include any device manufactured for the purpose of  
37 illumination, distress signaling, line-throwing, safety or similar  
38 purposes.

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the  
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Senate SJU committee amendments adopted March 12, 1990.

<sup>2</sup> Senate floor amendments adopted May 14, 1990.

- 1 d. "Dispose of" means to give, give away, lease, loan, keep for  
2 sale, offer, offer for sale, sell, transfer, or otherwise transfer  
3 possession.
- 4 e. "Explosive" means any chemical compound or mixture that  
5 is commonly used or is possessed for the purpose of producing an  
6 explosion and which contains any oxidizing and combustible  
7 materials or other ingredients in such proportions, quantities or  
8 packing that an ignition by fire, by friction, by concussion or by  
9 detonation of any part of the compound or mixture may cause  
10 such a sudden generation of highly heated gases that the resultant  
11 gaseous pressures are capable of producing destructive effects on  
12 contiguous objects. The term shall not include small arms  
13 ammunition, or explosives in the form prescribed by the official  
14 United States Pharmacopoeia.
- 15 f. "Firearm" means any handgun, rifle, shotgun, machine gun,  
16 automatic or semi-automatic rifle, or any gun, device or  
17 instrument in the nature of a weapon from which may be fired or  
18 ejected any solid projectable ball, slug, pellet, missile or bullet,  
19 or any gas, vapor or other noxious thing, by means of a cartridge  
20 or shell or by the action of an explosive or the igniting of  
21 flammable or explosive substances. It shall also include, without  
22 limitation, any firearm which is in the nature of an air gun, spring  
23 gun or pistol or other weapon of a similar nature in which the  
24 propelling force is a spring, elastic band, carbon dioxide,  
25 compressed or other gas or vapor, air or compressed air, or is  
26 ignited by compressed air, and ejecting a bullet or missile smaller  
27 than three-eighths of an inch in diameter, with sufficient force  
28 to injure a person.
- 29 g. "Firearm silencer" means any instrument, attachment,  
30 weapon or appliance for causing the firing of any gun, revolver,  
31 pistol or other firearm to be silent, or intended to lessen or  
32 muffle the noise of the firing of any gun, revolver, pistol or other  
33 firearm.
- 34 h. "Gravity knife" means any knife which has a blade which is  
35 released from the handle or sheath thereof by the force of  
36 gravity or the application of centrifugal force.
- 37 i. "Machine gun" means any firearm, mechanism or instrument  
38 not requiring that the trigger be pressed for each shot and having  
39 a reservoir, belt or other means of storing and carrying  
40 ammunition which can be loaded into the firearm, mechanism or  
41 instrument and fired therefrom.
- 42 j. "Manufacturer" means any person who receives or obtains  
43 raw materials or parts and processes them into firearms or  
44 finished parts of firearms, except a person who exclusively  
45 processes grips, stocks and other nonmetal parts of firearms. The  
46 term does not include a person who repairs existing firearms or  
47 receives new and used raw materials or parts solely for the repair  
48 of existing firearms.
- 49 k. "Handgun" means any pistol, revolver or other firearm

1 originally designed or manufactured to be fired by the use of a  
2 single hand.

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

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

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

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

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

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

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

48 s. "Wholesale dealer" means any person, except a  
49 manufacturer, who sells, transfers, or assigns firearms, or parts

1 of firearms, to persons who are reasonably understood not to be  
2 the ultimate consumers, and includes persons who receive  
3 finished parts of firearms and assemble them into completed or  
4 partially completed firearms, in furtherance of such purpose,  
5 except that it shall not include those persons dealing exclusively  
6 in grips, stocks and other nonmetal parts of firearms.

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

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

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

14 <sup>1</sup>[v. "Assault firearm" means:

15 (1) a semi-automatic rifle, carbine, or short rifle originally  
16 designed to accept a detachable magazine with a capacity  
17 exceeding 15 rounds. This definition shall not include a  
18 semi-automatic rifle, carbine, or short rifle originally designed to  
19 accept a detachable magazine of 15 rounds or less regardless of  
20 the fact that magazines of larger capacity were subsequently  
21 manufactured and made available for use with such a firearm.

22 (2) a semi-automatic shotgun with a magazine capacity of  
23 more than six rounds, or with a pistol grip extending beneath the  
24 trigger or folding stock.

25 (3) a semi-automatic rifle with a fixed magazine capacity  
26 exceeding 15 rounds.

27 (4) a semi-automatic handgun originally designed to accept a  
28 magazine with a capacity of 18 or more rounds. This definition  
29 shall not include a semi-automatic handgun originally designed to  
30 accept a detachable magazine of 17 rounds or less regardless of  
31 the fact that magazines of larger capacity were subsequently  
32 manufactured and made available for use with such a handgun.

33 (5) a firearm which may be readily restored to an operable  
34 assault firearm.

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

40 An assault firearm which has been rendered permanently  
41 inoperable shall no longer be considered an assault firearm under  
42 this definition.

43 Assault firearm as defined above shall include, but shall not be  
44 limited to, all versions or formats of any of the following  
45 firearms or firearms manufactured under any designation which  
46 are substantially identical:

47 Avtomat Kalashnikov semi-automatic firearms

48 Uzi semi-automatic firearms

49 Intratec TEC 9 or 22 semi-automatic firearm

- 1 Ruger Mini-14 semi-automatic firearm  
 2 Colt AR-15 semi-automatic firearm  
 3 Beretta AR-70 semi-automatic firearm  
 4 FN-FAL or FN-FNC semi-automatic firearms  
 5 Steyr A.U.G. semi-automatic firearm  
 6 Heckler and Koch HK91, HK93, HK94 semi-automatic rifles  
 7 and carbines  
 8 USAS 12 semi-automatic shotgun  
 9 Valmet M-76 or M-78 semi-automatic firearms  
 10 Shotgun with a revolving cylinder such as the "Street Sweeper"  
 11 or "Striker 12"  
 12 Firearms exempt from the definition of "assault firearm" shall  
 13 include, but shall not be limited to, the: Remington Model 1100  
 14 shotgun; Remington Model 870 shotgun; Ruger 10/22 carbine; HK  
 15 Model 300 rifle; Marlin Model 9 camp carbine; Stevens Model 987  
 16 rifle; and Remington Nylon 66 autoloading rifle. In addition,  
 17 "assault firearm" shall not include a firearm which does not use  
 18 fixed ammunition; a manually operated bolt action weapon that is  
 19 not a semi-automatic firearm such as a Winchester bolt action  
 20 rifle; a lever action weapon that is not a semi-automatic firearm  
 21 such as a Marlin lever action carbine; a slide action weapon that  
 22 is not a semi-automatic firearm; BB guns; gas and pneumatic  
 23 powered pellet guns; and air rifles.]  
 24 <sup>2</sup>[w. (1) "Assault firearm" means;  
 25 (a) a semi-automatic rifle, carbine, or short rifle, with a barrel  
 26 length measuring not less than 16 inches or more than 22 inches  
 27 from breech to muzzle and which was originally designed to  
 28 accept a detachable magazine with a capacity exceeding 15  
 29 rounds;  
 30 (b) a semi-automatic shotgun with either a magazine capacity  
 31 exceeding six rounds, a pistol grip, or a folding stock;  
 32 (c) a semi-automatic rifle with a fixed magazine capacity  
 33 exceeding 15 rounds;  
 34 (d) a semi-automatic handgun originally designed to accept a  
 35 magazine with a capacity exceeding 17 rounds;  
 36 (e) a firearm which may be readily restored to an operable  
 37 assault firearm;  
 38 (f) a part or combination of parts designed or intended to  
 39 convert a firearm into an assault firearm, or any combination of  
 40 parts from which an assault firearm may be readily assembled if  
 41 those parts are in the possession or under the control of the same  
 42 person; or  
 43 (g) all versions or formats of any of the following firearms, or  
 44 firearms manufactured under any designation which are  
 45 substantially identical:  
 46 Avtomat Kalashnikov semi-automatic firearms;  
 47 Uzi semi-automatic firearms;  
 48 Intratec TEC 9 or 22 semi-automatic firearm;  
 49 Ruger Mini-14 semi-automatic firearm;

- 1 Colt AR-15 semi-automatic firearm;  
 2 Beretta AR-70 semi-automatic firearm;  
 3 FN-FAL or FN-FNC semi-automatic firearms;  
 4 Steyr A.U.G. semi-automatic firearm;  
 5 Heckler and Koch HK91, HK93, HK94 semi-automatic rifles  
 6 and carbines;  
 7 USAS 12 semi-automatic shotgun;  
 8 Valmet M-76 or M-78 semi-automatic firearms; and  
 9 Any shotgun with a revolving cylinder such as the "Street  
 10 Sweeper" or "Striker 12,"  
 11 (2) The term "assault firearm" shall not include the following  
 12 firearms:  
 13 Remington Model 1100 shotgun;  
 14 Remington Model 870 shotgun;  
 15 Ruger 10/22 carbine;  
 16 HK Model 300 rifle;  
 17 Marlin Model 9 camp carbine;  
 18 Stevens Model 987 rifle;  
 19 Remington Nylon 66 autoloading rifle;  
 20 a firearm which does not use fixed ammunition;  
 21 a manually operated bolt action weapon that is not a  
 22 semi-automatic firearm, such as a Winchester bolt action rifle;  
 23 a lever action weapon that is not a semi-automatic firearm,  
 24 such as a Marlin lever action carbine;  
 25 a slide action weapon that is not a semi-automatic firearm;  
 26 a BB gun;  
 27 a gas and pneumatic powered pellet gun;  
 28 an air rifle;  
 29 an assault firearm which has been rendered permanently  
 30 inoperable.<sup>1)</sup>  
 31 w. "Assault firearm" means:  
 32 (1) The following firearms:  
 33 Algimec AGM1 type  
 34 Any shotgun with a revolving cylinder such as the "Street  
 35 Sweeper" or "Striker 12"  
 36 Armalite AR-180 type  
 37 Australian Automatic Arms SAR  
 38 Avtomat Kalashnikov type semi-automatic firearms  
 39 Beretta AR-70 and BM59 semi-automatic firearms  
 40 Bushmaster Assault Rifle  
 41 Calico M-900 Assault carbine and M-900  
 42 CETME G3  
 43 Chartered Industries of Singapore SR-88 type  
 44 Colt AR-15 and CAR-15 series  
 45 Daewoo K-1, K-2, Max 1 and Max 2, AR 100 types  
 46 Demro TAC-1 carbine type  
 47 Encom MP-9 and MP-45 carbine types  
 48 FAMAS MAS223 types  
 49 FN-FAL, FN-LAR, or FN-FNC type semi-automatic firearms

- 1 Franchi SPAS 12 and LAW 12 shotguns  
 2 G3SA type  
 3 Galil type  
 4 Heckler and Koch HK91, HK93, HK94, MP5, PSG-1  
 5 Intratec TEC 9 and 22 semi-automatic firearms  
 6 M1 carbine type  
 7 M14S type  
 8 MAC 10, MAC 11, MAC 11-9mm carbine type firearms  
 9 PJK M-68 carbine type  
 10 Plainfield Machine Company Carbine  
 11 Ruger K-Mini-14/5F and Mini-14/5RF  
 12 SIG AMT, SIG 550SP, SIG 551SP, SIG PE-57 types  
 13 SKS with detachable magazine type  
 14 Spectre Auto carbine type  
 15 Springfield Armory BM59 and SAR-48 type  
 16 Sterling MK-6, MK-7 and SAR types  
 17 Steyr A.U.G. semi-automatic firearms  
 18 USAS 12 semi-automatic type shotgun  
 19 Uzi type semi-automatic firearms  
 20 Valmet M62, M71S, M76, or M78 type semi-automatic firearms  
 21 Weaver Arm Nighthawk  
 22 (2) Any firearm manufactured under any designation which is  
 23 substantially identical to any of the firearms listed above.  
 24 (3) A semi-automatic shotgun with either a magazine capacity  
 25 exceeding six rounds, a pistol grip, or a folding stock.  
 26 (4) A semi-automatic rifle with a fixed magazine capacity  
 27 exceeding 15 rounds.  
 28 (5) A part or combination of parts designed or intended to  
 29 convert a firearm into an assault firearm, or any combination of  
 30 parts from which an assault firearm may be readily assembled if  
 31 those parts are in the possession or under the control of the same  
 32 person.<sup>2</sup>  
 33 x. "Semi-automatic" means a firearm which fires a single  
 34 projectile for each single pull of the trigger and is self-reloading  
 35 or automatically chambers a round, cartridge, or bullet.  
 36 y. "Large capacity ammunition magazine" means a box, drum,  
 37 tube or other container which is capable of holding more than 15  
 38 rounds of ammunition to be fed continuously<sup>1</sup> and directly  
 39 therefrom<sup>1</sup> into a semi-automatic firearm<sup>2</sup> [or a magazine  
 40 which can be readily converted into a large capacity magazine]<sup>2</sup>.  
 41 <sup>2</sup>z. "Pistol grip" means a well-defined handle, similar to that  
 42 found on a handgun, that protrudes conspicuously beneath the  
 43 action of the weapon, and which permits the shotgun to be held  
 44 and fired with one hand.<sup>2</sup>  
 45 (cf: P.L.1989, c.120, s.1)  
 46 2. N.J.S.2C:39-5 is amended to read as follows:  
 47 2C:39-5. Unlawful Possession of Weapons.  
 48 a. Machine guns. Any person who knowingly has in his  
 49 possession a machine gun or any instrument or device adaptable

1 for use as a machine gun, without being licensed to do so as  
2 provided in section 2C:58-5, is guilty of a crime of the third  
3 degree.

4 b. Handguns. Any person who knowingly has in his possession  
5 any handgun, including any antique handgun without first having  
6 obtained a permit to carry the same as provided in section  
7 2C:58-4, is guilty of a crime of the third degree.

8 c. Rifles and shotguns. (1) Any person who knowingly has in  
9 his possession any rifle or shotgun without having first obtained a  
10 firearms purchaser identification card in accordance with the  
11 provisions of section 2C:58-3, is guilty of a crime of the third  
12 degree.

13 (2) Unless otherwise permitted by law, any person who  
14 knowingly has in his possession any loaded rifle or shotgun is  
15 guilty of a crime of the third degree.

16 d. Other weapons. Any person who knowingly has in his  
17 possession any other weapon under circumstances not manifestly  
18 appropriate for such lawful uses as it may have is guilty of a  
19 crime of the fourth degree.

20 e. Firearms in educational institutions. Any person who  
21 knowingly has in his possession any firearm in or upon any part of  
22 the buildings or grounds of any school, college, university or other  
23 educational institution, without the written authorization of the  
24 governing officer of the institution, is guilty of a crime of the  
25 third degree, irrespective of whether he possesses a valid permit  
26 to carry the firearm or a valid firearms purchaser identification  
27 card.

28 f. Assault firearms. <sup>1</sup>[(1)]<sup>1</sup> Any person who <sup>1</sup>knowingly<sup>1</sup> has in  
29 his possession an assault firearm<sup>2</sup>, without being licensed under  
30 N.J.S.2C:58-5,<sup>2</sup> is guilty of a crime of the third degree <sup>2</sup>except  
31 if the assault firearm is licensed pursuant to N.J.S.2C:58-5;  
32 registered pursuant to section 11 of P.L. , c. (C. ) (now  
33 pending before the Legislature as this bill) or rendered inoperable  
34 pursuant to section 12 of P.L. , c. (C. ) (now pending  
35 before the Legislature as this bill).<sup>2</sup>

36 <sup>1</sup>[(2) Unless otherwise permitted by law, any person who  
37 knowingly has in his possession any loaded assault firearm is  
38 guilty of a crime of the third degree.]<sup>1</sup>

39 (cf: P.L.1979, c.179, s.4)

40 3. N.J.S.2C:39-9 is amended to read as follows:

41 2C:39-9. Manufacture, Transport, Disposition and  
42 Defacement of Weapons and Dangerous Instruments and  
43 Appliances. a. Machine guns. Any person who manufactures,  
44 causes to be manufactured, transports, ships, sells or disposes of  
45 any machine gun without being registered or licensed to do so as  
46 provided in chapter 58 is guilty of a crime of the third degree.

47 b. Sawed-off shotguns. Any person who manufactures, causes  
48 to be manufactured, transports, ships, sells or disposes of any  
49 sawed-off shotgun is guilty of a crime of the third degree.



1 c. Firearm silencers. Any person who manufactures, causes to  
2 be manufactured, transports, ships, sells or disposes of any  
3 firearm silencer is guilty of a crime of the fourth degree.

4 d. Weapons. Any person who manufactures, causes to be  
5 manufactured, transports, ships, sells or disposes of any weapon,  
6 including gravity knives, switchblade knives, ballistic knives,  
7 daggers, dirks, stilettos, billies, blackjacks, metal knuckles,  
8 sandclubs, slingshots, cesti or similar leather bands studded with  
9 metal filings, or in the case of firearms if he is not licensed or  
10 registered to do so as provided in chapter 58, is guilty of a crime  
11 of the fourth degree. Any person who manufactures, causes to be  
12 manufactured, transports, ships, sells or disposes of any weapon  
13 or other device which projects, releases or emits tear gas or  
14 other substances intended to produce temporary physical  
15 discomfort or permanent injury through being vaporized or  
16 otherwise dispensed in the air, which is intended to be used for  
17 any purpose other than for authorized military or law  
18 enforcement purposes by duly authorized military or law  
19 enforcement personnel or the device is for the purpose of  
20 personal self-defense, is pocket-sized and contains not more than  
21 three-quarters of an ounce of chemical substance not ordinarily  
22 capable of lethal use or of inflicting serious bodily injury, or  
23 other than to be used by any person permitted to possess such  
24 weapon or device under the provisions of subsection d. of  
25 N.J.S.2C:39-5, which is intended for use by financial and other  
26 business institutions as part of an integrated security system,  
27 placed at fixed locations, for the protection of money and  
28 property, by the duly authorized personnel of those institutions, is  
29 guilty of a crime of the fourth degree.

30 e. Defaced firearms. Any person who defaces any firearm is  
31 guilty of a crime of the third degree. Any person who knowingly  
32 buys, receives, disposes of or conceals a defaced firearm, except  
33 an antique firearm, is guilty of a crime of the fourth degree.

34 f. (1) Any person who manufactures, causes to be  
35 manufactured, transports, ships, sells, or disposes of any bullet,  
36 which is primarily designed for use in a handgun, and which is  
37 comprised of a bullet whose core or jacket, if the jacket is  
38 thicker than .025 of an inch, is made of tungsten carbide, or hard  
39 bronze, or other material which is harder than a rating of 72 or  
40 greater on the Rockwell B. Hardness Scale, and is therefore  
41 capable of breaching or penetrating body armor and which is  
42 intended to be used for any purpose other than for authorized  
43 military or law enforcement purposes by duly authorized military  
44 or law enforcement personnel, is guilty of a crime of the fourth  
45 degree.

46 (2) Nothing in this subsection shall be construed to prevent a  
47 licensed collector of ammunition as defined in paragraph (2) of  
48 subsection f. of N.J.S.2C:39-3 from transporting the bullets  
49 defined in paragraph (1) of this subsection from (a) any licensed

1 retail or wholesale firearms dealer's place of business to the  
2 collector's dwelling, premises, or other land owned or possessed  
3 by him, or (b) to or from the collector's dwelling, premises or  
4 other land owned or possessed by him to any gun show for the  
5 purposes of display, sale, trade, or transfer between collectors, or  
6 (c) to or from the collector's dwelling, premises or other land  
7 owned or possessed by him to any rifle or pistol club organized in  
8 accordance with the rules prescribed by the National Board for  
9 the Promotion of Rifle Practice; provided that the club has filed  
10 a copy of its charter with the superintendent of the State Police  
11 and annually submits a list of its members to the superintendent,  
12 and provided further that the ammunition being transported shall  
13 be carried not loaded in any firearm and contained in a closed and  
14 fastened case, gunbox, or locked in the trunk of the automobile in  
15 which it is being transported, and the course of travel shall  
16 include only such deviations as are reasonably necessary under  
17 the circumstances.

18 g. Assault firearms. Any person who manufactures, causes to  
19 be manufactured, transports, ships, sells or disposes of an assault  
20 firearm without being registered or licensed to do so pursuant to  
21 N.J.S.2C:58-1 et seq. is guilty of a crime of the third degree.

22 h. Large capacity ammunition magazines. Any person who  
23 manufactures, causes to be manufactured, transports, ships, sells  
24 or disposes of a large capacity ammunition magazine which is  
25 intended to be used for any purpose other than for authorized  
26 military or law enforcement purposes by duly authorized military  
27 or law enforcement personnel is guilty of a crime of the fourth  
28 degree.

29 (cf: P.L.1987, c.228, s.3)

30 4. N.J.S.2C:39-10 is amended to read as follows:

31 2C:39-10. Violation of the Regulatory Provisions Relating to  
32 Firearms; False Representation in Applications.

33 a. Any person who knowingly violates the regulatory provisions  
34 relating to manufacturing or wholesaling of firearms (section  
35 2C:58-1), retailing of firearms (section 2C:58-2), permits to  
36 purchase certain firearms (section 2C:58-3), permits to carry  
37 certain firearms (section 2C:58-4), licenses to procure machine  
38 guns or assault firearms (section 2C:58-5), or incendiary or tracer  
39 ammunition (section 2C:58-10), except acts which are punishable  
40 under section 2C:39-5 or section 2C:39-9, is guilty of a crime of  
41 the fourth degree.

42 b. Any person who knowingly violates the regulatory provisions  
43 relating to notifying the authorities of possessing certain items of  
44 explosives (section 2C:58-7), or of certain wounds (section  
45 2C:58-8) is a disorderly person.

46 c. Any person who gives or causes to be given any false  
47 information, or signs a fictitious name or address, in applying for  
48 a firearms purchaser identification card [or], a permit to  
49 purchase [or] a handgun, a permit to carry a handgun, [or] a

1 permit to possess a machine gun, a permit to possess an assault  
2 firearm, or in completing the certificate or any other instrument  
3 required by law in purchasing or otherwise acquiring delivery of  
4 any rifle, shotgun, handgun, machine gun, or assault firearm or  
5 any other firearm, is guilty of a crime of the third degree.

6 2d. Any person who gives or causes to be given any false  
7 information in registering an assault firearm pursuant to section  
8 11 of P.L. , c. (C. ) (now pending before the Legislature  
9 as this bill) or in certifying that an assault firearm was rendered  
10 inoperable pursuant to section 12 of P.L. , c. (C. ) (now  
11 pending before the Legislature as this bill) commits a crime of  
12 the fourth degree.<sup>2</sup>

13 (cf: P.L.1979, c.179, s.8)

14 5. Section 1 of P.L.1983. c.515 (C.2C:39-15) is amended to  
15 read as follows:

16 1. Any person who offers to sell a machine gun [or],  
17 semi-automatic rifle, or assault firearm by means of an  
18 advertisement published in a newspaper circulating within this  
19 State, which advertisement does not specify that the purchaser  
20 shall hold a valid license to purchase and possess a machine gun  
21 or assault firearm, or a valid firearms identification card to  
22 purchase and possess an automatic or semi-automatic rifle, is a  
23 disorderly person.

24 (cf: P.L.1983, c.515, s.1)

25 6. N.J.S.2C:43-6 is amended to read as follows:

26 2C:43-6. Sentence of Imprisonment for Crime; Ordinary  
27 Terms; Mandatory Terms. a. Except as otherwise provided, a  
28 person who has been convicted of a crime may be sentenced to  
29 imprisonment, as follows:

30 (1) In the case of a crime of the first degree, for a specific  
31 term of years which shall be fixed by the court and shall be  
32 between 10 years and 20 years;

33 (2) In the case of a crime of the second degree, for a specific  
34 term of years which shall be fixed by the court and shall be  
35 between five years and 10 years;

36 (3) In the case of a crime of the third degree, for a specific  
37 term of years which shall be fixed by the court and shall be  
38 between three years and five years;

39 (4) In the case of a crime of the fourth degree, for a specific  
40 term which shall be fixed by the court and shall not exceed 18  
41 months.

42 b. As part of a sentence for any crime, where the court is  
43 clearly convinced that the aggravating factors substantially  
44 outweigh the mitigating factors, as set forth in subsections a. and  
45 b. of 2C:44-1, the court may fix a minimum term not to exceed  
46 one-half of the term set pursuant to subsection a., or one-half of  
47 the term set pursuant to a maximum period of incarceration for a  
48 crime set forth in any statute other than this code, during which  
49 the defendant shall not be eligible for parole; provided that no

1 defendant shall be eligible for parole at a date earlier than  
2 otherwise provided by the law governing parole.

3 c. A person who has been convicted under 2C:39-4a. of  
4 possession of a firearm with intent to use it against the person of  
5 another, or of a crime under any of the following sections:  
6 2C:11-3, 2C:11-4, 2C:12-1b., 2C:13-1, 2C:14-2a., 2C:14-3a.,  
7 2C:15-1, 2C:18-2, 2C:29-5, who, while in the course of  
8 committing or attempting to commit the crime, including the  
9 *immediate flight therefrom*, used or was in possession of a  
10 firearm as defined in 2C:39-1f., shall be sentenced to a term of  
11 imprisonment by the court. The term of imprisonment shall  
12 include the imposition of a minimum term. The minimum term  
13 shall be fixed at, or between, one-third and one-half of the  
14 sentence imposed by the court or three years, whichever is  
15 greater, or 18 months in the case of a fourth degree crime, during  
16 which the defendant shall be ineligible for parole.

17 The minimum terms established by this section shall not  
18 prevent the court from imposing presumptive terms of  
19 imprisonment pursuant to 2C:44-1f. (1) except in cases of crimes  
20 of the fourth degree.

21 A person who has been convicted of an offense enumerated by  
22 this subsection and who used or possessed a firearm during its  
23 commission, attempted commission or flight therefrom and who  
24 has been previously convicted of an offense involving the use or  
25 possession of a firearm as defined in 2C:44-3d., shall be  
26 sentenced by the court to an extended term as authorized by  
27 2C:43-7c., notwithstanding that extended terms are ordinarily  
28 discretionary with the court.

29 d. The court shall not impose a mandatory sentence pursuant  
30 to subsection c. of this section, 2C:43-7c. or 2C:44-3d., unless  
31 the ground therefor has been established at a hearing. At the  
32 hearing, which may occur at the time of sentencing, the  
33 prosecutor shall establish by a preponderance of the evidence  
34 that the weapon used or possessed was a firearm. *In making its*  
35 *finding*, the court shall take judicial notice of any evidence,  
36 *testimony or information* adduced at the trial, plea hearing, or  
37 other court proceedings and shall also consider the presentence  
38 report and any other relevant information.

39 e. A person convicted of a third or subsequent offense  
40 involving State taxes under N.J.S.2C:20-9, N.J.S.2C:21-15, any  
41 other provision of this code, or under any of the provisions of  
42 Title 54 of the Revised Statutes, or Title 54A of the New Jersey  
43 Statutes, as amended and supplemented, shall be sentenced to a  
44 term of imprisonment by the court. This shall not preclude an  
45 *application for and imposition of an extended term of*  
46 *imprisonment under N.J.S.2C:44-3* if the provisions of that  
47 section are applicable to the offender.

48 f. A person convicted of manufacturing, distributing,  
49 dispensing or possessing with intent to distribute any dangerous

1 substance or controlled substance analog under N.J.S.2C:35-5, of  
2 maintaining or operating a controlled dangerous substance  
3 production facility under N.J.S.2C:35-4, of employing a juvenile  
4 in a drug distribution scheme under N.J.S.2C:35-6, leader of a  
5 narcotics trafficking network under N.J.S.2C:35-3, or of  
6 distributing, dispensing or possessing with intent to distribute on  
7 or near school property or buses under section 1 of P.L.1987,  
8 c.101 (C.2C:35-7), who has been previously convicted of  
9 manufacturing, distributing, dispensing or possessing with intent  
10 to distribute a controlled dangerous substance or controlled  
11 substance analog, shall upon application of the prosecuting  
12 attorney be sentenced by the court to an extended term as  
13 authorized by subsection c. of N.J.S.2C:43-7, notwithstanding  
14 that extended terms are ordinarily discretionary with the court.  
15 The term of imprisonment shall, except as may be provided in  
16 N.J.S.2C:35-12, include the imposition of a minimum term. The  
17 minimum term shall be fixed at, or between, one-third and  
18 one-half of the sentence imposed by the court or three years,  
19 whichever is greater, not less than seven years if the person is  
20 convicted of a violation of N.J.S.2C:35-6, or 18 months in the  
21 case of a fourth degree crime, during which the defendant shall  
22 be ineligible for parole.

23 The court shall not impose an extended term pursuant to this  
24 subsection unless the ground therefor has been established at a  
25 hearing. At the hearing, which may occur at the time of  
26 sentencing, the prosecutor shall establish the ground therefor by  
27 a preponderance of the evidence. In making its finding, the court  
28 shall take judicial notice of any evidence, testimony or  
29 information adduced at the trial, plea hearing, or other court  
30 proceedings and shall also consider the presentence report and  
31 any other relevant information.

32 For the purpose of this subsection, a previous conviction exists  
33 where the actor has at any time been convicted under chapter 35  
34 of this title or Title 24 of the Revised Statutes or under any  
35 similar statute of the United States, this State, or any other state  
36 for an offense that is substantially equivalent to N.J.S.2C:35-3,  
37 N.J.S.2C:35-4, N.J.S.2C:35-5, N.J.S.2C:35-6 or section 1 of  
38 P.L.1987, c.101 (C.2C:35-7).

39 g. Any person who has been convicted under subsection a. of  
40 N.J.S.2C:39-4 of possessing a machine gun or assault firearm  
41 with intent to use it against the person of another, or of a crime  
42 under any of the following sections: N.J.S.2C:11-3,  
43 N.J.S.2C:11-4, N.J.S.2C:12-1b., N.J.S.2C:13-1, N.J.S.2C:14-2a.,  
44 N.J.S.2C:14-3a., N.J.S.2C:15-1, N.J.S.2C:18-2, N.J.S.2C:29-5,  
45 N.J.S.2C:35-5, who, while in the course of committing or  
46 attempting to commit the crime, including the immediate flight  
47 therefrom, used or was in possession of a machine gun or assault  
48 firearm shall be sentenced to a term of imprisonment by the  
49 court. The term of imprisonment shall include the imposition of

1 a minimum term. The minimum term shall be fixed at 10 years  
2 for a crime of the first or second degree, five years for a crime  
3 of the third degree, or 18 months in the case of a fourth degree  
4 crime, during which the defendant shall be ineligible for parole.

5 The minimum terms established by this section shall not  
6 prevent the court from imposing presumptive terms of  
7 imprisonment pursuant to paragraph (1) of subsection f. of  
8 N.J.S.2C:44-1 for crimes of the first degree.

9 A person who has been convicted of an offense enumerated in  
10 this subsection and who used or possessed a machine gun or  
11 assault firearm during its commission, attempted commission or  
12 flight therefrom and who has been previously convicted of an  
13 offense involving the use or possession of any firearm as defined  
14 in subsection d. of N.J.S.2C:44-3, shall be sentenced by the court  
15 to an extended term as authorized by subsection d. of  
16 N.J.S.2C:43-7, notwithstanding that extended terms are  
17 ordinarily discretionary with the court.

18 h. The court shall not impose a mandatory sentence pursuant  
19 to subsection g. of this section, subsections d. of N.J.S.2C:43-7 or  
20 N.J.S.2C:44-3, unless the ground therefor has been established at  
21 a hearing. At the hearing, which may occur at the time of  
22 sentencing, the prosecutor shall establish by a preponderance of  
23 the evidence that the weapon used or possessed was a machine  
24 gun or assault firearm. In making its finding, the court shall take  
25 judicial notice of any evidence, testimony or information adduced  
26 at the trial, plea hearing, or other court proceedings and shall  
27 also consider the presentence report and any other relevant  
28 information.

29 (cf: P.L.1988, c.44, s.13)

30 7. N.J.S.2C:43-7 is amended to read as follows:

31 2C:43-7. Sentence of Imprisonment for Crime: Extended  
32 Terms. a. In the cases designated in section 2C:44-3, a person  
33 who has been convicted of a crime may be sentenced to an  
34 extended term of imprisonment, as follows:

35 (1) In case of aggravated manslaughter sentenced under  
36 subsection c. of N.J.S.2C:11-4 or kidnapping when sentenced as a  
37 crime of the first degree under paragraph (1) of subsection c. of  
38 2C:13-1 for a specific term of years which shall be between 30  
39 years and life imprisonment;

40 (2) Except for the crime of murder and except as provided in  
41 paragraph (1) of this subsection, in the case of a crime of the  
42 first degree, for a specific term of years which shall be fixed by  
43 the court and shall be between 20 years and life imprisonment;

44 (3) In the case of a crime of the second degree, for a term  
45 which shall be fixed by the court between 10 and 20 years;

46 (4) In the case of a crime of the third degree, for a term which  
47 shall be fixed by the court between five and 10 years;

48 (5) In the case of a crime of the fourth degree pursuant to  
49 2C:43-6c. and 2C:44-3d. for a term of five years, and in the case

1 of a crime of the fourth degree pursuant to 2C:43-6f. for a term  
2 which shall be fixed by the court between three and five years.

3 b. As part of a sentence for an extended term and  
4 notwithstanding the provisions of 2C:43-9, the court may fix a  
5 minimum term not to exceed one-half of the term set pursuant to  
6 subsection a. during which the defendant shall not be eligible for  
7 parole or a term of 25 years during which time the defendant  
8 shall not be eligible for parole where the sentence imposed was  
9 life imprisonment; provided that no defendant shall be eligible for  
10 parole at a date earlier than otherwise provided by the law  
11 governing parole.

12 c. In the case of a person sentenced to an extended term  
13 pursuant to 2C:43-6c., 2C:43-6f. and 2C:44-3d., the court shall  
14 impose a sentence within the ranges permitted by 2C:43-7a. (2),  
15 (3), (4) or (5) according to the degree or nature of the crime for  
16 which the defendant is being sentenced, which sentence shall  
17 include a minimum term which shall, except as may be  
18 specifically provided by N.J.S.2C:43-6f., be fixed at or between  
19 one-third and one-half of the sentence imposed by the court or  
20 five years, whichever is greater, during which the defendant shall  
21 not be eligible for parole. Where the sentence imposed is life  
22 imprisonment, the court shall impose a minimum term of 25 years  
23 during which the defendant shall not be eligible for parole, except  
24 that where the term of life imprisonment is imposed on a person  
25 convicted for a violation of N.J.S.2C:35-3, the term of parole  
26 ineligibility shall be 30 years.

27 d. In the case of a person sentenced to an extended term  
28 pursuant to N.J.S.2C:43-6g., the court shall impose a sentence  
29 within the ranges permitted by N.J.S.2C:43-7a. (2), (3), <sup>1</sup>[or] <sup>1</sup>(4)  
30 <sup>1</sup>or (5)<sup>1</sup> according to the degree or nature of the crime for which  
31 the defendant is being sentenced, which sentence shall include a  
32 minimum term which shall be fixed at 15 years for a crime of the  
33 first or second degree, eight years for a crime of the third  
34 degree, or <sup>1</sup>[four] <sup>1</sup>five<sup>1</sup> years for a crime of the fourth degree  
35 during which the defendant shall not be eligible for parole.  
36 Where the sentence imposed is life imprisonment, the court shall  
37 impose a minimum term of 25 years during which the defendant  
38 shall not be eligible for parole, except that where the term of life  
39 imprisonment is imposed on a person convicted of a violation of  
40 N.J.S.2C:35-3, the term of parole ineligibility shall be 30 years.  
41 (cf: P.L.1988, c.44, s.14)

42 8. N.J.S.2C:44-3 is amended to read as follows:

43 2C:44-3. Criteria for Sentence of Extended Term of  
44 Imprisonment.

45 The court may, upon application of the prosecuting attorney,  
46 sentence a person who has been convicted of a crime of the first,  
47 second or third degree to an extended term of imprisonment if it  
48 finds one or more of the grounds specified in this section. If the  
49 grounds specified in subsection d. are found, and the person is

1 being sentenced for commission of any of the offenses  
2 enumerated in N.J.S.2C:43-6c. or N.J.S.2C:43-6g., the court shall  
3 sentence the defendant to an extended term as required by  
4 N.J.S.2C:43-6c. or N.J.S.2C:43-6g., and application by the  
5 prosecutor shall not be required. The finding of the court shall be  
6 incorporated in the record.

7 a. The defendant is a persistent offender. A persistent  
8 offender is a person who at the time of the commission of the  
9 crime is 21 years of age or over, who has been previously  
10 convicted on at least two separate occasions of two crimes,  
11 committed at different times, when he was at least 18 years of  
12 age, if the latest in time of these crimes or the date of the  
13 defendant's last release from confinement, whichever is later, is  
14 within 10 years of the date of the crime for which the defendant  
15 is being sentenced.

16 b. The defendant is a professional criminal. A professional  
17 criminal is a person who committed a crime as part of a  
18 continuing criminal activity in concert with two or more persons,  
19 and the circumstances of the crime show he has knowingly  
20 devoted himself to criminal activity as a major source of  
21 livelihood.

22 c. The defendant committed the crime as consideration for the  
23 receipt, or in expectation of the receipt, of anything of pecuniary  
24 value the amount of which was unrelated to the proceeds of the  
25 crime or he procured the commission of the offense by payment  
26 or promise of payment of anything of pecuniary value.

27 d. Second offender with a firearm. The defendant is at least  
28 18 years of age and has been previously convicted of any of the  
29 following crimes: 2C:11-3, 2C:11-4, 2C:12-1b., 2C:13-1,  
30 2C:14-2a., 2C:14-3a., 2C:15-1, 2C:18-2, 2C:29-5, 2C:39-4a., or  
31 has been previously convicted of an offense under Title 2A of the  
32 New Jersey Statutes which is equivalent of the offenses  
33 enumerated in this subsection and he used or possessed a firearm,  
34 as defined in 2C:39-1f., in the course of committing or  
35 attempting to commit any of these crimes, including the  
36 immediate flight therefrom.

37 (cf: P.L.1981, c.31, s.3)

38 9. N.J.S.2C:58-5 is amended to read as follows:

39 2C:58-5. Licenses to Possess and Carry Machine Guns <sup>1</sup>and  
40 Assault Firearms<sup>1</sup>.

41 a. Any person who desires to purchase, possess and carry a  
42 machine gun or assault firearm in this State may apply for a  
43 license to do so by filing in the Superior Court in the county in  
44 which he resides, or conducts his business if a nonresident, a  
45 written application setting forth in detail his reasons for desiring  
46 such a license. The Superior Court shall refer the application to  
47 the county prosecutor for investigation and recommendation. A  
48 copy of the prosecutor's report, together with a copy of the  
49 notice of the hearing on the application, shall be served upon the



1 superintendent and the chief police officer of every municipality  
2 in which the applicant intends to carry the machine gun or assault  
3 firearm, unless, for good cause shown, the court orders notice to  
4 be given wholly or in part by publication.

5 b. No license shall be issued to any person who would not  
6 qualify for a permit to carry a handgun under section 2C:58-4,  
7 and no license shall be issued unless the court finds that the  
8 public safety and welfare so require. Any person aggrieved by the  
9 decision of the court in granting or denying an application,  
10 including the applicant, the prosecutor, or any law enforcement  
11 officer entitled to notice under subsection a. who appeared in  
12 opposition to the application, may appeal said decision in  
13 accordance with law and the rules governing the courts of this  
14 State.

15 c. Upon the issuance of any license under this section, true  
16 copies of such license shall be filed with the superintendent and  
17 the chief police officer of the municipality where the licensee  
18 resides or has his place of business.

19 d. In issuing any license under this section, the court shall  
20 attach thereto such conditions and limitations as it deems to be  
21 in the public interest. Unless otherwise provided by court order  
22 at the time of issuance, each license shall expire 1 year from the  
23 date of issuance, and may be renewed in the same manner and  
24 under the same conditions as apply to original applications.

25 e. Any license may be revoked by the Superior Court, after a  
26 hearing upon notice to the holder thereof, if the court finds that  
27 the holder is no longer qualified for the issuance of such a license  
28 or that revocation is necessary for the public safety and welfare.  
29 Any citizen may apply to the court for revocation of a license  
30 issued under this section.

31 <sup>2</sup>[1]. If an applicant appeals a decision by a court denying an  
32 application to purchase, possess, or carry an assault firearm and  
33 the appeal is pending on the effective date of P.L. \_\_\_\_\_,  
34 c. \_\_\_\_\_ (C. \_\_\_\_\_) (now pending before the Legislature as this  
35 bill), the applicant shall deliver any assault firearm owned or  
36 possessed by him to either the chief law enforcement officer of  
37 the municipality in which the applicant resides or, in the case of  
38 an applicant who resides outside this State but stores or possesses  
39 an assault firearm in this State, to the Superintendent of State  
40 Police. The chief law enforcement officer or superintendent  
41 shall retain custody of the firearm pending a decision on the  
42 appeal. If the denial of the application is upheld on appeal, the  
43 assault firearm shall, in accordance with the decision of the  
44 applicant, be rendered permanently inoperable and returned to  
45 the applicant, or retained by the chief law enforcement officer or  
46 the superintendent as a voluntarily surrendered firearm pursuant  
47 to N.J.S.2C:39-12.<sup>1</sup>]

48 f. A filing fee of \$75.00 shall be required for each application  
49 filed pursuant to the provisions of this section. Of this filing fee,

1 \$25.00 shall be forwarded to the State Treasury for deposit in the  
2 account used by the Violent Crimes Compensation Board in  
3 satisfying claims and for related administrative costs pursuant to  
4 the provisions of the "Criminal Injuries Compensation Act of  
5 1971," P.L.1971, c.317 (C.52:4B-1 et seq.).

6 g. Any license granted pursuant to the provisions of this  
7 section shall expire two years from the date of issuance and may  
8 be renewed in the same manner and under the same conditions as  
9 apply to original applications. If the holder of a license dies, the  
10 holder's heirs or estate shall have 90 days to dispose of that  
11 firearm as provided in section 12 of P.L. , c. (C. ) (now  
12 pending before the Legislature as this bill).

13 h. If an assault firearm licensed pursuant to the provisions of  
14 this section is used in the commission of a crime, the holder of  
15 the license for that assault firearm shall be civilly liable for any  
16 damages resulting from that crime. The liability imposed by this  
17 subsection shall not apply if the assault firearm used in the  
18 commission of the crime was stolen and the license holder  
19 reported the theft of the firearm to law enforcement authorities  
20 within 24 hours of the license holder's knowledge of the theft.

21 i. Nothing in P.L. c. (C. ) (now pending before the  
22 Legislature as this bill) shall be construed to abridge any  
23 exemptions provided under N.J.S.2C:39-6.<sup>2</sup>  
24 (cf: P.L.1979, c.179, s.13)

25 <sup>1</sup>[10. (New section) A person who is in lawful possession of an  
26 assault firearm as defined in N.J.S.2C:39-1 on the effective day  
27 of this act may apply within 15 days after the effective date for  
28 a license to continue to possess an assault firearm in accordance  
29 with N.J.S.2C:58-5. A person who intends to file an application  
30 for a license shall deliver the assault firearm to the chief law  
31 enforcement officer of the municipality in which the person  
32 resides by the effective date of this act and shall sign a  
33 statement of intent to apply for a license in accordance with  
34 N.J.S.2C:58-5. The chief law enforcement officer shall retain  
35 the assault firearm until the application is approved. If the  
36 application is denied, the person may retain ownership of the  
37 assault firearm for the purpose of sale for a period not exceeding  
38 90 days, provided the assault firearm remains in the custody of  
39 the chief until it may be turned over by the chief directly to the  
40 purchaser. If the firearm is not sold within 90 days, it shall be  
41 rendered permanently inoperable upon the request of the owner  
42 and returned to the owner, or it shall be retained by the chief as  
43 a voluntarily surrendered firearm pursuant to N.J.S.2C:39-12.

44 A person who is in possession of an assault firearm and who  
45 does not intend to apply for a license in accordance with  
46 N.J.S.2C:58-5 shall permanently dispose of the assault firearm by  
47 sale, voluntary surrender under N.J.S.2C:39-12, or other lawful  
48 means or shall render it permanently inoperable by the effective  
49 date of this act. If an assault firearm is rendered permanently

1 inoperable, the person shall file an affidavit or notarized  
2 statement with the Superior Court in the county in which the  
3 person resides stating that the person possesses an assault  
4 firearm which has been rendered permanently inoperable.]<sup>1</sup>

5 <sup>1</sup>[11.] 10.<sup>1</sup> N.J.S.2C:39-3 is amended to read as follows:

6 2C:39-3. Prohibited Weapons and Devices. a. Destructive  
7 devices. Any person who knowingly has in his possession any  
8 destructive device is guilty of a crime of the third degree.

9 b. Sawed-off shotguns. Any person who knowingly has in his  
10 possession any sawed-off shotgun is guilty of a crime of the third  
11 degree.

12 c. Silencers. Any person who knowingly has in his possession  
13 any firearm silencer is guilty of a crime of the fourth degree.

14 d. Defaced firearms. Any person who knowingly has in his  
15 possession any firearm which has been defaced, except an antique  
16 firearm, is guilty of a crime of the fourth degree.

17 e. Certain weapons. Any person who knowingly has in his  
18 possession any gravity knife, switchblade knife, dagger, dirk,  
19 stiletto, billy, blackjack, metal knuckle, sandclub, slingshot,  
20 cestus or similar leather band studded with metal filings or razor  
21 blades imbedded in wood, ballistic knife, without any explainable  
22 lawful purpose, is guilty of a crime of the fourth degree.

23 f. Dum-dum or body armor penetrating bullets. (1) Any  
24 person, other than a law enforcement officer or persons engaged  
25 in activities pursuant to subsection f. of N.J.S.2C:39-6, who  
26 knowingly has in his possession any hollow nose or dum-dum  
27 bullet, or (2) any person, other than a collector of firearms or  
28 ammunition as curios or relics as defined in Title 18, United  
29 States Code, section 921 (a) (13) and has in his possession a valid  
30 Collector of Curios and Relics License issued by the Bureau of  
31 Alcohol, Tobacco and Firearms, who knowingly has in his  
32 possession any body armor breaching or penetrating ammunition,  
33 which means: (a) ammunition primarily designed for use in a  
34 handgun, and (b) which is comprised of a bullet whose core or  
35 jacket, if the jacket is thicker than .025 of an inch, is made of  
36 tungsten carbide, or hard bronze, or other material which is  
37 harder than a rating of 72 or greater on the Rockwell B. Hardness  
38 Scale, and (c) is therefore capable of breaching or penetrating  
39 body armor, is guilty of a crime of the fourth degree. For  
40 purposes of this section, a collector may possess not more than  
41 three examples of each distinctive variation of the ammunition  
42 described above. A distinctive variation includes a different head  
43 stamp, composition, design, or color.

44 g. Exceptions. (1) Nothing in subsection a., b., c., d., e., [or]  
45 f., or i. of this section shall apply to any member of the Armed  
46 Forces of the United States or the National Guard, or except as  
47 otherwise provided, to any law enforcement officer while  
48 actually on duty or traveling to or from an authorized place of  
49 duty, provided that his possession of the prohibited weapon or

1 device has been duly authorized under the applicable laws,  
2 regulations or military or law enforcement orders. Nothing in  
3 subsection h. of this section shall apply to any law enforcement  
4 officer who is exempted from the provisions of that subsection by  
5 the Attorney General. Nothing in this section shall apply to the  
6 possession of any weapon or device by a law enforcement officer  
7 who has confiscated, seized or otherwise taken possession of said  
8 weapon or device as evidence of the commission of a crime or  
9 because he believed it to be possessed illegally by the person  
10 from whom it was taken, provided that said law enforcement  
11 officer promptly notifies his superiors of his possession of such  
12 prohibited weapon or device.

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

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

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

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

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

1 nightstick.

2 j. Any person who knowingly has in his possession a large  
3 capacity ammunition magazine is guilty of a crime of the fourth  
4 degree <sup>2</sup>unless the person has registered an assault firearm  
5 pursuant to section 11 of P.L. , c. (C. ) (now pending  
6 before the Legislature as this bill) and the magazine is  
7 maintained and used in connection with participation in  
8 competitive shooting matches sanctioned by the Director of  
9 Civilian Marksmanship of the United States Department of the  
10 Army<sup>2</sup>.

11 (cf: P.L.1989, c.11, s.1)

12 <sup>2</sup>[11. (New section) Within 30 days after the date of  
13 enactment of P.L. , c. (C. ) (now pending  
14 before the Legislature as this bill), the Attorney General shall  
15 compile and publish a list naming those firearms which meet the  
16 definition for "assault firearm" set forth in subsection w. of  
17 N.J.S.2C:39-1. The list shall contain only those firearms which  
18 meet the definition in paragraph (1) of subsection w. and shall not  
19 contain any firearm named or described in paragraph (2) of  
20 subsection w. of N.J.S.2C:39-1.

21 The Attorney General shall periodically review the list of  
22 assault firearms and may, at any time, add to that list in  
23 accordance with the provisions of this section.]<sup>2</sup>

24 <sup>2</sup>11. (New section) a. Within 90 days of the effective date of  
25 P.L. , c. (C. ) (now pending before the Legislature as  
26 this bill), the Attorney General shall promulgate a list by trade  
27 name of any assault firearm which the Attorney General  
28 determines is an assault firearm which is used for legitimate  
29 target-shooting purposes. This list shall include, but need not be  
30 limited to, the Colt AR-15 and any other assault firearm used in  
31 competitive shooting matches sanctioned by the Director of  
32 Civilian Marksmanship of the United States Department of the  
33 Army.

34 b. The owner of an assault firearm purchased on or before May  
35 1, 1990 which is on the list of assault firearms determined by the  
36 Attorney General to be legitimate for target-shooting purposes  
37 shall have one year from the effective date of P.L. , c.  
38 (C. ) ( now pending before the Legislature as this bill) to  
39 register that firearm. In order to register an assault firearm, the  
40 owner shall:

41 (1) Complete an assault firearm registration statement, in the  
42 form to be prescribed by the Superintendent of the State Police;

43 (2) Pay a registration fee of \$50.00 per each assault firearm;

44 (3) Produce for inspection a valid firearms purchaser  
45 identification card, a valid permit to carry handguns, or a copy of  
46 the permit to purchase a handgun which was used to purchase the  
47 assault firearm which is being registered; and

48 (4) Submit valid proof that the person is a member of a rifle or  
49 pistol club in existence prior to the effective date of P.L. ,

1 c. (C. \_\_\_\_\_) (now pending before the Legislature as this bill).

2 Membership in a rifle or pistol club shall not be considered  
3 valid unless the person joined the club no later than 210 days  
4 after the effective date of P.L. \_\_\_\_\_, c. \_\_\_\_\_ (C. \_\_\_\_\_) (now pending  
5 before the Legislature as this bill) and unless the rifle or pistol  
6 club files its charter with the Superintendent no later than 180  
7 days following the effective date of P.L. \_\_\_\_\_, c. \_\_\_\_\_ (C. \_\_\_\_\_) (now  
8 pending before the Legislature as this bill). The rifle or pistol  
9 club charter shall contain the name and address of the club's  
10 headquarters and the name of the club's officers.

11 The information to be provided in the registration statement  
12 shall include, but shall not be limited to: the name and address of  
13 the registrant; the number or numbers on the registrant's  
14 firearms purchaser identification card, permit to carry handguns,  
15 or permit to purchase a handgun; the name, address, and  
16 telephone number of the rifle or pistol club in which the  
17 registrant is a member; and the make, model, and serial number  
18 of the assault firearm being registered. Each registration  
19 statement shall be signed by the registrant, and the signature  
20 shall constitute a representation of the accuracy of the  
21 information contained in the registration statement.

22 c. For an applicant who resides in a municipality with an  
23 organized full-time police department, the registration shall take  
24 place at the main office of the police department. For all other  
25 applicants, the registration shall take place at any State Police  
26 station.

27 d. Within 60 days of the effective date of P.L. \_\_\_\_\_, c. \_\_\_\_\_ (C. \_\_\_\_\_)  
28 (now pending before the Legislature as this bill), the  
29 Superintendent shall prepare the form of registration statement  
30 as described in subsection b. of this section and shall provide a  
31 suitable supply of statements to each organized full-time  
32 municipal police department and each State Police station.

33 e. One copy of the completed assault firearms registration  
34 statement shall be returned to the registrant, a second copy shall  
35 be sent to the Superintendent, and, if the registration takes place  
36 at a municipal police department, a third copy shall be retained  
37 by that municipal police department.

38 f. If the owner of an assault firearm which has been registered  
39 pursuant to this section dies, the owner's heirs or estate shall  
40 have 90 days to dispose of that firearm in accordance with  
41 section 12 of P.L. \_\_\_\_\_, c. \_\_\_\_\_ (C. \_\_\_\_\_) (now pending before the  
42 Legislature as this bill).

43 g. If an assault firearm registered pursuant to the provisions of  
44 this section is used in the commission of a crime, the registrant  
45 of that assault firearm shall be civilly liable for any damages  
46 resulting from that crime. The liability imposed by this  
47 subsection shall not apply if the assault firearm used in the  
48 commission of the crime was stolen and the registrant reported  
49 the theft of the firearm to law enforcement authorities within 24

1 hours of the registrant's knowledge of the theft.

2 h. Of the registration fee required pursuant to subsection b. of  
 3 this section, \$20.00 shall be forwarded to the State Treasury for  
 4 deposit in the account used by the Violent Crimes Compensation  
 5 Board in satisfying claims and for related administrative costs  
 6 pursuant to the provisions of the "Criminal Injuries Compensation  
 7 Act of 1971," P.L.1971, c.317 (C.52:4B-1 et seq.).<sup>2</sup>

8 <sup>2</sup>12. (New section) a. Any person who legally owns an assault  
 9 firearm on the effective date of this act and who is unable to  
 10 register or chooses not to register the firearm pursuant to section  
 11 11 of P.L. , c. (C. ) (now pending before the  
 12 Legislature as this bill) may retain possession of that firearm for  
 13 a period not to exceed one year from the effective date of this  
 14 act. During this time period, the owner of the assault firearm  
 15 shall either:

16 (1) Transfer the assault firearm to any person or firm lawfully  
 17 entitled to own or possess such firearm;

18 (2) Render the assault firearm inoperable; or

19 (3) Voluntarily surrender the assault firearm pursuant to the  
 20 provisions of N.J.S.2C:39-12.

21 b. If the owner of an assault firearm elects to render the  
 22 firearm inoperable, the owner shall file a certification on a form  
 23 prescribed by the Superintendent of the State Police indicating  
 24 the date on which the firearm was rendered inoperable. This  
 25 certification shall be filed with either the chief law enforcement  
 26 officer of the municipality in which the owner resides or, in the  
 27 case of an owner who resides outside this State but stores or  
 28 possesses an assault firearm in this State, with the  
 29 Superintendent of the State Police.

30 c. As used in this section, "inoperable" means that the firearm  
 31 is altered in such a manner that it cannot be immediately fired  
 32 and that the owner or possessor of the firearm does not possess or  
 33 have control over the parts necessary to make the firearm  
 34 operable.<sup>2</sup>

35 <sup>2</sup>13. (New section) Within 180 days of the enactment of P.L. ,  
 36 c. (C. ) (now pending before the Legislature as this bill),  
 37 and annually thereafter, the Attorney General shall present a  
 38 report to the Legislature which includes the types and quantities  
 39 of firearms surrendered or rendered inoperable pursuant to  
 40 section 12 of this act and the number and types of criminal  
 41 offenses involving assault firearms and any recommendations,  
 42 including additions or deletions to the inventory of assault  
 43 firearms delineated in N.J.S.2C:39-1, which the Attorney General  
 44 believes should be considered by the Legislature.<sup>2</sup>

45 <sup>2</sup>[12.] 14.<sup>2</sup> This act shall take effect <sup>2</sup>[on the first day of the  
 46 fourth month after enactment<sup>1</sup>, except that sections 1, 9 and 11  
 47 shall take effect]<sup>2</sup> immediately<sup>1</sup>.

PUBLIC SAFETY

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Makes certain statutory changes concerning the possession,  
purchase and illegal use of assault firearms and large capacity  
magazines.



## Appendix G

### Maryland State Law Ann. Code of MD Article 27. Crimes and Punishments

#### H.B. No. 1131 — AN ACT CONCERNING HANDGUNS:

PROHIBITION OF MANUFACTURE AND SALE; PROHIBITION OF STRICT LIABILITY FOR DAMAGES CAUSED BY CERTAIN CRIMINAL USE OF FIREARMS.  
SIGNED BY THE GOVERNOR ON  
MAY 23, 1988.

#### PREAMBLE

WHEREAS, Certain handguns generally include several of the following characteristics: easily concealable, ballistically inaccurate, relatively light in weight, of low quality and manufacture, unreliable as to safety, and of low caliber; and

WHEREAS, Certain handguns have no legitimate socially useful purpose and are not suitable for law enforcement, self-protection, or sporting activities; and

WHEREAS, Only the prohibition of the manufacture and sale of these handguns will remove these handguns from the streets of this State; now, therefore,

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows: Article 27 — Crimes and Punishments \* \* \*

SECTION 3. AND BE IT FURTHER ENACTED, That compliance with the prohibition of this Act against the manufacture for distribution or sale, sale, or offer for sale of handguns is not required until January 1, 1990.

SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1988. \* \* \*

#### COMPILER'S NOTES:

1. Sections 36F and 443(h) were amended, and Sections 36-I and 36J were added by H.B. No. 1131 during 1988.

2. Sections 443(l) and 481E were added by enactment of S.B. No. 531 during 1989. This law places specific semiautomatic assault weapons within State restrictions/requirements relating to handguns, and takes effect January 1, 1990.

3. All new and amended sections are included in this edition of State Laws and Published Ordinances-Firearms.

#### 36F. [Definitions.]

(a) As used in this subheading, the following words have the meaning indicated.

(b) "Handgun" means any pistol, revolver, or other firearm capable of being concealed on the person, including a short-barreled shotgun and a short-barreled rifle, as these terms are defined below, except it does not include a shotgun, rifle, or antique firearm as those terms are defined below.

(c) "Antique firearm" means:

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

(2) Any replica of any firearm described in paragraph (1) of this subsection 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 manu-

factured in the United States and which is not readily available in the ordinary channels of commercial trade.

(d) "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.

(e) "Short-barreled shotgun" means a shotgun having one or more barrels less than eighteen inches in length and any weapon made from a shotgun (whether by alteration, modification, or otherwise) if such weapon as modified has an overall length of less than twenty-six inches.

(f) "Short-barreled rifle" means a rifle having one or more barrels less than sixteen inches in length and any weapon made from a rifle (whether by alteration, modification, or otherwise) if such weapon, as modified, has an overall length of less than twenty-six inches.

(g) "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.

(h) "Handgun roster" means the roster of permitted handguns compiled by the Board under section 36-I of this Article.

(i) "Law enforcement personnel" means:

(1) Any full-time member of a police force or other agency of the United States, a State, a county, a municipality or other political subdivision who is responsible for the prevention and detection of crime and the enforcement of the laws of the United States, a State, or of a county or municipality or other political subdivision of a State; and

(2) Any part-time member of a police force of a county or municipality who is certified by the county or municipality as being trained and qualified in the use of handguns.

(j) "Superintendent" means the Superintendent of the Maryland State Police, or the Superintendent's designee.

(k) "Vehicle" means any motor vehicle as defined in Title 11 of the Transportation Article, trains, aircraft, and vessels.

(1) "Board" means the Handgun Roster Board. \* \* \*

36H. State preemption of weapons and ammunition regulations.

(a) Handguns, rifles, shotguns, and ammunition. — Except as provided in subsections (b), (c), and (d) of this section, the State of Maryland hereby preempts the rights of any county, municipal corporation, or special taxing district whether by law, ordinance, or regulation to regulate the purchase, sale, taxation, transfer, manufacture, repair, ownership, possession, and transportation of the following:

(1) Handgun, defined in Art. 27, § 36F(b);

(2) Rifle, as defined in Art. 27, § 36F(d);

(3) Shotgun, as defined in Art. 27, § 36F(g); and

(4) Ammunition and components for the above enumerated items.

(b) Exceptions. — Any county, municipal corporation, or special taxing district may regulate the purchase, sale, transfer, ownership, possession, and transportation of the weapons and ammunition listed in subsection (a) of this section:

(1) With respect to minors;

(2) With respect to these activities on or within 100 yards of parks, churches, schools, public buildings, and other places of public assembly; however, the teaching of firearms safety training or other educational or sporting use may not be prohibited; and

(3) With respect to law enforcement personnel of the subdivision.

(c) Authority to amend local laws or regulations. — To the extent that local laws or regulations do not create an inconsistency with the provisions of this section or expand existing regulatory control, any county, municipal corporation, or special taxing district may exercise its existing authority to amend any local laws or regulations that exist before January 1, 1985.

(d) Discharge of handguns, rifles, and shotguns. — In accordance with law, any county, municipal corporation, or special taxing district may continue to regulate the discharge of handguns, rifles, and shotguns, but may not prohibit the discharge of firearms at established ranges.

36-I. [Prohibited activities; injunction to enjoin certain activities; rules and regulations.]

(a) Except for the manufacture of prototype models required for design, development, testing, and approval by the Board, a person may not manufacture for distribution or sale any handgun that is not included on the handgun roster in the State.

(b) A person may not sell or offer for sale in the State a handgun manufactured after January 1, 1985 that is not on the handgun roster.

(c) A person may not manufacture, sell, or offer for sale any handgun on which the manufacturer's identification mark or number is obliterated, removed, changed, or otherwise altered.

(d) The Superintendent may seek a permanent or temporary injunction from a circuit court to enjoin the willful and continuous manufacture, sale, or offer for sale, in violation of this section, of a handgun not included on the handgun roster.

(e) Subject to the provisions of the Administrative Procedure Act, the Secretary of Public Safety and Correctional Services shall adopt rules and regulations necessary to carry out the provisions of this Act.

(f) Nothing in this section shall be construed to interfere with a person's ability to manufacture, sell, or offer to sell rifles or other weapons not defined as handguns in section 36F(b) of this article.

(g) [Penalties.]

(1) Any person who manufactures a handgun for distribution or sale in violation of this section shall be guilty of a misdemeanor and shall be fined not more than \$10,000 for each violation.

(2) Any person or entity who sells or offers to sell a handgun in violation of this

section shall be guilty of a misdemeanor and shall be fined not more than \$2,500 for each violation.

(3) For purposes of this subsection, each handgun manufactured, sold, or offered for sale in violation of this subsection shall be a separate violation.

**(h) [Liability for damages.]**

(1) A person or entity may not be held strictly liable for damages of any kind resulting from injuries to another person sustained as a result of the criminal use of any firearm by a third person, unless the person or entity conspired with the third person to commit, or willfully aided, abetted, or caused the commission of the criminal act in which the firearm was used.

(2) This section may not be construed to otherwise negate, limit, or modify the doctrine of negligence or strict liability relating to abnormally dangerous products or activities and defective products.

**36J. [Handgun Roster Board; personnel and activities.]**

**(a) [Membership and meetings of the Board.]**

(1) There is a Handgun Roster Board in the Department of Public Safety and Correctional Services.

(2) The Board shall consist of 9 members, appointed by the Governor with the advice and consent of the Senate, each of whom shall serve for a term of 4 years.

(3) The members of the Board shall be:

(i) The Superintendent;

(ii) A representative of the Association of Chiefs of Police;

(iii) A representative of the Maryland State's Attorneys' Association;

(iv) A representative of a handgun manufacturer, preferably a manufacturer from the State;

(v) A representative of the Maryland chapter of the National Rifle Association;

(vi) A representative of the Marylanders Against Handgun Abuse; and

(vii) Three (3) citizen members.

(4) The Superintendent shall serve as Chairman of the Board.

(5) The Board shall meet at the request of the Chairman of the Board or by request of a majority of the members.

**(b) [Handgun roster entry criteria and determination; compilation, and distribution.]**

(1) There is a handgun roster that the Board shall compile and publish in the MARYLAND REGISTER by July 1, 1989, and thereafter maintain, of permitted handguns that are useful for legitimate sporting, self-protection, or law enforcement purposes.

(2) The Board shall consider the following characteristics of a handgun in determining whether any handgun should be placed on the handgun roster:

(i) Concealability;

(ii) Ballistic accuracy;

(iii) Weight;

(iv) Quality of materials;

(v) Quality of manufacture;

(vi) Reliability as to safety;

(vii) Caliber;

(viii) Detectability by the standard security equipment commonly used at airports or courthouses and approved by the Federal Aviation Administration for use at airports in the United States; and

(ix) Utility for legitimate sporting activities, self-protection, or law enforcement.

(4) The Board shall semiannually:

(i) Publish the handgun roster in the MARYLAND REGISTER; and

(ii) Send a copy of the handgun roster to all pistol and revolver dealers that are licensed under section 443 of this article.

**(c) [Placing a handgun on the handgun roster; court action.]**

(1) The Board may place a handgun on the handgun roster upon the Board's own initiative.

(2) On the successful petition of any person, subject to the provisions of subsections (e) and (f) of this section, the Board shall place a handgun on the handgun roster unless a court, after all appeals are exhausted, has made a finding that the decision of the Board shall be affirmed.

**(d) [Petitioning for placement on handgun roster; requirements.]**

(1) A person who petitions for placement of a handgun on the handgun roster shall bear the burden of proof that the handgun should be placed on the roster.

(2) A petition to place a handgun on the handgun roster shall be submitted in writing and shall be in the form and manner prescribed by the Board.

**(e) [Period for Board to approve or deny petition.]**

(1) Upon receipt of a petition to place a handgun on the handgun roster, the Board shall, within 45 days of receipt of the petition:

(i) Deny the petition in writing, stating the reasons for denial; or

(ii) Approve the petition and publish a description of the handgun in the MARYLAND REGISTER, including notice that any objection to its inclusion in the handgun roster must be filed with the Board within 30 days.

(2) If the Board fails to deny or approve a petition within the time required under paragraph (1) of this subsection, the petition shall be considered denied.

**(f)(1) [Notification of denial by Board; request for hearing and burden of proof to be met by petitioner; hearing and decision by Board; handgun testing by Board.]**

(i) If the Board denies a petition to place a handgun on the handgun roster, the Board shall notify the petitioner by certified mail, return receipt requested.

(ii) The petitioner may request a hearing within 15 days from the date that the Board's denial letter is received.

(2) The Board shall, within a reasonable time not to exceed 90 days after receiving a request for a hearing, both hold a hearing on the petition and issue a written final decision on the petition.

(3) The Board shall provide notice of the hearing in accordance with the Administrative Procedure Act.

(4) At a hearing held under this subsection, the petitioner shall have the burden of proving to the Board, that the handgun at issue is useful for legitimate sporting, law enforcement, or self-protection purposes, and therefore should be placed on the roster.

(5) Any aggrieved party of record may appeal within 30 days a final decision of the Board in accordance with the Administrative Procedure Act.

(6) Nothing in this section shall be construed as requiring the Board to test any handgun or have any handgun tested at the Board's expense.

**Explosives**

**139A. Molotov cocktail.**

(a) It is unlawful for any person to manufacture, assemble, use or possess in this State, any device commonly known as a

firebomb or a Molotov cocktail. Such a device is defined as any container which is filled with an incendiary mixture or flammable material or liquid, and is designed and intended to be used as a destructive device and whose ignition is caused by flame, friction, concussion, detonation or other method which will produce destructive effects primarily through combustion rather than explosion. This provision does not extend to those containers that contain and that are primarily designed and approved for the transportation or storage of a particular mixture, material or liquid.

(b) Violation of this section is a misdemeanor and is punishable upon conviction by imprisonment in the penitentiary for not to exceed 5 years, or by fine not to exceed \$2,500 or both.

**139B. Destructive explosive devices.**

(a) Devices made illegal. — A person may not manufacture, assemble, possess, transport, or place in this State any destructive explosive device with the intent to terrorize, frighten, intimidate, threaten, or harass.

(b) Definition. — The term, "destructive explosive device" shall include any explosive, as defined by Article 38A, § 26(1) of the Code, incendiary or poisonous gas incorporated into a bomb, grenade, rocket having a propellant charge, missile having an explosive or incendiary charge, mine, or other similar device.

(c) Penalty. — A person who violates this section is guilty of a felony and, upon conviction, is subject to imprisonment for 20 years or a fine of \$10,000 or both.

**Machine Guns**

**372. Definitions.** "Machine gun" as used in this subtitle, means a weapon, of any description, by whatever name known, loaded or unloaded, from which more than one shot or bullet may be automatically discharged from a magazine, by a single function of the firing device.

"Crime of violence" applies to and includes any of the following crimes or an attempt to commit any of the same, namely, murder of any degree, manslaughter, kidnapping, rape in any degree, mayhem, assault with intent to do great bodily harm, assault with intent to murder, assault with intent to rape, robbery, burglary, house-breaking, breaking and entering and theft.

"Person" applies to and includes firm, partnership, association or corporation.

**375. What constitutes aggressive purpose.** Possession or use of a machine gun shall be presumed to be for offensive or aggressive purpose:

(a) When the machine gun is on premises not owned or rented, for bona fide permanent residence or business occupancy, by the person in whose possession the machine gun may be found; or

(b) When in the possession of, or used by, an unnaturalized foreign-born person, or a person who has been convicted of a crime of violence in any court of record, state or federal, of the United States of America, its territories or insular possessions; or

(c) When the machine gun is of the kind described in §379 and has not been registered as in said section required; or

(d) When empty or loaded shells which have been used or are susceptible of being used in the machine gun are found in the immediate vicinity thereof.

**376. Presence prima facie evidence of use.** The presence of a machine gun in any room, boat, or vehicle shall be evidence of the possession or use of the machine gun by each person occupying the room, boat, or vehicle where the weapon is found.

**377. Exceptions.** Nothing contained in this subtitle shall prohibit or interfere with:

(1) The manufacture for, and sale of, machine guns to the military forces or the peace officers of the United States, the several states or of any political subdivision thereof, of the transportation required for that purpose;

(2) The possession of a machine gun for scientific purpose; or the possession of a machine gun not usable as a weapon and possessed as a curiosity, ornament, or keepsake;

(3) The possession of a machine gun for a purpose manifestly not aggressive or offensive.

**378. Manufacturer's register; inspection of stock.** Every manufacturer shall keep a register of all machine guns manufactured or handled by him. This register shall show the method and serial number, date of manufacture, sale, loan, gift, delivery or receipt, of every machine gun, the name, address, and occupation of the person to whom the machine gun was sold, loaned, given or delivered, or from whom it was acquired by the person to whom the machine gun was sold, loaned, given or delivered, or from whom received. Upon demand every manufacturer shall permit any marshal, sheriff or police officer to inspect his entire stock of machine guns, parts, and supplies therefor, and shall produce the register, herein required, for inspection. A violation of any provision of this section shall be punishable by a fine of not more than one hundred dollars.

**379. Registration of machine guns.** Except in the calendar year it was purchased, every machine gun in this State shall be registered with the Superintendent of the Maryland State Police annually during the month of May. Also, every machine gun shall be registered within 24 hours after its acquisition. Blanks for registration shall be prepared by the Superintendent of the State Police and furnished upon application. To comply with this section the application as filed must show the make, model, serial number, caliber, type, barrel length, finish, country of origin of the gun, and the name, address, race, sex, date of birth, Maryland driver's license number, and occupation of the person in possession of the gun, from whom and the purpose for which the gun was acquired. The registration data shall not be subject to inspection by the public. Any person failing to register any gun as required by this section shall be presumed to possess the same for offensive or aggressive purpose. \* \* \*

**382. Uniformity of interpretation.** This subtitle shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

**383. Short title.** This subtitle may be cited as the Uniform Machine Gun Act.

#### Minors, Selling Deadly Weapons To

**406. Sale, etc., of deadly weapon or ammunition therefor to minor; exceptions.** It shall be unlawful for any person, be he licensed dealer or not, to sell, barter or give away any firearms whatsoever, or other deadly weapons or any ammunition there-

for, to any minor under the age of eighteen years, except with the express permission of a parent or guardian of such minor. Any person violating this section shall on conviction thereof pay a fine of not less than fifty nor more than two hundred dollars, together with the costs of prosecution; and upon failure to pay said fine and costs shall be committed to jail and confined therein until such fine and costs are paid, or for the period of sixty days, whichever shall first occur, **provided, however,** that the provisions of this section shall not apply to a member of any organized militia in Maryland, when said member is engaged in supervised training, marksmanship activities or any other performance of his official duty, and **provided further** that none of the restrictions or limitations contained herein shall apply to any adult or qualified supervisor or instructor of a recognized organization engaged in the instruction of marksmanship.

#### COMPILER'S NOTE:

State law preempts local restrictions on possession or sale of handgun ammunition. 57 Op. Att'y Gen. (December 10, 1982).

#### Pistols

##### 441. Definitions.

(a) As used in this subtitle —

(b) The term "person" includes an individual, partnership, association or corporation.

(c) The term "pistol or revolver" means any firearm with barrel less than twelve inches in length, including signal, starter, and blank pistols.

(d) The term "dealer" means any person engaged in the business of selling firearms at wholesale or retail, or any person engaged in the business of repairing such firearms.

(e) The term "crime of violence" means abduction; arson; burglary, including commonlaw and all statutory and storehouse forms of burglary offenses; escape; house-breaking; kidnapping; manslaughter, excepting involuntary manslaughter; mayhem; murder; rape; robbery; robbery with a deadly weapon; sexual offense in the first degree; and sodomy; or an attempt to commit any of the aforesaid offenses; or assault with intent to commit any other offense punishable by imprisonment for more than one year.

(f) The term "fugitive from justice" means any person who has fled from a sheriff or other peace officer within this State, or who has fled from any state, territory or the District of Columbia, or possession of the United States, to avoid prosecution for a crime of violence or to avoid giving testimony in any criminal proceeding.

(g) The term "antique pistol or revolver" means:

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

(2) Any replica of any pistol or revolver described in paragraph (1) if the 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.

#### 442. Sale or transfer of pistols and revolvers.

(a) **Right to regulate sales preempted by State.** All restrictions imposed by the laws, ordinances or regulations of all subordinate jurisdictions within the State of Maryland on sales of pistols or revolvers are superseded by this section, and the State of Maryland hereby preempts the rights of such jurisdictions to regulate the sale of pistols and revolvers.

(b) **Application to purchase or transfer.** No dealer shall sell or transfer any pistol or revolver until after seven days shall have elapsed from the time an application to purchase or transfer shall have been executed by the prospective purchaser or transferee, in triplicate, and forwarded by the prospective seller or transferor to the Superintendent of the Maryland State Police.

(c) **Same — Disposition of copies.** The dealer shall promptly after receiving an application to purchase or transfer, completed in accordance with subsection (e) below, forward one copy of the same, by certified mail, to the Superintendent of the Maryland State Police. The copy forwarded to the said Superintendent shall contain the name, address, and signature of the prospective seller or transferor. The prospective seller or transferor shall retain one copy of the application for a period of not less than three years. The prospective purchaser or transferee shall be entitled to the remaining copy of the application.

(d) **Same — Statement of penalties for supplying false information required.** The application to purchase or transfer shall bear the following legend: "Any false information supplied or statement made in this application is a crime which may be punished by imprisonment for a period of not more than two years, or a fine of not more than \$1,000, or both."

(e) **Same — Information required.** The application to purchase or transfer shall contain the following information:

(1) Applicant's name, address, occupation, place and date of birth, height, weight, race, eye and hair color and signature. In the event the applicant is a corporation, the application shall be completed and executed by a corporate officer who is a resident of the jurisdiction in which the application is made.

(2) A statement by the applicant that he or she:

(i) Has never been convicted of a crime of violence, in this State or elsewhere, or of any of the provisions of this subtitle.

(ii) Is not a fugitive from justice.

(iii) Is not an habitual drunkard.

(iv) Is not an addict or an habitual user of narcotics, barbiturates or amphetamines.

(v) Has never spent more than thirty consecutive days in any medical institution for treatment of a mental disorder or disorders, unless there is attached to the application a physician's certificate, issued within thirty days prior to the date of application, certifying that the applicant is capable of possessing a pistol or revolver without undue danger to himself or herself, or to others.

(vi) Is at least 21 years of age as required by federal law.

(vii) Has or has not submitted a prior application and, if so, when and where.

(3) The date and hour the application was delivered in completed form to the prospective seller or transferor by the prospective purchaser or transferee. \* \* \*

**(g) Sale prohibited to disapproved applicant; exceptions.** — No dealer shall sell or transfer a pistol or revolver to an applicant whose application has been timely disapproved, unless such disapproval has been subsequently withdrawn by the Superintendent of the Maryland State Police and/or his duly authorized agent or agents or overruled by the action of the courts . . .

**(i) Notification of completed transaction; permanent record of sales and transfers.** Any dealer who sells or transfers a pistol or revolver in compliance with this subtitle shall forward a copy of the written notification of such completed transaction, within seven days from the date of delivery of the said pistol or revolver, to the Superintendent of the Maryland State Police, whose duty it shall be to maintain a permanent record of all such completed sales and transfers of pistols and revolvers in the State. The notification shall contain an identifying description of the pistol or revolver sold or transferred including its caliber, make, model, manufacturer's serial number, if any, and any other special or peculiar characteristics or marking by which the said pistol or revolver may be identified.

**(j) Construction of section.** Nothing in this section shall be construed to affect sales and/or transfers for bona fide resale in the ordinary course of business of a person duly licensed under §443 of this subtitle, or sales, transfer, and/or the use of pistols or revolvers by any person authorized or required to sell, transfer, and/or use such pistols or revolvers as part of his or her duties as a member of any official police force or other law enforcement agency, the armed forces or other law enforcement agency, the armed forces of the United States, including all official reserve organizations, or the Maryland National Guard.

**(k) Penalties.** — Any person who knowingly gives any false information or makes any material misstatement in an application required by this section, or who fails to promptly forward such application to the Superintendent of the Maryland State Police or his duly authorized agent or agents, or who sells or transfers a pistol or revolver to a person other than the one by whom application was made, or who otherwise sells, transfers, purchases, or receives transfer of a pistol or revolver in violation of this section, shall upon conviction thereof be subject to the penalties hereinafter provided in §448 of this subtitle.

**443. Pistol and revolver dealer's license.**

**(a) Required.** — No person shall engage in the business of selling pistols or revolvers unless he lawfully possesses and conspicuously displays at his place of business, in addition to any other license required by law, a pistol and revolver dealer's license issued by the Superintendent of the Maryland State Police or his duly authorized agent or agents. Such license shall identify the licensee and the location of his place of business. One such license shall be required for each place of business where pistols or revolvers are sold. . . .

**(c) Application for license — Statement of penalties for giving false information required.** — Every annual application for a pistol and revolver dealer's license shall bear the following legend: "Any false information supplied or statement made in this application is a crime which may be punished by imprisonment for a period of not more than two years, or a fine of not more than \$1,000, or both."

**(d) Same — Information required.** — The application for a pistol and revolver dealer's

license shall contain the following information:

**(1)** Applicant's name, address, place and date of birth, height, weight, race, eye and hair color and signature. In the event the applicant is a corporation, the application shall be completed and executed by a corporate officer who is a resident of the jurisdiction in which the application is made.

**(2)** A clear and recognizable photograph of the applicant, except where such photograph has been submitted with a prior year's application.

**(3)** A set of the applicant's fingerprints, except where such fingerprints have been submitted with a prior year's application.

**(4)** A statement by the applicant that he or she:

**(i)** Is a citizen of the United States.

**(ii)** Is at least 21 years of age as required by federal law.

**(iii)** Has never been convicted of a crime of violence, in this State or elsewhere, or of any of the provisions of this subtitle.

**(iv)** Is not a fugitive from justice.

**(v)** Is not an habitual drunkard.

**(vi)** Is not an addict or an habitual user of narcotics, barbiturates or amphetamines.

**(vii)** Has never spent more than thirty consecutive days in any medical institution for treatment of a mental disorder or disorders, unless there is attached to the application a physician's certificate, issued within thirty days prior to the date of application, certifying that the applicant is capable of possessing a pistol or revolver without undue danger to himself or herself, or to others. . . .

**(h) Revocation of license.** — The Superintendent of the Maryland State Police or his duly authorized agent or agents shall revoke an issued pistol and revolver dealer's license, by written notification forwarded to the licensee, under any of the following circumstances:

**(1)** When it is discovered false information or statements have been supplied or made in an application required by this section.

**(2)** If the licensee is convicted of a crime of violence, in this State or elsewhere, or of any of the provisions of this subtitle, or is a fugitive from justice, or is an habitual drunkard, or is addicted to or an habitual user of narcotics, barbiturates or amphetamines, or has spent more than thirty consecutive days in any medical institution for treatment of a mental disorder or disorders, unless the licensee produces a physician's certificate, issued subsequent to the last period of institutionalization, certifying that the licensee is capable of possessing a pistol or revolver without undue danger to himself or herself, or to others.

**(3)** If the licensee has willfully manufactured, offered to sell, or sold a handgun not on the handgun roster in violation of section 36-1 of this article.

**(i) Sales by person whose license has been revoked prohibited; exceptions.** — No person shall engage in the business of selling pistols or revolvers whose pistol and revolver dealer's license has been revoked, unless such revocation has been subsequently withdrawn by the Superintendent of the Maryland State Police and/or his duly authorized agent or agents or overruled by the action of the courts pursuant to subsection (j) below.

**(j) Hearing on revocation of license; judicial review.** — Any prospective dealer aggrieved by the action of the State Police may request a hearing within thirty (30)

days from the date when written notice was forwarded to such aggrieved person by writing to the Superintendent of State Police, who shall grant the hearing within fifteen days of said request. Said hearing and subsequent proceedings of judicial review, if any, thereupon following shall be conducted in accordance with the provisions of the Administrative Procedure Act. A suspension or revocation shall not take effect while an appeal is pending. . . .

**(l)** The Superintendent of the Maryland State Police shall adopt regulations to implement the inclusion of an assault weapon, as defined under § 481E of this Article, within the license, sales, and transfer requirements under this section.

**444. Obliterating, etc., identification mark or number.** It shall be unlawful for anyone to obliterate, remove, change or alter the manufacturer's identification mark or number on any firearms. Whenever on trial for a violation of this section the defendant is shown to have or have had possession of any such firearms, such fact shall be presumptive evidence that the defendant obliterated, removed, changed or altered the manufacturer's identification mark or number.

**445. Restrictions on sale, transfer and possession of pistols and revolvers.**

**(a) Right to regulate transfer and possession of pistols and revolvers preempted by State.** All restrictions imposed by the laws, ordinances or regulations of all subordinate jurisdictions within the State of Maryland on possession or transfers by private parties of pistols and revolvers are superseded by this section and the State of Maryland hereby preempts the right of such jurisdictions to regulate the possession and transfer of pistols and revolvers.

**(b) Sale or transfer to criminal, fugitive, etc.** A dealer or person may not sell or transfer a pistol or revolver to a person whom he knows or has reasonable cause to believe has been convicted of a crime of violence, or of any of the provisions of this subtitle, or is a fugitive from justice, or is an habitual drunkard, or is addicted to or an habitual user of narcotics, barbiturates or amphetamines, or is of unsound mind, or to any person visibly under the influence of alcohol or drugs, or to any person under 21 years of age as required by federal law.

**(c) Possession by criminal, fugitive, etc.** A person may not possess a pistol or revolver if the person:

**(1)** Has been convicted of a crime of violence, or of any of the provisions of this subtitle; or

**(2)** Is:

**(i)** A fugitive from justice;

**(ii)** A habitual drunkard;

**(iii)** A habitual abuser of narcotics, barbiturates or amphetamines; or

**(iv)** Suffering from a mental disorder as defined in § 10-101(f)(2) of the Health-General Article and has a history of violent behavior against another person or self, or has been confined for more than 30 consecutive days to a facility as defined in § 10-101 of the Health-General Article, unless the person possesses a physician's certification that the person is capable of possessing a pistol or revolver without undue danger to the person or to others.

**446. Sale, transfer, etc., of stolen pistol.** It shall be unlawful for any person to possess, sell, transfer or otherwise dispose of any stolen pistol or revolver, knowing or having reasonable cause to believe same to have been stolen.

**447. Antique or unserviceable firearm excepted.** The provisions of this subtitle shall not be construed to include any antique or unserviceable firearms sold or transferred and/or held as curios or museum pieces.

**447A. Marine signal pistols, etc.** This subtitle does not apply to any signal pistol or other visual distress signal approved by the United States Coast Guard for use as a marine safety device.

**448. Penalties.** Any person violating any of the provisions of this subtitle unless otherwise stated herein shall upon conviction be fined not more than one thousand dollars (\$1,000) or imprisoned for not more than three years, or both. Any prospective purchaser making a false material statement on an application to purchase or transfer required by §442 or any dealer making a false material statement on an application for a pistol and revolver dealer's license required by §443 shall upon conviction thereof be fined not more than one thousand dollars (\$1,000) or imprisoned for not more than two (2) years, or both.

#### Rifles and Shotguns

**481C. Short-barreled rifles and shortbarreled shotguns.**

(a) Definitions. —

(1) In this section, the following words have the meanings indicated:

(2) "Rifle" \* \* \* [is defined in § 36F(d)]

(3) "Short-barreled shotgun" \* \* \* [is defined in § 36F(e)]

(4) "Short-barreled rifle" \* \* \* [is defined in § 36F(f)]

(5) "Shotgun" \* \* \* [is defined in § 36F(g)]

(6) The terms short-barreled shotgun and short-barreled rifle do not include:

(i) Antique firearms as defined in §36F(c) of this article;

(ii) Any device which is neither designed nor redesigned for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device; or

(iii) Any firearm which is incapable of discharging a shot by means of an explosive and incapable of being readily restored to a firing condition.

(b) Possession of short-barreled rifle or short-barreled shotgun prohibited. — Except as provided in subsection (c), a person may not possess a short-barreled rifle or short-barreled shotgun.

(c) Exceptions; registration. — The provisions of subsection (b) of this section do not apply to the following individuals, while on official business:

(i) Law enforcement personnel of the United States or of this State, or of any political subdivision of this State;

(ii) A member of the armed forces of the United States or the national guard while on duty or travelling to or from duty;

(iii) Law enforcement personnel of another state or of a political subdivision of another state, while temporarily in this State;

(iv) A jailer, prison guard, warden, or guard or keeper of any penal, correctional, or detention institution in this State; and

(v) A sheriff, and a temporary or full-time deputy sheriff.

(2) A person may possess a short-barreled shotgun or short-barreled rifle which has been registered with the United States government in accordance with United States statutes. In any prosecution under this section, the defendant has the burden of proving the lawful registration of the short-barreled shotgun or short-barreled rifle.

(d) Penalty. — Any person violating the provisions of this section is guilty of a misdemeanor and upon conviction is subject to a fine not exceeding \$5,000 or imprisonment not exceeding five years, or both.

#### 481E. [Assault Weapons.]

(a) [Definition.]

(1) In this section, "assault weapon" means any of the following specific firearms or their copies regardless of which company produced and manufactured that firearm:

(i) UZI 9MM in any format (carbine, rifle);

(ii) HECKLER and KOCH HK 91 A3 (.308 caliber), 93-A

(.223 caliber), or 94;

(iii) GALLI 5.56MM and 7.62MM;

(iv) FN LAR and FN FAL Assault Rifle;

(v) MAC 10-11 in any format;

(vi) TAC-1 Carbine in 45 ACP or 9MM;

(vii) COLT AR 15 in any format;

(viii) FNC .223 Carbine;

(ix) AVTOMAT KALASHNIKOV Semiautomatic Rifle in any format;

(x) CALICO M 900 9MM Assault Rifle or Carbine;

(xi) SIG 550/551 Assault Rifle (.223 caliber);

(xii) FAMAS 5.56MM (.223 caliber);

(xiii) MOSSBERG MODEL 500 BULLPUP Assault Shotgun;

(xiv) USAS-12 Semi-Auto Assault Shotgun;

(xv) FEATHER CENTERFIRE AT-9 Semi-Auto;

(xvi) STEYR-AUG-SA Semi-Auto (.223 caliber);

(xvii) VALMET M-76 and M78 in all formats;

(xviii) AP 9 Assault Pistol;

(xix) DRAGUNOV Sniper Rifle (7.62 X 39MM);

(xx) STRIKER 12 Assault Shotgun in all formats;

(xxi) THOMPSON ORDNANCE 1927 and M1 in all formats;

(xxii) RUGER MINI-14 Folding Stock Model (.223 caliber);

(xxiii) DAEWOL AR 110-100; and

(xxiv) INTRATEC TEC 9 and TEC 9MM.

(2) "Assault weapon" does not include any firearm modified to render it permanently inoperative.

(b) [Dealer's Responsibilities.]

(1) A dealer or person may not sell or transfer any assault weapon to a person whom the dealer or person knows or has reasonable cause to believe:

(i) Has been convicted of a crime of violence or of any of the provisions of this subtitle;

(ii) Is a fugitive from justice;

(iii) Is an habitual drunkard or is addicted to or an habitual user of narcotics, barbiturates, or amphetamines;

(iv) Is of unsound mind;

(v) Is visibly under the influence of alcohol or drugs; or

(vi) Is under 21 years of age.

(2) A dealer may not sell or transfer any assault weapon until the dealer complies with all of the requirements for the sale or transfer of a pistol or revolver as provided for under §442 of this article.

(c) [Penalty —] A person who knowingly violates any provision of this section or who knowingly gives false information in order to obtain an assault weapon shall, on conviction, be fined not more than \$10,000 or imprisoned for not more than 3 years or both.

#### COMPILER'S NOTES:

1. The following jurisdiction requires a waiting period and notification to law enforcement officials before weapons may be delivered to purchasers [The asterisk (\*) indicates another listing]

Cumberland\* (2 days)

2. A permit to purchase must be obtained before a firearm may be sold or delivered to a purchaser or recipient in the following jurisdiction [The asterisk (\*) indicates another listing]

Cumberland\*

3. The following jurisdictions restrict the age at which it is lawful for a person to purchase or receive a firearm [An asterisk (\*) next to a name indicates another listing]

Annapolis\*

Baltimore County\*

Prince George's County

4. The following jurisdictions restrict the sale of firearms [i.e., (a) requirement for a State or local license to sell firearms, or (b) recordkeeping requirements imposed as a condition of lawful sale of firearms, or (c) other (specified)] [The asterisk (\*) indicates another listing]

Annapolis\* (b)

5. The following jurisdiction holds parents/guardians of underage persons liable for acts wrongfully committed with firearms [The asterisk (\*) indicates another listing]

Baltimore County\*

## Massachusetts State Law

### Ann. Laws of MA

#### COMPILER'S NOTE:

The District Attorney for Middlesex County has furnished a summary of some of the firearms laws of this State. Extracts are included as a supplement immediately following the Annotated Laws of Massachusetts.

#### Chapter 140. Licenses

**121. Definitions; application for license or identification card; exceptions.** In sections one hundred and twenty-two to one hundred and thirty-one F, inclusive, "firearm" shall mean 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 bar-

rel is less than sixteen inches or eighteen inches in the case of a shotgun, and the term "length of barrel" shall mean 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. A "Sawed-off shotgun" shall mean any weapon made from a shotgun, whether by alteration, modification or otherwise, if such weapon as modified has one

## Appendix H

### List of Hawaii Law Enforcement Agencies Contacted

Honorable Warren Price III  
Attorney General  
Department of the Attorney General  
425 Queen Street  
Honolulu, HI 96813

Mr. Jon R. Ono  
Prosecuting Attorney  
Prosecuting Attorney's Office  
County of Hawaii  
34 Rainbow Drive  
Hilo, HI 96720

Mr. Victor V. Vierra  
Chief of Police  
Hawaii Police Department  
349 Kapiolani Street  
Hilo, HI 96720

Mr. Keith Kaneshiro  
Prosecuting Attorney  
Department of the Prosecuting Attorney  
1164 Bishop Street  
Honolulu, HI 96813

Mr. Harold Kawasaki  
Acting Police Chief  
Honolulu Police Department  
1455 S. Beretania Street  
Honolulu, HI 96814

Mr. Ryan E. Jimenez  
Prosecuting Attorney  
Office of the Prosecuting Attorney  
County of Kauai  
4396 Rice Street  
Lihue, HI 96766

Mr. Calvin C. Fujita  
Chief of Police  
Kauai Police Department  
4396 Rice Street  
Lihue, HI 96766

Mr. Joseph Cardoza  
Prosecuting Attorney  
Department of the Public Prosecutor  
County of Maui  
200 South High Street  
Wailuku, HI 96793

Mr. Howard Tagomori  
Chief of Police  
Maui Department of Police  
200 South High Street  
Wailuku, HI 96793



## Appendix I

Samuel B. K. Chang  
Director



LEGISLATIVE REFERENCE BUREAU  
State of Hawaii  
State Capitol  
Honolulu, Hawaii 96813  
Phone (808) 548-6237

July 3, 19990

4352A

Mr. Keith Kaneshiro  
Prosecuting Attorney  
Department of the Prosecuting Attorney  
1164 Bishop St.  
Honolulu, HI 96813

Dear Keith:

The Legislative Reference Bureau has been assigned to study the effectiveness of banning firearms pursuant to S.C.R. No. 227, S.D. 1, adopted during the Regular Session of 1990. This resolution specifically requests that the Bureau include in the study a "description, based on information provided by the county police departments and the county prosecuting attorneys and the Department of the Attorney General, of the planning and commitment of resources required of the State and counties in order to implement an effective firearms ban."

Accordingly, the Bureau is soliciting your input in estimating the resources and planning required by your office in order to implement and enforce a firearms ban. I am enclosing a copy of S.C.R. No. 227, S.D. 1, for your review. As you will see, the resolution refers rather generally to a firearms ban. For purposes of your input, however, I ask you to consider separately a ban on all handguns and a ban on assault type weapons. Also, please feel free to comment on any other issue to be addressed in the study.

I would appreciate receiving a written response from your office by July 27th. If you or a member of your staff wish to discuss any issue raised in the resolution or have any questions concerning this request, please do not hesitate to contact me. Thank you for your assistance in this matter.

Sincerely yours,

Charlotte A. Carter-Yamauchi  
Researcher

CACY:mm  
Enclosure

## Appendix J

Samuel B. K. Chang  
Director



LEGISLATIVE REFERENCE BUREAU  
State of Hawaii  
State Capitol  
Honolulu, Hawaii 96813  
Phone (808) 548-6237

September 6, 1990

4352A

Mr. Keith Kaneshiro  
Prosecuting Attorney  
Department of the Prosecuting Attorney  
1164 Bishop Street  
Honolulu, Hawaii 96813

Dear Mr. Kaneshiro:

I am writing to follow-up on my original letter, dated July 3, 1990, in which I requested your input on a study for the 1991 Legislature concerning the effectiveness of banning firearms in Hawaii. A copy of this letter, as well as the underlying Senate Concurrent Resolution requesting the study, are enclosed for your convenience.

The Legislature has requested that the study include a description of the planning and resources required of the State and counties in order to implement an effective firearms ban. The Bureau's response to the Legislature on this issue will be based upon the information provided by local law enforcement agencies. As of this date, I have not received any response from your office. The Bureau would like to make every effort to include your input; however, responses not received in a timely manner cannot be included. I originally requested a response by July 27th; however, recognizing that extenuating circumstances may have delayed your response, I am willing to extend the deadline to September 28, 1990.

If you intend to respond, but are unable to meet this timetable, please give me a call so we can work out a suitable date. Also, please do not hesitate to contact me if you or a member of your staff have any questions.

Your input on this study is important; I hope you will see fit to respond.

Sincerely yours,

Charlotte A. Carter-Yamauchi  
Researcher

CACY:at  
Encs.



Appendix K



Department of the Treasury

**BUREAU OF ALCOHOL,  
TOBACCO & FIREARMS**

**NEWS**



WASHINGTON, D.C. 20226

24 HOUR TELEPHONE: (202) 566-7135

July, 1989

BARRED FROM IMPORTATION:

AK47 type	86S type
AK47S type	86S7 type
AK74 type	87S type
AKS type	Galil type
AKM type	Type 56 type
AKMS type	Type 56S type
84S type	Valmet M76 type
ARM type	Valmet M78 type
84S1 type	M76 counter sniper type
84S3 type	FAL type
HK91 type	L1A1A type
HK93 type	SAR 48 type
HK94 type	AUG type
G3SA type	FNC type
K1 type	Uzi carbine
K2 type	Algimec AGMI type
AR100 type	AR180 type
M14S type	Australian Automatic Arms SAR type
MAS223 type	Beretta AR70 type
SIG 550SP type	Beretta BM59 type
SIG 551SP type	CIS SR88 type
SKS type with detachable magazine	

ALLOWED FOR IMPORTATION:

AK22 type  
AP74 type  
Galil/22 type  
M16/22 type  
Unique F11 type  
Erma EM1.22 type  
Valmet Hunter ( Considered as one of AK-47 type during suspension)

## Appendix L

167

1 (c) EFFECTIVE DATE.—The amendments made by this  
2 section shall apply only to loans made on or after the date of  
3 enactment of this Act under part E of title IV of the Higher  
4 Education Act of 1965.

### 5 TITLE XXII—FIREARMS 6 PROVISIONS

#### 7 SEC. 2201. PROHIBITION AGAINST TRANSFERRING FIREARMS 8 TO NONRESIDENTS.

9 Section 922(a)(5) of title 18, United States Code, is  
10 amended by striking “resides” the first place such term ap-  
11 pears and all that follows through “(or other than that in  
12 which its place of business is located if the transferor is a  
13 corporation or other business entity);” and inserting “does  
14 not reside in (or if the person is a corporation or other busi-  
15 ness entity, does not maintain a place of business in) the  
16 State in which the transferor resides;”.

#### 17 SEC. 2202. COMMERCE NEXUS FOR TRAFFICKING IN STOLEN 18 FIREARMS.

19 (a) IN GENERAL.—Section 922(j) of title 18, United  
20 States Code, is amended by striking “or which constitutes,”  
21 and inserting “which constitutes, or which has been shipped  
22 or transported in,”.

23 (b) ALTERATION OF SERIAL NUMBER OF FIREARM.—  
24 Section 922(k) of title 18, United States Code, is amended by  
25 inserting “or to possess or receive any firearm which has had

1 the importer's or manufacturer's serial number removed, ob-  
 2 literated, or altered and has, at any time, been shipped or  
 3 transported in interstate or foreign commerce" after "al-  
 4 tered".

5 SEC. 2203. TECHNICAL AMENDMENTS.

6 (a) AMENDMENT TO SECTION 923(d)(1)(B).—Section  
 7 923(d)(1)(B) of title 18, United States Code, is amended by  
 8 striking "(h)" and inserting "(n)".

9 (b) AMENDMENT TO SECTION 925(a)(1).—Section  
 10 925(a)(1) of title 18, United States Code, is amended by in-  
 11 serting "possession," before "or importation".

12 (c) AMENDMENTS TO SECTION 925(c).—Section 925(c)  
 13 of title 18, United States Code, is amended—

14 (1) by striking "conviction" the first and third  
 15 places such term appears and inserting "disability";  
 16 and

17 (2) by striking "by reason of such a conviction".

18 (d) AMENDMENTS TO SECTION 924(a).—Section 924(a)  
 19 of title 18, United States Code, is amended by striking ", and  
 20 shall become eligible for parole as the Parole Commission  
 21 shall determine" each place such term appears. This amend-  
 22 ment shall be effective with respect to any offense committed  
 23 after November 1, 1987.

1 SEC. 2204. AMENDMENTS RELATING TO THE DOMESTIC AS-  
2 SEMBLY OF NONIMPORTABLE FIREARMS.

3 (a) SEMIAUTOMATIC RIFLE DEFINED.—Section 921(a)  
4 of title 18, United States Code, is amended by adding at the  
5 end the following:

6 “(28) The term ‘semiautomatic rifle’ means any repeat-  
7 ing rifle which utilizes a portion of the energy of a firing  
8 cartridge to extract the fired cartridge case and chamber the  
9 next round, and which requires a separate pull of the trigger  
10 to fire each cartridge.”.

11 (b) PROHIBITIONS.—Section 922 of title 18, United  
12 States Code, is amended by adding at the end the following:

13 “(r) It shall be unlawful for any person to assemble from  
14 imported parts any semiautomatic rifle or any shotgun which  
15 is identical to any rifle or shotgun prohibited from importa-  
16 tion under section 925(d)(3) of this chapter as not being par-  
17 ticularly suitable for or readily adaptable to sporting purposes  
18 except that this subsection shall not apply to—

19 “(1) the assembly of any such rifle or shotgun for  
20 sale or distribution by a licensed manufacturer to the  
21 United States or any department or agency thereof or  
22 to any State or any department, agency, or political  
23 subdivision thereof; or

24 “(2) the assembly of any such rifle or shotgun for  
25 the purposes of testing or experimentation authorized  
26 by the Secretary.”.

1 (c) PENALTY.—Section 924(a)(1)(B) of title 18, United  
 2 States Code, is amended by striking “or (k)” and inserting  
 3 “(k), or (q)”.

4 SEC. 2205. PROHIBITION AGAINST POSSESSION OF FIREARMS  
 5 IN FEDERAL COURT FACILITIES.

6 (a) PROHIBITION.—Section 930 of title 18, United  
 7 States Code, is amended—

8 (1) in subsection (a), by inserting “(other than a  
 9 Federal court facility)” before the second comma;

10 (2) by redesignating subsections (d), (e), and (f) as  
 11 subsections (e), (f), and (g), respectively;

12 (3) by inserting after subsection (c) the following:

13 “(d)(1) Except as provided in paragraph (2), whoever  
 14 knowingly possesses or causes to be present a firearm in a  
 15 Federal court facility, or attempts to do so, shall be fined  
 16 under this title, imprisoned not more than 2 years, or both.

17 “(2) Paragraph (1) shall not apply to conduct which is  
 18 described in paragraph (1) or (2) of subsection (c).”;

19 (4) in subsection (f) (as so redesignated by para-  
 20 graph (2) of this subsection), by adding at the end the  
 21 following:

22 “(3) The term ‘Federal court facility’ means the  
 23 courtroom, judges’ chambers, witness rooms, jury de-  
 24 liberation rooms, attorney conference rooms, prisoner  
 25 holding cells, offices of the court clerks, the United

1 States attorney, and the United States marshal, proba-  
 2 tion and parole offices, and adjoining corridors of any  
 3 court of the United States.”; and

4 (5) in subsection (g) (as so redesignated by para-  
 5 graph (2) of this subsection)—

6 (A) by inserting “and notice of subsection (d)  
 7 shall be posted conspicuously at each public en-  
 8 trance to each Federal court facility,” after the  
 9 first comma;

10 (B) by inserting “or (d)” before “with respect  
 11 to”; and

12 (C) by inserting “or (d), as the case may be”  
 13 before the period.

14 (b) EFFECTIVE DATE.—The amendments made by sub-  
 15 section (a) shall apply to conduct engaged in after the date of  
 16 the enactment of this Act.

17 **TITLE XXIII—CHEMICAL**  
 18 **DIVERSION AND TRAFFICKING**

19 **SEC. 2301. CHEMICAL DIVERSION AND TRAFFICKING.**

20 (a) NEW LISTED PRECURSOR CHEMICALS.—Section  
 21 102(34) of the Controlled Substances Act (21 U.S.C.  
 22 802(34)) is amended by adding at the end the following:

23 “(M) Methylamine.

24 “(N) Ethylamine.

25 “(O) D-lysergic acid.

## Appendix M

Table 2.53

### Attitudes toward home safety and the possession of a firearm

By demographic characteristics, United States, 1986

Question: "In general, do you think having a gun in a home makes the home a safer place, a more dangerous place or makes no difference at all?"

	Safer	More dangerous	No difference	Don't know/ no answer
National	28%	36%	29%	7%
<b>Sex</b>				
Male	34	26	34	6
Female	23	43	25	9
<b>Age</b>				
18 to 34 years	27	38	30	5
35 to 54 years	28	36	30	6
55 to 64 years	33	33	26	8
65 years and older	26	31	28	15
<b>Region</b>				
Northeast	18	42	32	8
North Central	26	33	34	7
South	37	28	28	7
West	26	43	23	8
<b>Race, ethnicity</b>				
White	28	36	29	7
Black	34	31	26	9
Hispanic	25	44	31	0
Other	22	17	44	17
<b>Education</b>				
College graduate	24	44	24	8
College incomplete	26	40	30	4
High school graduate	29	29	34	8
Less than high school graduate	40	24	26	10
<b>Politics</b>				
Republican	32	31	32	5
Democrat	28	40	24	8
Independent	25	35	32	8
<b>Income</b>				
\$35,000 and over	27	39	29	5
\$20,000 to \$34,999	29	35	29	7
Under \$20,000	30	33	29	8
<b>Religion</b>				
Protestant	32	30	30	8
Catholic	21	44	27	8
Jewish	19	66	10	5
Other	35	33	23	9
No preference	20	37	37	6

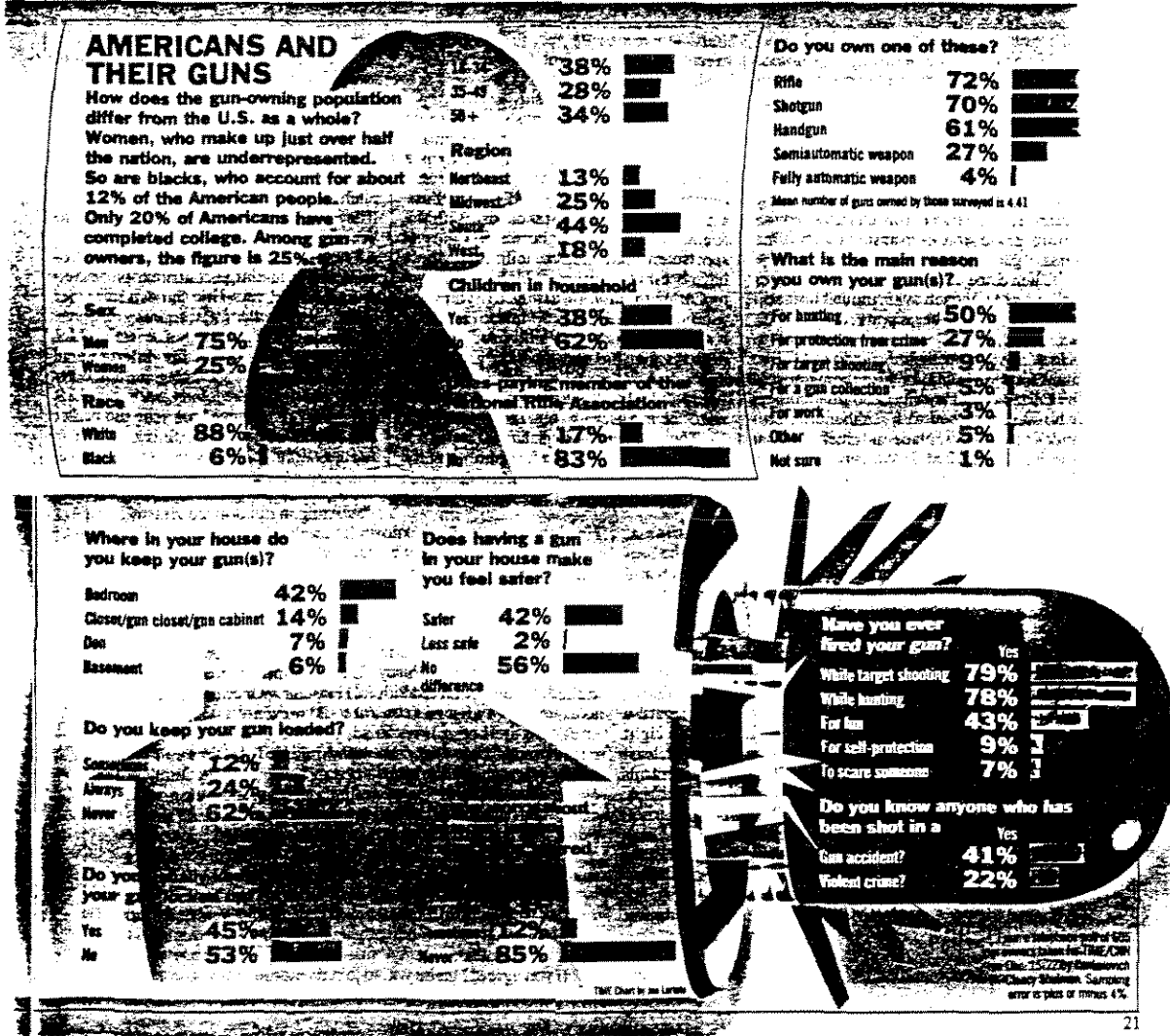
Note: For a discussion of public opinion survey sampling procedures, see Appendix 5.

Source: Table adapted by SOURCEBOOK staff from table provided by the Media General/Associated Press Poll. Reprinted by permission.

Source: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, Sourcebook of Criminal Justice Statistics-1988 (Washington, D.C.: U.S. Government Printing Office, 1989)

## Appendix N

### "TIME/CNN SURVEY--Americans and Their Guns



Source: "Americans and Their Guns," *Time* (January 29, 1990) at 20-21 (Survey per Yankelovich Clancy Shulman taken on December 15-22 for Time/CNN).



## Appendix O

Table 2.50

Respondents reporting a firearm in their home										
By demographic characteristics, United States, selected years 1973-88										
Question: "Do you happen to have in your home (or garage) any guns or revolvers?"										
(Percent reporting having guns)										
	1973	1974	1976	1977	1980	1982	1984	1985	1987	1988
National	47%	48%	47%	51%	48%	45%	49%	44%	48%	40%
<b>Sex</b>										
Male	53	51	52	55	56	54	53	54	51	50
Female	43	42	43	47	41	39	40	36	43	33
<b>Race</b>										
White	49	48	58	53	50	48	48	46	49	43
Black/other	38	32	37	34	29	30	30	29	33	28
<b>Education</b>										
College	45	42	44	45	41	39	42	40	43	37
High school	50	48	50	54	51	51	48	49	50	43
Grade school	44	49	42	51	51	41	43	38	44	39
<b>Occupation</b>										
Professional/business	48	45	46	48	45	42	42	40	45	39
Clerical	42	43	40	49	45	39	41	40	45	37
Manual	48	48	48	52	48	49	48	48	46	41
Farmer	83	79	62	66	81	77	84	78	75	82
<b>Income</b>										
\$15,000 and over	55	52	53	57	56	53	53	53	51	47
\$10,000 to \$14,999	58	51	54	56	46	49	39	37	40	39
\$7,000 to \$9,999	44	48	42	50	45	43	39	37	36	31
\$5,000 to \$6,999	43	40	44	38	38	28	27	31	35	27
\$3,000 to \$4,999	35	38	35	39	26	26	31	26	30	23
Under \$3,000	30	34	30	35	24	26	26	12	28	14
<b>Age</b>										
18 to 20 years	50	34	38	54	48	51	44	39	43	33
21 to 29 years	43	48	45	45	48	41	37	40	35	34
30 to 49 years	51	49	52	55	50	51	48	48	51	42
50 years and older	46	44	44	49	46	44	49	44	47	42
<b>Region</b>										
Northeast	22	27	29	32	27	32	32	28	31	25
Midwest	51	49	48	53	52	48	44	48	46	41
South	62	59	60	62	59	52	52	53	55	47
West	47	42	44	46	44	47	49	40	47	42
<b>Religion</b>										
Protestant	56	52	53	57	56	52	52	50	52	46
Catholic	35	37	36	39	36	36	34	35	36	31
Jewish	14	7	26	17	6	11	22	9	25	0
None	32	40	43	50	39	37	36	44	39	41
<b>Politics</b>										
Republican	53	49	50	56	53	50	56	47	51	46
Democrat	44	45	45	49	46	44	42	47	44	39
Independent	49	47	48	50	47	44	40	39	44	36

Note: For a discussion of public opinion survey sampling procedures, see Appendix 5.

Source: Table constructed by SOURCEBOOK staff from data provided by the National Opinion Research Center; data were made available through the Roper Public Opinion Research Center.

Source: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, Sourcebook of Criminal Justice Statistics-1988 (Washington, D.C.: U.S. Government Printing Office, 1989)

## Appendix P

Table 2.52

**Respondents reporting the type of firearm present in their house**

By demographic characteristics, United States, 1989<sup>a</sup>

Question: "Is it a pistol, shotgun, rifle or what?"

	Pistol	Shotgun	Rifle	Assault weapon	Other	No opinion
National	52%	60%	65%	2%	3%	2%
<b>Sex</b>						
Male	54	64	70	3	2	2
Female	50	54	58	1	2	2
<b>Age</b>						
18 to 29 years	61	62	59	3	4	(b)
30 to 49 years	48	62	62	2	3	2
50 years and older	52	55	72	2	1	2
<b>Region</b>						
East	57	68	77	3	5	1
Midwest	32	63	60	(b)	1	(b)
South	57	58	60	2	4	3
West	61	52	70	4	2	1
<b>Race</b>						
White	51	61	67	2	3	2
Nonwhite	60	47	43	(b)	4	3
Black	61	46	32	(b)	6	(b)
<b>Education</b>						
College graduate	42	54	66	2	1	3
College incomplete	56	65	65	4	1	(b)
High school graduate	55	67	68	1	4	1
Less than high school graduate	51	44	57	3	5	1
<b>Politics</b>						
Republican	47	63	64	2	2	2
Democrat	54	56	64	(b)	3	1
Independent	58	59	66	4	3	2
<b>Income</b>						
\$40,000 and over	56	62	69	4	3	2
\$25,000 to \$39,999	46	63	67	2	3	2
\$15,000 to \$24,999	51	63	63	2	3	3
Under \$15,000	55	50	58	1	1	1
<b>Religion</b>						
Protestant	54	58	63	1	3	2
Catholic	50	68	74	3	1	1

Note: This question was asked of a 47 percent subsample of respondents who responded affirmatively when asked if they had any guns in the house. For a discussion of public opinion survey sampling procedures, see Appendix 5.

<sup>a</sup>Totals may exceed 100 percent because of multiple responses.

<sup>b</sup>Less than 1 percent.

Source: George Gallup, Jr., *The Gallup Report*, Report Nos. 282-283 (Princeton, NJ: The Gallup Poll, March/April 1989), p. 5. Table adapted by SOURCEBOOK staff. Reprinted by permission.

Source: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Sourcebook of Criminal Justice Statistics-1988* (Washington, D.C.: U.S. Government Printing Office, 1989)

## Appendix Q

Table 2.56

### Attitudes toward Federal laws regulating the sale and registration of all guns

By demographic characteristics, United States, 1989<sup>a</sup>

	"Do you favor or oppose federal laws which control the sale of guns, such as making all persons register all gun purchases, no matter where the purchases are made?"			"Do you favor or oppose a federal law requiring that all handguns people own be registered by federal authorities?"		
	Favor	Oppose	Not sure	Favor	Oppose	Not sure
National	79%	18%	3%	78%	20%	2%
<b>Sex</b>						
Male	74	23	3	71	27	2
Female	84	14	3	84	14	2
<b>Age</b>						
18 to 24 years	87	12	(b)	85	14	(b)
25 to 29 years	85	14	1	86	12	1
30 to 39 years	80	20	1	79	19	2
40 to 49 years	74	21	5	72	25	3
50 to 64 years	72	22	6	70	26	4
65 years and older	78	18	3	77	20	3
<b>Region</b>						
East	81	15	4	82	15	3
Midwest	77	21	2	79	20	1
South	78	19	3	75	21	4
West	82	17	1	75	24	1
<b>Area</b>						
Central city	81	16	3	80	17	2
Rest of metropolitan area	82	16	2	80	18	2
Outside metropolitan area	71	25	4	72	26	2
<b>Race, ethnicity</b>						
White	79	19	3	78	20	2
Black	83	12	4	79	16	5
Hispanic	74	24	2	71	27	2
<b>Education</b>						
Post graduate	83	15	3	81	17	3
College graduate	81	17	2	82	16	2
Some college	83	15	2	76	21	2
High school graduate	77	21	2	80	18	2
Less than high school graduate	77	17	5	73	24	3
<b>Politics</b>						
Republican	77	21	2	78	20	2
Democrat	81	15	4	81	17	2
Independent	79	20	1	75	23	1
<b>Income</b>						
\$50,001 and over	89	10	1	83	16	1
\$35,001 to \$50,000	78	19	3	79	20	1
\$25,001 to \$35,000	78	20	1	76	23	2
\$15,001 to \$25,000	78	18	4	79	19	2
\$7,501 to \$15,000	75	23	2	77	20	3
\$7,500 or less	75	23	3	73	24	3

Note: For a discussion of public opinion survey sampling procedures, see Appendix 5.

<sup>a</sup>Percents may not add to 100 due to rounding.

<sup>b</sup>Less than one-half of 1 percent.

Source: Table adapted by SOURCEBOOK staff from table provided by Louis Harris and Associates, Inc. Reprinted by permission.

Source: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, Sourcebook of Criminal Justice Statistics-1988 (Washington, D.C.: U.S. Government Printing Office, 1989)



## Appendix S

Table 2.63

### Attitudes toward the registration of all gun purchases

United States, selected years 1975-89

Question: "Do you favor or oppose federal laws which control the sale of guns, such as making all persons register all gun purchases, no matter where the purchases are made?"

	Favor	Oppose	Not sure
August 1967	66%	28%	6%
April 1968	71	23	6
June 1968	75	14	11
October 1975	73	24	3
July 1978	73	25	2
June 1979	72	26	2
March 1989	79	18	3

Note: For a discussion of public opinion survey sampling procedures, see Appendix 5.

Source: Louis Harris, The Harris Poll (Los Angeles: Creators Syndicate, Inc., Apr. 9, 1989), pp. 2, 3. Table adapted by SOURCEBOOK staff. Reprinted by permission.

Source: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, Sourcebook of Criminal Justice Statistics-1988 (Washington, D.C.: U.S. Government Printing Office, 1989)

## Appendix T

Table 2.64

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### Attitudes toward the registration of all handguns

United States, 1975, 1978, 1979, and 1989

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Question: "Do you favor or oppose a federal law requiring that all handguns people own be registered by federal authorities?"

	Favor	Oppose	Not sure
1975	77%	19%	4%
1978	80	18	2
1979	78	20	2
1989	78	20	2

---

Note: For a discussion of public opinion survey sampling procedures, see Appendix 5.

Source: Louis Harris, The Harris Poll (Los Angeles: Creators Syndicate, Inc., Apr. 9, 1989), p. 3. Table adapted by SOURCEBOOK staff. Reprinted by permission.

Source: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, Sourcebook of Criminal Justice Statistics-1988 (Washington, D.C.: U.S. Government Printing Office, 1989)

## Appendix U

Table 2.65

Attitudes toward public policies on firearm registration						
By demographic characteristics, United States, 1988 <sup>a</sup>						
Question: "Would you favor or oppose: a) The registration of all firearms? b) A law requiring that any person who carries a gun outside his home must have a license to do so? c) A national law requiring a 7-day waiting period before a handgun could be purchased, in order to determine whether the prospective buyer has been convicted of a felony or is mentally ill?"						
	Registration		Licensing		Waiting period	
	Favor	Oppose	Favor	Oppose	Favor	Oppose
National	67%	30%	84%	15%	91%	8%
<b>Sex</b>						
Male	60	37	77	22	87	12
Female	73	22	89	9	94	5
<b>Age</b>						
18 to 29 years	70	27	86	12	90	10
30 to 49 years	63	34	83	16	93	7
50 years and older	68	27	83	15	88	8
<b>Region</b>						
East	77	22	93	6	92	7
Midwest	65	29	83	15	92	7
South	64	31	80	18	88	9
West	60	38	78	20	90	9
<b>Race</b>						
White	68	28	83	15	91	7
Nonwhite	59	38	86	11	86	13
Black	59	37	86	13	86	13
<b>Education</b>						
College graduate	71	28	85	14	89	9
College incomplete	66	30	79	19	95	4
High school graduate	66	30	86	12	90	9
Less than high school graduate	66	30	85	14	90	7
<b>Politics</b>						
Republican	66	30	79	18	93	6
Democrat	69	28	86	12	91	8
Independent	68	30	86	14	91	8
<b>Income</b>						
\$40,000 and over	71	27	82	18	92	8
\$25,000 to \$39,999	63	33	81	17	95	4
\$15,000 to \$24,999	65	31	85	13	91	8
Under \$15,000	68	28	88	11	86	12
<b>Religion</b>						
Protestant	64	32	80	18	89	10
Catholic	74	23	90	8	94	5
<b>Gun ownership</b>						
Gun owner	58	38	84	15	90	9
Nonowner	75	21	94	5	92	7

Note: For a discussion of public opinion survey sampling procedures, see Appendix 5.

<sup>a</sup> Responses of "no opinion" were omitted by the Source.

Source: George Gallup, Jr., The Gallup Report, Report No. 280 (Princeton, NJ: The Gallup Poll, January 1989), p. 26. Reprinted by permission.

Source: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, Sourcebook of Criminal Justice Statistics-1988 (Washington, D.C.: U.S. Government Printing Office, 1989)

## Appendix V

Table 2.57

### Attitudes toward the severity of laws covering the sale of firearms

By demographic characteristics, United States, 1989

Question: "In general, do you feel that the laws covering the sale of firearms should be made more strict, less strict, or kept as they are?"

	More strict	Less strict	Kept the same	No opinion
National	70%	6%	22%	2%
<u>Sex</u>				
Male	59	8	31	2
Female	79	4	14	3
<u>Age</u>				
18 to 29 years	70	11	18	1
30 to 49 years	70	5	23	2
50 years and older	69	3	23	5
<u>Region</u>				
East	71	8	19	2
Midwest	72	6	19	3
South	66	5	27	2
West	71	5	22	2
<u>Race</u>				
White	69	5	24	2
Nonwhite	73	11	12	4
Black	72	11	11	6
<u>Education</u>				
College graduate	76	3	19	2
College incomplete	66	7	25	2
High school graduate	69	7	22	2
Less than high school graduate	69	4	23	4
<u>Politics</u>				
Republican	65	5	27	3
Democrat	73	8	17	2
Independent	72	5	21	2
<u>Income</u>				
\$40,000 and over	72	4	23	1
\$25,000 to \$39,999	69	6	22	3
\$15,000 to \$24,999	72	5	22	1
Under \$15,000	64	8	24	4
<u>Religion</u>				
Protestant	68	5	25	2
Catholic	69	9	20	2
<u>Gun ownership</u>				
Gun owner	58	7	33	2
Nonowner	80	5	12	3

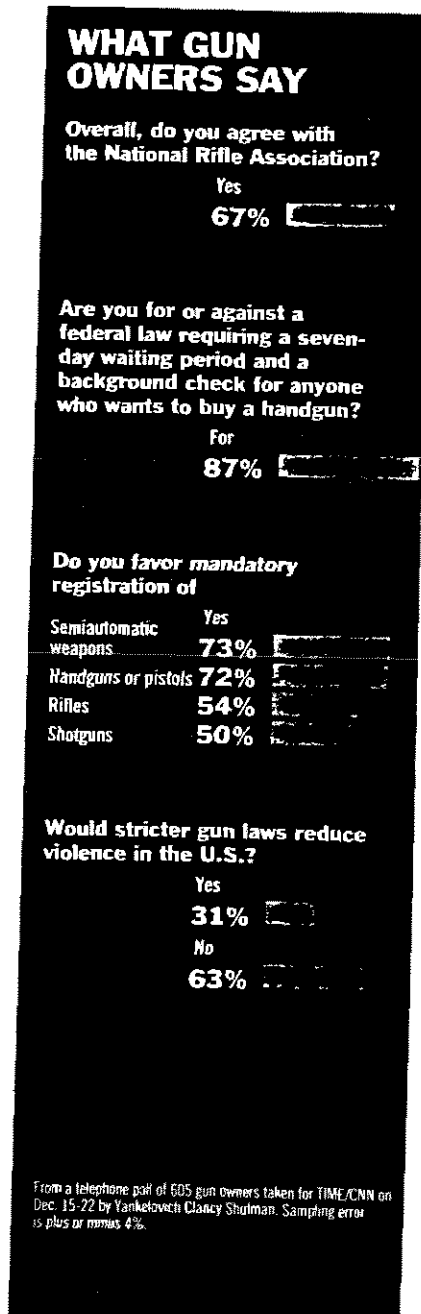
Note: For a discussion of public opinion survey sampling procedures, see Appendix 5.

Source: George Gallup, Jr., *The Gallup Report*, Report Nos. 282-283 (Princeton, NJ: The Gallup Poll, March/April 1989), p. 3. Table adapted by SOURCEBOOK staff. Reprinted by permission.

Source: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Sourcebook of Criminal Justice Statistics-1988* (Washington, D.C.: U.S. Government Printing Office, 1989)



## Appendix W



Source: "What Gun Owners Say," Time (January 29, 1990) at 16 (Survey per Yankelovich Clancy Shulman taken on December 15-22 for Time/CNN).

## Appendix X

Table 2.55

**Attitudes toward Federal laws banning the manufacture, sale, and possession of firearms**

By demographic characteristics, United States, 1989<sup>a</sup>

Question: "Would you favor or oppose Federal legislation banning the manufacture, sale, and possession of the following types of weapons: (a) Cheap handguns known as Saturday night specials? (b) Plastic guns invisible to metal detectors? (c) Semi-automatic assault guns, such as the AK-47?"

	Ban cheap handguns		Ban plastic guns		Ban assault guns	
	Favor	Oppose	Favor	Oppose	Favor	Oppose
National	71%	29%	75%	20%	72%	23%
<b>Sex</b>						
Male	68	30	74	22	70	27
Female	73	21	75	18	74	19
<b>Age</b>						
18 to 29 years	69	29	72	26	66	29
30 to 49 years	74	24	80	17	77	20
50 years and older	66	26	71	20	71	21
<b>Region</b>						
East	77	21	75	21	73	21
Midwest	70	27	76	20	72	24
South	67	29	71	24	68	25
West	68	24	80	13	77	18
<b>Race</b>						
White	71	25	76	19	73	22
Nonwhite	66	26	66	28	68	24
Black	68	26	68	26	69	22
<b>Education</b>						
College graduate	75	19	84	12	79	17
College incomplete	73	26	74	23	71	25
High school graduate	70	26	73	21	71	24
Less than high school graduate	63	30	68	24	67	23
<b>Politics</b>						
Republican	71	26	76	19	73	22
Democrat	71	23	75	19	73	20
Independent	70	27	75	22	72	25
<b>Income</b>						
\$40,000 and over	71	27	77	19	76	22
\$25,000 to \$39,999	72	24	76	20	73	24
\$15,000 to \$24,999	74	24	76	21	72	23
Under \$15,000	68	25	73	17	66	23
<b>Religion</b>						
Protestant	70	26	75	19	71	22
Catholic	72	24	72	24	74	23
<b>Gun ownership</b>						
Gun owner	66	31	74	21	68	27
Nonowner	75	21	75	19	76	18

Note: For a discussion of public opinion survey sampling procedures, see Appendix 5.

<sup>a</sup>"No opinion" category was omitted by Source.

Source: George Gallup, Jr., *The Gallup Report*, Report Nos. 282-283 (Princeton, NJ: The Gallup Poll, March/April 1989), p. 4. Table adapted by SOURCEBOOK staff. Reprinted by permission.

Source: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Sourcebook of Criminal Justice Statistics-1988* (Washington, D.C.: U.S. Government Printing Office, 1989)

## Appendix Y

Table 2.59

**Attitudes toward banning the possession of handguns except by the police and other authorized persons**

By demographic characteristics, United States, 1988

Question: "Do you think there should or should not be a law that would ban the possession of handguns except by the police and other authorized persons?"

	Should	Should not	No opinion
National	37%	59%	4%
<u>Sex</u>			
Male	28	70	2
Female	45	49	6
<u>Age</u>			
18 to 29 years	37	60	3
30 to 49 years	34	64	2
50 years and older	40	54	6
<u>Region</u>			
East	44	52	4
Midwest	35	61	4
South	34	60	6
West	34	63	3
<u>Race</u>			
White	36	61	3
Nonwhite	46	46	8
<u>Education</u>			
College graduate	50	47	3
College incomplete	33	62	5
High school graduate	31	66	3
Less than high school graduate	38	56	6
<u>Politics</u>			
Republican	31	66	3
Democrat	41	53	6
Independent	38	59	3
<u>Income</u>			
\$40,000 and over	36	60	4
\$25,000 to \$39,999	32	65	3
\$15,000 to \$24,999	39	58	3
Under \$15,000	39	56	5
<u>Religion</u>			
Protestant	32	63	5
Catholic	46	52	2

Note: For a discussion of public opinion survey sampling procedures, see Appendix 5.

Source: George Gallup, Jr., *The Gallup Report*, Report No. 275 (Princeton, NJ: The Gallup Poll, August 1988), p. 4. Table adapted by SOURCEBOOK staff. Reprinted by permission.

Source: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, Sourcebook of Criminal Justice Statistics-1988 (Washington, D.C.: U.S. Government Printing Office, 1989)

## Appendix Z

Table Z.61

**Attitudes toward laws banning the sale and possession of handguns  
in own community**

By demographic characteristics, United States, 1986

Question: "Some communities have passed laws banning the sale and possession of handguns. Would you favor or oppose having such a law in this city/community?"

	Favor	Oppose	No opinion
National	47%	47%	6%
<u>Sex</u>			
Male	39	57	4
Female	55	38	7
<u>Age</u>			
Total under 30 years	47	47	6
18 to 24 years	47	48	5
25 to 29 years	47	45	8
30 to 49 years	50	47	3
Total 50 years and older	44	48	8
50 to 64 years	41	52	7
65 years and older	47	44	9
<u>Region</u>			
East	62	34	4
Midwest	45	49	6
South	40	51	9
West	43	55	2
<u>Race, ethnicity</u>			
White	45	49	6
Nonwhite	59	35	6
Black	59	34	7
Hispanic	50	41	9
<u>Education</u>			
College graduate	54	43	3
College incomplete	47	48	5
High school graduate	45	48	7
Less than high school graduate	44	49	7
<u>Politics</u>			
Republican	43	53	4
Democrat	49	45	6
Independent	46	48	6
<u>Occupation</u>			
Professional and business	50	46	4
Clerical and sales	62	35	3
Manual worker	45	49	6
Skilled worker	39	56	5
Unskilled worker	50	42	8
<u>Income</u>			
\$50,000 and over	56	41	3
\$35,000 to \$49,999	50	46	4
\$25,000 to \$34,999	39	59	2
\$15,000 to \$24,999	46	49	5
\$10,000 to \$14,999	48	44	8
Under \$10,000	44	47	9
\$25,000 and over	47	50	3
Under \$25,000	46	47	7
<u>Religion</u>			
Protestant	45	49	6
Catholic	51	45	4
<u>Gun ownership</u>			
All gun owners	31	64	5
Handgun owners	26	71	3
Nonowners	58	36	6

Notes: For a discussion of public opinion survey sampling procedures, see Appendix 5.

Source: George Gallup, Jr., *The Gallup Report*, Report No. 248 (Princeton, NJ: The Gallup Poll, May 1986), p. 18 and *The Gallup Poll* (Princeton, NJ: The Gallup Poll, May 11, 1986), pp. 2, 3. Table adapted by SOURCEBOOK staff. Reprinted by permission.

Source: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, Sourcebook of Criminal Justice Statistics-1988 (Washington, D.C.: U.S. Government Printing Office, 1989)


## Appendix AA

### "ASSAULT WEAPONS MOST OFTEN USED IN CRIME"



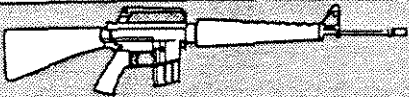
**1**  
**TEC-9**

**MADE IN MIAMI:** Manufactured by In-tratec U.S.A. Inc., this 9mm gun is the favorite of drug dealers, apparently because it is inexpensive — about \$380 — easily concealed and is available with a 36-round magazine. One of every five assault weapons traced to crime is a TEC-9, according to ATF records. Promotional material states the gun is "as tough as your toughest customer."



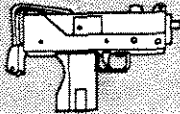
**6**  
**AK-47**

**MADE IN CHINA, HUNGARY:** This is the Eastern bloc's standard infantry weapon. It also is a popular weapon among America's West Coast criminals and crazies. Drifter Patrick Edward Purdy used one to kill five schoolchildren last January in Stockton, Calif. After the shootings, the average price jumped from around \$380 to around \$1,500.



**2**  
**AR-15**

**MADE IN HARTFORD, CONN.:** As concern about assault weapons being used in crime mounted, Colt Industries Firearms Division ceased sale on March 15 of this reliable look-alike to the fully automatic Army M-16. Demand had pushed the average price to nearly \$1,000 by the time sales were suspended.



**7**  
**MAC-10**

**MADE IN ATLANTA:** Drug gangs quickly discovered that they could easily convert these guns to full automatic. Nearly 33,000 were in circulation before ATF decided it had made a mistake in allowing them to be sold. The weapon was banned in 1982. A variation is now being manufactured by RPB Industries Inc. in Texas.



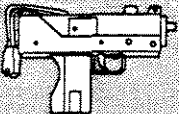
**3**  
**UZI**

**MADE IN ISRAEL:** One of the foundation weapons of the Israeli army, it comes in a 9mm submachine-gun style popular with the U.S. Secret Service. Critics contend that legal semiautomatic Uzis are too easily converted to illegal fully automatic Uzis. The gun is popular despite its high price, from \$700 to \$1,400.



**8**  
**SPAS 12**

**MADE IN ITALY:** This "battle shotgun" — manufactured by the Luigi Franchi firm — is rapidly gaining in popularity. It can be fired either from the hip or sighted down the barrel using a folding stock. The average price is around \$395.




**4**  
**MAC-11**

**MADE IN ATLANTA:** "The Gun That Made the '80s Roar," boasted a recent magazine ad for the gun. It is manufactured by SWD Inc. and is based on the company's earlier MAC-10 design. A favorite of survivalists and soldiers of fortune, the boxy-looking gun is cheap — \$200 to \$300 — and can be fitted with a 32-round 9mm magazine.




**9**  
**HK-91**

**MADE IN GERMANY:** A favorite with many police SWAT teams, this rifle is manufactured by Heckler & Koch using 308-caliber ammunition in the semiautomatic version. The West German army uses it in the fully automatic version. The price of the HK-91 has risen from around \$946 to between \$1,500 and \$2,000.



**5**  
**MINI-14**

**MADE IN SOUTHPORT, CONN.:** A light, handy rifle made by Sturm, Ruger & Co. Inc., the Mini-14 is patterned after the M-1 and M-14 combat rifles. William B. Cruise used one to kill six people outside a Palm Bay, Fla., shopping center in 1987. Since then, the cost has increased from \$400 to about \$1,500.



**10**  
**HK-93**

**MADE IN GERMANY:** Same as the HK-91 but in a smaller .223-caliber, like the Colt AR-15 and the Ruger Mini-14, it sells for more than \$1,500 these days.

Assault guns most often used in crimes, according to a study by Cox Newspapers of trace requests submitted to the U.S. Bureau of Alcohol, Tobacco and Firearms.

**ONE MILLION STRONG . . . working to  
keep handguns out of the wrong hands.**

## ASSAULT WEAPONS: POLLING DATA

### The Gallup Poll

(February 28 - March 2, 1989; N = 1,000 adults nationwide)

*"Would you favor or oppose Federal legislation banning the manufacture, sale and possession of semi-automatic assault guns, such as the AK-47?"*

	<u>Favor</u>	<u>Oppose</u>	<u>No Opinion</u>
<u>Nationwide</u>	72%	23%	5%
Men	70%	27%	3
Women	74	19	7
College Grads.	79%	17%	4%
Some College	71	25	4
No College	70	24	6
East	73%	21%	6%
Midwest	72	24	4
South	68	25	7
West	77	18	5
Gun Owners	68%	27%	5%
Non-owners	76	18	6

*"In general, do you feel the laws covering the sale of firearms should be made more strict, less strict, or kept as they are now?"*

<u>More Strict</u>	<u>Less Strict</u>	<u>Kept Same</u>	<u>No Opinion</u>
70%	6%	22%	2%

### *Among Gun Owners: Types of Guns Owned*

	<u>1989</u>	<u>1985</u>	<u>1975</u>	<u>1972</u>
Rifle	31%	26%	30%	26%
Shotgun	28	24	31	27
Pistol	25	22	19	16
Assault gun	1	*	*	*
Other, not sure	2	2	1	*

\* = Not recorded

**Yankelovich Clancy Shulman for Time and CNN**

*(February 13 - 14, 1989; N = 1,012 adults nationwide)*

*"Do you think violence from the use of guns is becoming a bigger problem in the country these days or less of a problem?"*

<u>Bigger</u>	<u>Less</u>	<u>No Difference</u>	<u>Not Sure</u>
84%	5%	7%	3%

*"Do you favor or oppose mandatory registration of..."*

	<u>Favor</u>	<u>Oppose</u>	<u>Not Sure</u>
Handguns	84%	14%	2%
Shotguns	71	26	3
Rifles	74	23	3
Semi-automatic weapons	77	19	4
All guns of any type	73	23	4

*"Do you have any of these types of guns in your home?" [More than one answer allowed.]*

Pistol	25%
Shotgun	32
Rifle	32
Assault rifle	3
Do not have any guns	53

**Hotline/KRC for Boston Globe, WBZ-TV and San Francisco Examiner**

*(March 12 - 14, 1989; N = 1,001 registered voters nationwide)*

*"Do you think the sale of assault weapons like the AK-47 rifle should or should not be banned?"*

<u>Should:</u> 73%	<u>Should Not:</u> 19%
--------------------	------------------------

**CBS News/48 Hours Poll**

*(March 15, 1989; N = 663 adults nationwide)*

*President Bush's temporary ban on importing assault weapons...*

<u>Approve:</u> 76%	<u>Disapprove:</u> 18%
---------------------	------------------------

*Ban on ownership, sale and manufacture of assault weapons...*

<u>Approve:</u> 73%	<u>Disapprove:</u> 22%
---------------------	------------------------

**The Harris Poll**

*(March 23 - 29, 1989; N = 1,248 adults nationwide)*

*"Do you or does anyone in your house own a gun?"*

<u>Own</u>	<u>Don't Own</u>	<u>Not Sure</u>
45%	54%	1%

*Among Gun Owners: "Do you belong to the National Rifle Association or not?"*

<u>Belong</u>	<u>Don't Belong</u>	<u>Not Sure</u>
14%	85%	1%

*"Assault rifles are manufactured both here at home and abroad. Do you favor or oppose banning the sale of all assault rifles made abroad?"*

	<u>Favor</u>	<u>Oppose</u>	<u>Not Sure</u>
Total	67%	29%	4%
Gun Owners	64	33	3
NRA Members	48	52	-

*"Do you favor or oppose banning the sale of all assault rifles made in the U.S.?"*

	<u>Favor</u>	<u>Oppose</u>	<u>Not Sure</u>
Total	60%	35%	5%
Gun Owners	58	39	3
NRA Members	40	57	3

**NBC/Wall Street Journal**

*(April 16 - 18, 1989; N = 1,447 adults nationwide)*

*"Do you think the federal government should ban the sale of assault rifles in the United States, or don't you think so?"*

	<u>Yes</u>	<u>No</u>	<u>Not Sure</u>
All	74%	20%	6%
Gun Owners	66	29	5
Not Gun Owners	79	15	6



## ASSAULT WEAPONS: STATE POLLING DATA

### Arizona, Maricopa County: Arizona Republic Poll

*(March 9 - 12, 1989; N = 608 registered voters)*

*"Do you believe the sale of semi-automatic weapons capable of firing bullets in rapid succession should be banned?"*

<u>Yes</u>	<u>No</u>	<u>Don't Know</u>
69%	30%	1%

### Connecticut: University of Connecticut Poll

*(March 28 - April 5, 1989; N = 500 adults)*

*Nationwide ban on semi-automatic assault rifles...*

	<u>Favor</u>	<u>Oppose</u>
Total	71%	25%
Rifle Owners	58	36

### Florida: Mason-Dixon Poll

*(March 29 - April 1, 1989; N = 828 registered voters statewide)*

*"Should Florida ban the manufacture, sale, and possession of some semi-automatic weapons, such as the AK-47, the Colt AR-15, and the UZI?"*

<u>Yes</u>	<u>No</u>	<u>Not Sure</u>
80%	17%	3%

### Georgia: Atlanta Journal and Constitution

*(November 7, 1989; Exit poll of Georgia voters)*

*A ban on the sale of assault weapons...*

<u>Favor</u>	<u>Oppose</u>	<u>No Opinion</u>
57%	36%	7%

### Kentucky: Bluegrass State Poll

*(April, 1989; N = 817 adults statewide)*

*"Would you favor or oppose a national ban on the sale of military-style assault weapons such as the AK-47?"*

<u>Favor</u>	<u>Oppose</u>	<u>No Opinion</u>
75%	18%	7%

*"Do you feel that the National Rifle Association does or does not have too much influence in keeping stricter gun-control laws from being passed?"*

<u>Yes</u>	<u>No</u>
50%	33%

**Massachusetts: Boston Globe/WBZ-TV**

*(November 1 - 6, 1989; N = 600 registered voters)*

*"Do you support or oppose legislation that would ban assault rifles in Massachusetts?"*

<u>Support</u>	<u>Oppose</u>	<u>No Opinion</u>
78%	19%	3%

**Michigan: Inside Michigan Politics**

*(March 27-April 7, 1989; N = 800 adults)*

*Should the sale and possession in Michigan of semi-automatic assault weapons such as the AK-47 and M-16 be banned?*

<u>Strongly Favor</u>	<u>Favor Somewhat</u>	<u>Oppose Somewhat</u>	<u>Strongly Oppose</u>	<u>Don't Know/Depends</u>
66%	5%	5%	21%	4%

**Minnesota: St. Cloud State University**

*(Reported in Star Tribune, August 17, 1989; N = 801 Adults)*

*"...Would you favor or oppose federal legislation banning the manufacture, sale and possession of semi-automatic assault guns, such as the AK-47?"*

<u>Favor</u>	<u>Oppose</u>	<u>No Opinion</u>
68%	27%	5%

*"When you vote, how important is a candidate's position on gun control?"*

	<u>Very Important</u>	<u>Somewhat Important</u>	<u>Not Important</u>
Gun control supporters	33%	48%	16%
Gun control opponents	17	48	32

**Nebraska: World Herald Poll**

*(March 29 - 30, 1989; N = 605 registered voters)*

*"President Bush has placed a temporary halt on the importation of military-style semi-automatic assault weapons. Do you favor or oppose this action?"*

<u>Favor</u>	<u>Oppose</u>	<u>No Opinion</u>
77%	14%	8%

*"Would you favor or oppose a permanent ban on the sale of military-style semi-automatic assault weapons?"*

<u>Favor</u>	<u>Oppose</u>	<u>No Opinion</u>
72%	21%	7%

**Ohio: University of Cincinnati Poll**

*(February 2-10, 1989; N = 811 adults)*

*A ban on the sale of semi-automatic assault weapons...*

<u>Favor</u>	<u>Oppose</u>	<u>No Opinion</u>
77%	18%	5%

**Utah: Salt Lake Tribune**

*(September, 1989; N = 603 adults)*

*"President Bush has recently banned the import of assault weapons...Do you favor or oppose this ban on assault weapons?"*

	<u>Favor</u>	<u>Oppose</u>	<u>Undecided</u>
<u>Statewide</u>	74%	20%	6%
Republican	74%	19%	7%
Democrat	78	18	4
Independent/Other	72	23	5
Salt Lake City	82%	16%	2%
Outside Salt Lake City	77	19	4

*"It has been proposed in the U.S. Senate that a bill be passed to ban the manufacturing and sale of assault weapons in this country. Do you favor or oppose a ban on the manufacturing and sale of assault weapons in this country?"*

	<u>Favor</u>	<u>Oppose</u>	<u>Undecided</u>
<u>Statewide</u>	60%	33%	7%
Republican	62%	31%	7%
Democrat	63	32	5
Independent/Other	52	38	10
Salt Lake City	65%	24%	10%
Outside Salt Lake City	71	23	6

**Virginia: Mason-Dixon Poll**

*(January 31 - February 3, 1989; N = 831 registered voters)*

*"Would you favor or oppose requiring all citizens to have a permit in order to purchase a semi-automatic firearm in Virginia?"*

<u>Favor</u>	<u>Oppose</u>	<u>Undecided</u>
81%	17%	3%

## Appendix CC

### FLORIDA STATE STORAGE BILL

ENROLLED

41-2383-89

1                   A bill to be entitled  
2           An act relating to firearms; providing  
3           legislative findings and intent; requiring  
4           persons to keep firearms in a locked container,  
5           another reasonably secure manner, or secured  
6           with a trigger lock under certain  
7           circumstances; providing criminal penalties;  
8           amending s. 784.05, F.S.; providing enhanced  
9           penalties for culpable negligence in storing or  
10          leaving a loaded firearm within the reach or  
11          easy access of a minor; providing procedures  
12          with respect to investigations and arrests;  
13          creating s. 790.175, F.S.; requiring specified  
14          warnings when firearms are sold or transferred;  
15          providing a penalty; providing additional  
16          penalties for crimes involving firearms;  
17          prescribing a condition on sales of firearms;  
18          providing penalties; defining the term "minor"  
19          for purposes of this act; requiring elementary  
20          and secondary schools to offer courses on gun  
21          safety; providing for act to be read in pari  
22          materia with certain prior acts; providing an  
23          effective date.

24  
25 Be It Enacted by the Legislature of the State of Florida:

26  
27           Section 1. Legislative findings and intent.--

28           (1) The Legislature finds that a tragically large  
29           number of Florida children have been accidentally killed or  
30           seriously injured by negligently stored firearms, that placin  
31           firearms within the reach or easy access of children is

1 irresponsible, encourages such accidents, and should be  
 2 prohibited, and that legislative action is necessary to  
 3 protect the safety of our children.

4 (2) It is the intent of the Legislature that adult  
 5 citizens of the state retain their constitutional right to  
 6 keep and bear firearms for hunting and sporting activities  
 7 for defense of self, family, home, and business and as  
 8 collectibles. Nothing in this act shall be construed to  
 9 reduce or limit any existing right to purchase and own  
 10 firearms, or to provide authority to any state or local age  
 11 to infringe upon the privacy of any family, home, or busine  
 12 except by lawful warrant.

13 Section 2. (1) A person who stores or leaves, on a  
 14 premise under his control, a loaded firearm, as defined in  
 15 section 790.001, Florida Statutes, and who knows or reasona  
 16 should know that a minor is likely to gain access to the  
 17 firearm without the lawful permission of the minor's parent  
 18 the person having charge of the minor or without the  
 19 supervision required by law shall keep the firearm in a  
 20 securely locked box or container or in a location which a  
 21 reasonable person would believe to be secure or shall secur  
 22 it with a trigger lock, except when he is carrying the fire  
 23 on his body or within such close proximity thereto that he  
 24 retrieve and use it as easily and quickly as if he carried  
 25 on his body.

26 (2) It is a misdemeanor of the second degree,  
 27 punishable as provided in section 775.082 or section 775.08  
 28 Florida Statutes, if a person violates subsection (1) by  
 29 failing to store or leave a firearm in the required manner  
 30 as a result thereof a minor gains access to the firearm,  
 31 without the lawful permission of the minor's parent or the

1 person having charge of the minor, and possesses or exhibits  
2 it, without the supervision required by law:

- 3 (a) In a public place; or  
4 (b) In a rude, careless, angry, or threatening manne  
5 in violation of section 790.10, Florida Statutes.  
6

7 This subsection does not apply if the minor obtains the  
8 firearm as a result of an unlawful entry by any person.

9 Section 3. Section 784.05, Florida Statutes, is  
10 amended to read:

11 784.05 Culpable negligence.--

12 (1) Whoever, through culpable negligence, exposes  
13 another person to personal injury ~~commits shall-be-guilty-of~~  
14 misdemeanor of the second degree, punishable as provided in  
15 775.082 ~~or~~ s. 775.083 ~~or~~ ~~s.~~ 775.084.

16 (2) Whoever, through culpable negligence, inflicts  
17 actual personal injury on another ~~commits shall-be-guilty-of~~  
18 misdemeanor of the first degree, punishable as provided in s.  
19 775.082 ~~or~~ s. 775.083 ~~or~~ ~~s.~~ 775.084.

20 (3) Whoever violates subsection (1) by storing or  
21 leaving a loaded firearm within the reach or easy access of  
22 minor commits, if the minor obtains the firearm and uses it  
23 inflict injury or death upon himself or any other person, a  
24 felony of the third degree, punishable as provided in s.  
25 775.082, s. 775.083, or s. 775.084. However, this subsection  
26 does not apply:

27 (a) If the firearm was stored or left in a securely  
28 locked box or container or in a location which a reasonable  
29 person would have believed to be secure, or was securely  
30 locked with a trigger lock;  
31

1 (b) If the minor obtains the firearm as a result of  
2 unlawful entry by any person:

3 (c) To injuries resulting from target or sport  
4 shooting accidents or hunting accidents: or

5 (d) To members of the Armed Forces, National Guard,  
6 State Militia, or to police or other law enforcement officer  
7 with respect to firearm possession by a minor which occurs  
8 during or incidental to the performance of their official  
9 duties.

10  
11 When any minor child is accidentally shot by another family  
12 member, no arrest shall be made pursuant to this subsection  
13 prior to 7 days after the date of the shooting. With respect  
14 to any parent or guardian of any deceased minor, the  
15 investigating officers shall file all findings and evidence  
16 with the state attorney's office with respect to violations  
17 this subsection. The state attorney shall evaluate such  
18 evidence and shall take such action as he or she deems  
19 appropriate under the circumstances and may file an  
20 information against the appropriate parties.

21 Section 4. Section 790.175, Florida Statutes, is  
22 created to read:

23 790.175 Transfer or sale of firearms; required  
24 warnings; penalties.--

25 (1) Upon the retail commercial sale or retail transf  
26 of any firearm, the seller or transferor shall deliver a  
27 written warning to the purchaser or transferee, which warnin  
28 states, in block letters not less than one-fourth inch in  
29 height:

30 "IT IS UNLAWFUL, AND PUNISHABLE  
31 BY IMPRISONMENT AND FINE, FOR ANY

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ADULT TO STORE OR LEAVE A FIREARM  
IN ANY PLACE WITHIN THE REACH  
OR EASY ACCESS OF A MINOR."

(2) Any retail or wholesale store, shop, or sales outlet which sells firearms must conspicuously post at each purchase counter the following warning in block letters not less than 1 inch in height:

"IT IS UNLAWFUL TO STORE  
OR LEAVE A FIREARM IN ANY  
PLACE WITHIN THE REACH OR  
EASY ACCESS OF A MINOR."

(3) Any person or business knowingly violating a requirement to provide warning under this section commits a misdemeanor of the second degree, punishable as provided in 775.082 or s. 775.083.

Section 5. The Department of Education shall develop gun safety program for public education and shall submit the plan to the Legislature by March 1, 1990, together with proposed implementing legislation.

Section 6. If any law which is amended by this act is also amended by a law enacted at the 1989 Regular Session of the Legislature or at the special session held on June 3, 1989, all such laws shall be construed as if they had been enacted by the same session of the Legislature, and full effect should be given to each if that is possible.

Section 7. As used in this act the term "minor" means any person under the age of 16.

Section 8. This act shall take effect October 1, 198



SENATE BILL 18-B as passed by both houses--7-10/89

Senate Bill 18-B provides it shall be a misdemeanor of the second degree for any person to place a firearm in a premises under his control where the person knows or reasonably should know that a minor is likely to gain access to the firearm and the minor does gain access and possesses or exhibits the firearm in a public place or in a rude, careless, angry, or threatening manner in violation of S. 190.10, F. S. An exception is provided for a minor who obtains the firearm as a result of an unlawful entry by any person.

The bill further enhances the penalty for the crime of culpable negligence when a person stores or leaves a loaded firearm within the reach or easy access of a minor and the minor obtains the firearm and uses it to inflict injury or death upon himself or any other person. This is punishable as a third degree felony.

Exceptions are provided for firearms stored in a location or in a manner reasonably believed to be secure; for access by a child as a result of unlawful entry by any person; to injuries resulting from target or sport shooting accidents or hunting accidents; or for any occasion incidental to the performance of official armed forces or law enforcement duties.

Retail sellers of firearms are required to provide written warnings and post signs which state that it is unlawful to store or leave a firearm within the reach or easy access of a minor. Failure to provide the written warnings or post the signs shall be a second degree misdemeanor.

The Department of Education is directed to develop a gun safety program for public education by March 1, 1990.

"Minor" for purposes of this act is a person under the age of 16.

The act shall become effective October 1, 1989.

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The intent section specifies that the rights not to be infringed upon are rights under the Constitutions of either Florida or the United States.

A seven day period is provided for between shooting and arrest for situations of minor children accidentally shot by family members.

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## A BILL FOR AN ACT

RELATING TO FIREARMS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1       SECTION 1. The legislature finds that a number of tragic  
2 accidents have occurred in which children have been accidentally  
3 killed or seriously injured by negligently stored firearms.  
4 Placing or leaving firearms within the reach or easy access of  
5 children is criminally irresponsible, encourages tragic  
6 accidents, and should be prohibited. The legislature further  
7 finds that legislative action is necessary to protect the health,  
8 safety, and welfare of children. Accordingly, the purpose of  
9 this Act is to require the proper storage of firearms.

10       SECTION 2. Chapter 134, Hawaii Revised Statutes, is amended  
11 by adding a new section to be appropriately designated and to  
12 read as follows:

13       "§134-     Storage of firearms, ammunition; penalty. (a)  
14 Except as otherwise may be provided, any person who stores or  
15 leaves a firearm on premises that are within the person's control  
16 shall keep the firearm unloaded and placed in a securely locked  
17 box or container or in a location that a reasonable person would  
18 believe to be secure or shall secure the firearm with a trigger  
19 lock. All ammunition for the firearm shall be kept under lock

1 and key separately from the firearm. The person shall store all  
2 keys separately from both the firearm and ammunition.

3 (b) Any person who fails to store or leave a firearm as  
4 provided in subsection (a) and as a result thereof a minor gains  
5 access to the firearm, without the lawful permission of the  
6 minor's parent or person having charge of the minor, is guilty of  
7 a misdemeanor if the minor possesses or exhibits the firearm in a  
8 public place without the supervision required by law or in a  
9 rude, careless, angry, or threatening manner; provided that this  
10 subsection shall not apply if the minor obtains the firearm as a  
11 result of an unlawful entry by any person."

12 SECTION 3. Section 707-713, Hawaii Revised Statutes, is  
13 amended to read as follows:

14 "§707-713 Reckless endangering in the first degree. (1) A  
15 person commits the offense of reckless endangering in the first  
16 degree if [he] the person employs widely dangerous means in a  
17 manner [which] that recklessly places another person in danger of  
18 death or serious bodily injury or intentionally fires a firearm  
19 in a manner [which] that recklessly places another person in  
20 danger of death or serious bodily injury.

21 (2) A person commits the offense of reckless endangering in  
22 the first degree by storing or leaving a loaded firearm within

1 the reach or easy access of a minor, if the minor obtains the  
2 firearm and uses it to inflict injury or death upon the minor or  
3 any other person; provided that this subsection shall not apply:

4 (a) If the firearm was stored or left in a securely locked  
5 box or container or in a location that a reasonable  
6 person would have believed to be secure or was securely  
7 locked with a trigger lock;

8 (b) If the minor obtains the firearm as a result of an  
9 unlawful entry by any person;

10 (c) To injuries resulting from target or sport shooting  
11 accidents or hunting accidents; or

12 (d) To members of the armed forces, state military forces,  
13 police, or to other law enforcement officers with  
14 respect to firearm possession by a minor that occurs  
15 during or incidental to the performance of their  
16 official duties.

17 When any minor child is shot accidentally by another family  
18 member, no arrest shall be made pursuant to this subsection prior  
19 to seven days after the shooting, and all findings and evidence  
20 in any investigation of the shooting shall be filed with the  
21 attorney general. The attorney general shall evaluate the  
22 evidence and take whatever action the attorney general considers

1 appropriate under the circumstances.

2        [(2)] (3) Reckless endangering in the first degree is a  
3 class C felony."

4        SECTION 4. This Act does not affect rights and duties that  
5 matured, penalties that were incurred, and proceedings that were  
6 begun, before its effective date.

7        SECTION 5. Statutory material to be repealed is bracketed.  
8 New statutory material is underscored.

9        SECTION 6. This Act shall take effect upon its approval.

10

11

INTRODUCED BY:

V. O. O'Neil  
by request

JAN 24 1990