



THE COALITION TO STOP GUN VIOLENCE

ASSAULT WEAPONS IN AMERICA

A BRIEF HISTORY

The recent mass shooting tragedies have highlighted the destructive power of assault weapons and high-capacity ammunition magazines. Semiautomatic assault rifles are not our Founding Fathers' muskets or even our grandfather's hunting rifle. They are designed with military-grade features such as pistol grips and detachable magazines; and for the sole purpose of killing quickly and en masse.

The three hallmarks of assault weapons, derived directly from their military lineage, are semi-automatic, ability to accept high capacity detachable magazine, and the presence of one or more features that enhance control during rapid firing, including pistol grip and/or barrel shroud. Some assault weapons also include devices, like folding or collapsible stocks, that make them easier to conceal or to carry. These special features of assault weapons, which can be pistols, rifles or shotguns, make assault weapons particularly useful for committing crimes, but offer no benefit for legitimate purposes beyond military applications.¹ In fact, in 1998, the federal Bureau of Alcohol, Tobacco and Firearms (ATF) determined that rifles capable of accepting large-capacity military magazines “are attractive to certain criminals,” and that these rifles “are not generally recognized as particularly suitable for or readily adaptable to sporting purposes.”²³

The first assault weapons were fully automatic rifles intended to serve the needs of the world's armies and were produced in vast numbers for military use around the globe. Military assault weapons combined the high firepower of bigger, heavier guns, which were designed for medium-range use, with the relative ease of carrying and controlling smaller, lighter weapons, which were better suited for short-range combat.⁴ This balance was achieved by using smaller cartridges and large-capacity magazines, while retaining design features (like pistol grips, barrel shrouds or forward handgrips) necessary to control the gun during sustained, automatic fire.

The military's fully automatic assault weapons eventually entered the civilian market, typically (though not always) after being modified to prevent operation in fully automatic mode.⁵ Gun makers and dealers who

¹ In modern usage, the term “pistol” generally refers to a firearm that is designed to be held and fired with a single hand, with a short barrel and stock and a single, stationary firing chamber. Pistols differ from “revolvers,” which are also designed to be fired with one hand, in that revolvers have multiple firing chambers arranged in a rotating cylinder. A rifle is a firearm with a long stock and a long, rifled barrel, which is designed to fire cartridges containing a single bullet and is intended to be fired from the shoulder. A shotgun is a firearm with a long stock and a long, unrifled barrel, which is intended to be fired from the shoulder and uses the energy of an explosive to fire through a smooth bore a number of ball shot or a single projectile for each pull of the trigger.

² Department of Treasury (1998). “Study on the Sporting Suitability of Modified Semiautomatic Assault Rifles,” page 38.

³ Today there are new semi-automatic hunting rifles that accept detachable magazines, but we would not classify them as assault weapons because there is no pistol grip.

⁴ Lewis, J, Steele, D. (2000). *The Gun Digest Book of Assault Weapons*, 5th Ed.19

(“The Main Battle Rifle [the 7.62 mm M1 Garand] is designed to produce grazing fire out to about 600 yards...However, the modern battlefield...is filled with support weapons that obviate the need for an infantryman rifle to be effective beyond 300 yards. Instead, the soldier is expected to place ‘suppressive’ fire on the enemy in the last phase of an attack, the assault. Instead of traditional, British-style aimed fire, the emphasis is on Soviet-style spray fire. Lighter ammo [sic]...is easier to carry and easier to control in fullauto. Combine this with a lighter, easier to carry rifle, and it should be no surprise that the 5.56mm M-16 rifle [became] U.S. Army and Allied country standard.”)

⁵ As of 2019, the military weapon is select fire (full or semi-automatic) and most military applications are kept in the semi-automatic mode.



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were eager to exploit the poorly regulated American civilian gun market began to import or manufacture innumerable semiautomatic variations of these military armaments. Before long, military-style assault weapons became readily available for the asking.

1980s: CALIFORNIA BANS ASSAULT WEAPONS

The emergence during the 1980s of the lucrative crack cocaine trade, with the associated violent turf battles, created a huge demand among criminals for guns, which the American marketplace was happy to supply.^{6,7} Soon, assault weapons like the Israeli Uzi pistol and many variants of the Soviet-designed AK-47 rifle became commonplace on our streets.

Despite the carnage caused by assault weapons in the hands of criminals, the civilian sale and possession of assault weapons remained legal throughout the United States until 1989. Early that year, a man with a history of crimes and behavioral health problems used an AK-47 assault rifle to shoot at a schoolyard filled with small children, in Stockton, California, killing 5 and wounding 39 before killing himself. Within months, the California Legislature adopted the nation's first ban on the sale and possession of assault weapons.⁸

The 1989 California law banned the manufacture, sale and possession of specified models of rifles, pistols and shotguns that were recognized at the time as assault weapons. To prevent manufacturers from subverting the ban by simply changing model designations, the California law also authorized the state's Attorney General to add similar guns to the list.⁹ Most of the named guns were versions of the assault weapons used by military forces around the world, while some were copies or slightly altered variations originally intended for the civilian market.

1990s: FOLLOWING CALIFORNIA'S LEAD

Through the early 1990s, two competing trends evolved that affected the debate over assault weapons. The first trend showed many cities and a handful of states following California's lead and adopting assault weapon bans of their own. These statutes and ordinances ranged in strength and approach.

Hawaii, for example, banned only assault pistols, but applied a feature-based test rather than relying on model designations.¹⁰ In 1989, Denver, CO, adopted an ordinance that referred to features of assault weapons, but relied primarily on the identification of specific models.^{11,12} The District of Columbia imposed

⁶ Blumstein, A. (1995). "Youth Gun Violence, Guns, and the Illicit-Drug Industry," *Journal of Criminal Law and Criminology*.

⁷ Cork, D. (1999). "Examining Time-Space Interaction in City-Level Homicide Data: Crack Markets and the Diffusion of Guns Among Youth," *Journal of Quantitative Criminology*.

⁸ Roberti-Roos Assault Weapons Control Act of 1989, Ca. Penal Code § 12275 et seq

⁹ Ca. Penal Code §§ 12276(d), 12276.5. The "add-on" provision, which required the Attorney General to petition a court for approval of any proposed addition to the list, survived a constitutional challenge. *Kasler v. Lockyer*, 23 Cal.4th 472 (2000), cert. denied, 531 U.S. 1149 (2001).

¹⁰ H.R.C. §§ 134-1, 134-4.

¹¹ Denver Rev. Mun. Code § 38-130.

¹² Denver's ordinance has survived multiple legal challenges over the years: In 1994, the Colorado Supreme Court ruled the ban was Constitutional; in 2003, a new Colorado state law tried to eliminate all local gun laws, however the Colorado Supreme Court again ruled Denver's ban was constitutional.



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strict liability on manufacturers of specified assault weapons for most injuries resulting from their use.¹³ At the far end of the spectrum, New York City’s 1991 ordinance prohibited the sale or possession of, among others, any semi-automatic rifle or shotgun with any one of a list of features, including a pistol grip.¹⁴

The second trend involved the gun industry’s response to the first trend. While cities and states sought to eliminate assault weapons from their streets, gun makers began evading these new laws. Manufacturers changed the model designation of some guns, continuing to sell them under the new name with virtually no changes in design.¹⁵ Colt’s banned AR-15, for example, became the non-listed, and arguably legal, Colt Sporter.¹⁶ Some manufacturers explicitly acknowledged their intent to evade the ban in the name of the new gun. Thus, Intratec’s TEC-9 assault pistol became the virtually identical TEC-DC9, to evade the District of Columbia’s assault weapon law, which referred to the TEC-9 by name.¹⁷

The inevitable result of this patchwork of state and local regulations was that “copycat” assault weapons, functionally if not cosmetically identical to their banned siblings, became widely available. These “legal” substitutes flooded the civilian marketplace, undermining the bans and returning assault weapons to our streets.¹⁸

1994: CONGRESS STEPS IN

The growing number of local and state assault weapon bans, combined with the gun industry’s efforts to evade those laws and more mass shootings, convinced the United States Congress to adopt a federal assault weapon ban in 1994.¹⁹ The core of the federal ban relied upon the model-designation approach, banning both specific assault weapons and “copies or duplicates . . . in any caliber” of those weapons.

In addition to the model-designation test, the federal ban incorporated a features test, banning semi-automatic rifles and pistols that could accept a detachable magazine and included two or more specified features.

Taken together, the “copies and duplicates” provision and the features test were intended to end the rampant proliferation of “copycat” assault weapons. The law’s reference to “copies and duplicates” implicitly acknowledged the gun industry’s evasive maneuvering around the model-designation test, while the features test focused on the key components that make military-style assault weapons inappropriate for civilian use.

¹³ D.C. St. §§ 7-2551.01-.03. D.C. St. §§ 7-2551.01-.03.

¹⁴ N. Y. C. Admin. Code § 10-301(16).

¹⁵ Unlike California’s statute, many assault weapon bans failed to address the question of copycats directly.

¹⁶ According to assault weapon historian Duncan Long, “1990 saw the reintroduction of the AR-15 for civilian sales that was [sic] only slightly different from the previous model. This gun was no longer sold as the AR-15 Sporter II, but rather simply as the Sporter. The only outward difference between the Sporter and the AR-15 Sporter II was a missing bayonet lug.” Long, D, *The Complete AR-15/M16 Sourcebook*, page 57 (2001).

¹⁷ Olinger, D. (1999). “Following the Guns,” *Denver Post*. Intratec would play this game again a few years later, renaming TEC-DC9 as the “AB-10” in response to the 1994 federal assault weapon ban discussed below. “AB” is widely understood to stand for “after ban.”

¹⁸ Roth, JA, et al. (1997). “Impact Evaluation of the Public Safety and Recreational Firearms Use Protection Act of 1994, Final Report,” *The Urban Institute*.

¹⁹ 18 U.S.C. 921(a)(30).



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However, several major flaws in how the federal law was drafted, interpreted and implemented severely undermined its effectiveness. The biggest problem was a sweeping “grandfather clause” that allowed the continued possession and transfer of assault weapons that were legally manufactured or owned prior to September 13, 1994, the date the ban was signed into law.²⁰ With millions of assault weapons already in civilian hands, and a long lead-time during which manufacturers greatly increased production, the grandfather clause ensured continuing commerce in otherwise-banned weapons.²¹

The drafting of the federal law’s two-feature test created a comparably large loophole. Under the statute, the ability to accept a detachable magazine, which gives assault weapons their essentially unlimited ammunition capacity, did not count against the two-feature limit. At the same time, accessories like bayonet mounts or threaded barrels, which have nothing to do with enhancing control during rapid fire, did count, as did more central features like pistol grips and barrel shrouds. Under this definition, an assault weapon with both a detachable magazine and a pistol grip or barrel shroud remained legal, despite being capable of controlled, high-capacity firing. Some manufacturers evaded the ban by removing the bayonet mount or the threading on the barrel (which allows the addition of accessories like silencers), while retaining the pistol grip or barrel shroud.

Even worse, the two-feature provision in the law did not account for the ingenuity of assault weapon manufacturers in designing around the listed features. Some manufacturers replaced pistol grips with “thumbhole” stocks, which serve precisely the same function. Others replaced prohibited flash suppressors (designed to conceal the shooter’s location) with non-prohibited “muzzle brakes,” or “compensators” (designed, ironically, to reduce “muzzle climb” during rapid firing).²² A version of Colt’s Match Target copy-cat includes a compensator in place of the banned AR-15’s flash suppressor, arguably making the legal version a more effective assault weapon than its banned twin.

The interpretation and implementation of the “copies or duplicates” language by the Bureau of Alcohol, Tobacco and Firearms was another significant problem with the federal ban. In a 2002 document providing answers to frequently asked questions, ATF never mentioned “copies or duplicates,”²³ and ATF regulations did not define the term.²⁴ Instead, ATF treated the federal statute as covering only the specifically named assault weapons and the assault weapons defined by the feature-based test.²⁵ In ATF’s view, “copies or duplicates” did not include any assault weapons that differ from their named siblings in any way, even if the differences were only cosmetic. In effect, this interpretation excised the “copies or duplicates” provision from the statute, giving manufacturers wide latitude to evade the spirit of the law by making cosmetic modifications while preserving the functional elements of an assault weapon. Taking advantage of this loophole, Colt again slightly altered the “Sporter,” itself a ban-evading variation of the AR-15, by removing

²⁰ 18 U.S.C. 921(a)(30).

²¹ Roth, JA, et al., “Impact Evaluation of the Public Safety and Recreational Firearms Use Protection Act of 1994, Final Report,” The Urban Institute, March, 1997.

²² As discussed more fully below, some devices are capable of performing both functions

²³ Bureau of Alcohol, Tobacco and Firearms FAQs, revised 12/27/02, question O2, accessed on June 24, 2003, at <http://www.atf.treas.gov/firearms/faq/faq2.htm#o>.

²⁴ See 27 C.F.R. 178.

²⁵ ATF rarely enforced the ban except for the guns specifically named in the law.



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the flash suppressor (which is not a central feature of an assault weapon) and renaming the gun the Colt “Match Target.” The Colt Match Target, which is functionally nearly identical to the AR-15, and many other copy-cat assault weapons remain on the market today.

1999: CALIFORNIA RAISES THE BAR, AGAIN

Recognizing that the federal model-designation test was inadequate and that the two feature test was only a marginal improvement, California expanded its assault weapon ban in 1999.²⁶ The new law incorporated a one-feature test, banning pistols and rifles with a detachable magazine and any single listed feature. In addition, the new law encompassed the industry’s innovative alternatives, like the thumbhole stock and muzzle compensators, that are not on the federal list.²⁷ This new formulation focuses much more narrowly on the essential features of assault weapons. Thus, the new law effectively bans virtually every firearm possessing the four key components of an assault weapon: high ammunition capacity and enhanced control during rapid firing.

2004: A DEADLY SUNSET

The federal assault weapon ban, limited though it was, sunset on September 13, 2004.²⁸ Ahead of the expiration, Senator Dianne Feinstein introduced the Assault Weapons Ban Reauthorization Act of 2003, to repeal the sunset provision before the ban expired, however the bill never made it out of committee.

2000s: AFTERMATH OF THE EXPIRATION

Following the assault weapon ban expiration, Senator Frank Lautenberg and Representative Carolyn McCarthy introduced the Assault Weapons Ban and Law Enforcement Protection Act, and Senator Feinstein introduced, the Assault Weapons Ban Reauthorization Act of 2005. The legislation aimed to renew and strengthen the 1994 ban to effectively prevent the gun industry from circumventing Congressional intent by continuing to manufacture and market deadly assault weapons. However, these bills, too, never left committee. Senator Feinstein and Representative McCarthy continued to introduce an assault weapons ban through 2013.

2013: ASSAULT WEAPON BAN FAILS IN THE SENATE

After the Sandy Hook Tragedy, Senator Feinstein introduced the Assault Weapons Ban of 2013, updated to include a one feature test (rather than two-feature test included in the 1994 law). On April 17, 2013, the Senate voted against the bill in a vote 40-60.

Despite the 2013 bill’s failure to pass, Members of the House and Senate have tenaciously continued to introduce Assault Weapons Ban legislation each session.

²⁶ Ca. Penal Code § 12276.1

²⁷ The law also encompasses some firearms, such as short-barreled rifles and rifles or pistols with high capacity fixed magazines. Ca. Penal Code §§ 12276.1(a)(2), (3), (5)

²⁸ Pub. L. 103-322, § 110105 (1994). The sunset provision appears only in the bill; it does not appear in the United States Code.



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2019: IMPLICATIONS OF THE ASSAULT WEAPON BAN EXPIRATION

The federal sunset provision has had grave implications nationwide. Manufacturers once again now legally produce military assault weapons in any configuration, regardless of their deadly features. The five deadliest shootings in American history occurred in the last 15 years after the Federal Assault Weapons Ban expired, and all five of these shootings included assault weapons.²⁹ A recent academic study published in the *Journal of Trauma and Acute Care Surgery* found that mass-shooting fatalities were 70% less likely to occur during the ten years of the federal assault weapons ban.³⁰ The open borders between states has invited gun traffickers to evade the law in one state by importing assault weapons from other states. Assault weapons that were once unavailable have become readily accessible in the 43 states that have not yet banned them. California's more effective ban lost much of its power as a robust supply of newly manufactured assault weapons became available in other states, as seen most recently in the Gilroy, California mass shooting.

2019: A NEW GUN SAFETY CONGRESS

After a decade of Congressional inaction, in February this year, the House Judiciary Committee held a hearing on gun violence in America. During the hearing, witnesses, such as Doctor Joseph Sakran highlighted the unique lethality of assault weapons and the importance of an Assault Weapons Ban.

A strong federal assault weapon ban is the most effective way to eliminate assault weapons from our communities. Representative Cicilline's Assault Weapons Ban of 2019 would go far in realizing the original intent of the 1994 law by ensuring that military-style assault weapons are banned from the civilian marketplace. After bearing witness to the recent mass shooting tragedies in Dayton, Ohio; El Paso, Texas; Gilroy, California; Pittsburgh, Pennsylvania; Parkland, Florida; and Las Vegas, Nevada; the American people are showing increased support for meaningful reforms to reduce gun violence. Congress has the opportunity listen to its constituents and reinstate and improve the 1994 assault weapons ban and make our country safer.

²⁹ CNN. (2019). "Mass Shootings in the US Fast Facts." <https://www.cnn.com/2019/08/19/us/mass-shootings-fast-facts/index.html>

³⁰ DiMaggio, C., Avraham, J., Berry, C., Bukur, M., Feldman, J., Klein, M., ... & Frangos, S. (2019). Changes in US mass shooting deaths associated with the 1994–2004 federal assault weapons ban: Analysis of open-source data. *Journal of trauma and acute care surgery*.