Legal Community Against Violence
expertise, information & advocacy to end gun violence

LCAV Model Law

PROHIBITING THE POSSESSION OF LARGE CAPACITY AMMUNITION MAGAZINES (LOCAL GOVERNMENTS IN CALIFORNIA)

May 2009

About LCAV and Our Model Laws

Legal Community Against Violence (LCAV) is a national public interest law center dedicated to preventing gun violence. As the first and only lawyers' organization in the gun violence prevention movement, LCAV focuses on policy reform at the state and local levels, marshaling the expertise and resources of the legal community in support of gun violence prevention.

LCAV serves governmental and nonprofit organizations nationwide. Our services include legal and technical assistance in the form of legal research and analysis, development of regulatory strategies, legislative drafting, and in certain circumstances, calling upon our network of attorney members to help secure *pro bono* litigation assistance. We also engage in educational outreach and advocacy, producing reports, analyses and model laws. Our website, www.lcav.org, is the most comprehensive resource on U.S. firearm laws in either print or electronic form.

Model laws provide a starting point: a framework from which state or local legislation can be drafted, reviewed, debated, and ultimately adopted. California jurisdictions using this model must integrate it with existing ordinances as appropriate.

This report and model law do not offer, and are not intended to constitute, legal advice.

Executive Summary

Legal Community Against Violence (LCAV) has developed a model ordinance for use by California jurisdictions seeking to prohibit the possession of large capacity ammunition magazines.

The ability of an automatic or semi-automatic firearm to fire multiple bullets without reloading is directly related to the capacity of the firearm's feeding device or "magazine."[1] Inside the magazine, a spring forces the cartridges into position to be fed into the chamber by operation of the firearm's action. Although the statutory definitions vary, magazines with a capacity of more than 10 rounds of ammunition are generally considered to be "large capacity" magazines. In some cases, large capacity magazines can hold up to 100 rounds of ammunition. Other types of firearms, in contrast, are generally capable of holding far less ammunition. For example, revolvers typically hold six rounds of ammunition in a rotating cylinder. Although detachable large capacity magazines are typically associated with machine guns or semi-automatic assault

[1] References for the facts identified in the Executive Summary can be found in the "Findings" portion of the model law below.

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weapons, such devices are available for any semiautomatic firearm that accepts a detachable magazine, including semi-automatic handguns.

Because of their ability to hold so many rounds of ammunition, large capacity magazines significantly increase the lethality of the automatic and semi-automatic firearms using them. Large capacity magazine bans, therefore, reduce the capacity, and thus the potential lethality, of any firearm that can accept a large capacity ammunition magazine. In 1994, in recognition of the dangers posed by these devices, Congress adopted a law prohibiting the transfer and possession of large capacity magazines as part of the federal assault weapon ban. That law was filled with loopholes, however. In addition, the federal law was enacted with a sunset clause, providing for its expiration after ten years. Despite overwhelming public support for the law, Congress allowed the federal ban to expire on September 13, 2004.

Since January 1, 2000, California law has, with limited exceptions, prohibited any person from manufacturing, importing into the state, keeping for sale, offering or exposing for sale, giving, or lending any large capacity magazine. California does not ban the *possession* of large capacity magazines, however.

The States of Hawaii, Massachusetts, New York, and New Jersey, and the City of Richmond, California are among the jurisdictions that currently prohibit the possession of large capacity magazines.

This model law prohibits the possession of large capacity ammunition magazines and is designed specifically for use by local governments in California. LCAV is available to provide additional legal research, analysis, and drafting assistance to those seeking to enact this or other laws to reduce gun violence. Please see www.lcav.org for more information about our services, and contact us at 415-433-2062 if we can be of assistance.

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Text of Model Law

CHAPTER 1 BANNING THE POSSESSION OF LARGE CAPACITY MAGAZINES

Sec. 1 Findings
Sec. 2 Definition
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Sec. 4 Exemptions
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Sec. 1 Findings

[Findings regarding the need for and benefits of this law should be included. Findings in support of a law are most effective when they are specific and localized. When possible, local data from law enforcement, the public health community, and the media should be added. General findings are provided below.]

Whereas, in 2005, 3,434 people died from firearm-related injuries in California, and 4,553 other people were hospitalized for non-fatal gunshot wounds;[2]

Whereas, the ability of an automatic or semi-automatic firearm to fire multiple bullets without reloading is directly related to the capacity of the firearm's feeding device or "magazine." Inside the magazine, a spring forces the cartridges into position to be fed into the chamber by operation of the firearm's action,

Whereas, magazines with a capacity of more than 10 rounds of ammunition are generally considered to be "large capacity" magazines, although the statutory definitions vary. In some cases, large capacity magazines can hold up to 100 rounds of ammunition. Other types of firearms, in contrast, are generally capable of holding far less ammunition; for example, revolvers typically hold six rounds of ammunition in a rotating cylinder,

Whereas, although detachable large capacity magazines are typically associated with machine guns or semi-automatic assault weapons, such devices are available for any semiautomatic firearm that accepts a detachable magazine, including semi-automatic handguns,

Whereas, the ability of large capacity magazines to hold numerous rounds of ammunition significantly increases the lethality of the automatic and semi-automatic firearms using them,

Whereas, large capacity magazine bans reduce the capacity, and thus the potential lethality, of any firearm that can accept a large capacity magazine,

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[2] California Department of Health Services, Epidemiology and Prevention for Injury Control Branch (EPIC), *Firearm Injuries in California* (2008).

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Whereas, in 1994, in recognition of the dangers posed by these devices, Congress adopted a law prohibiting the transfer and possession of large capacity magazines as part of the federal assault weapon ban. That law was filled with loopholes, however,[3]

Whereas, the federal law was enacted with a sunset clause, providing for its expiration after ten years. Despite overwhelming public support for the law, Congress allowed the federal ban to expire on September 13, 2004,[4]

Whereas, a researcher hired by the U.S. Department of Justice to analyze the effect of the 1994 federal ban on assault weapons (AWs) and large capacity magazines (LCMs) found that, "attacks with semiautomatics including AWs and other semiautomatics equipped with LCMs result in more shots fired, more persons hit, and more wounds inflicted per victim than do attacks with other firearms,"[5]

Whereas, since January 1, 2000, California Penal Code § 12020(a)(2), (b) has, with limited exceptions, prohibited the manufacture, importation into the state, keeping for sale, offering or exposing for sale, giving, or lending of large capacity magazines. California law does not, however, prohibit the possession of these magazines,[6] and this gap in the law threatens public safety,

Whereas, the States of Hawaii, Massachusetts, New York, and New Jersey, and the City of Richmond, California are among the jurisdictions that currently prohibit the possession of large capacity magazines,

Therefore, the [jurisdiction/governing body] hereby adopts the following:

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[3] Violent Crime Control and Law Enforcement Act of 1994, P.L. 103-322, codified at: 18 U.S.C. §§ 921(a)(31), 922(w)(1), (2).Because the federal law only applied to large capacity ammunition magazines manufactured after the law's effective date, possession and transfer of magazines manufactured prior to that date were still legal. Manufacturers took advantage of this loophole by boosting production of these devices in the months leading up to the ban, creating a legal stockpile of these weapons. This loophole also made enforcement difficult, as most magazines do not have any identifying marks to distinguish those that were manufactured before or after the effective date of the ban. Importation of Ammunition Feeding Devices with a Capacity of More Than 10 Rounds, 61 Fed. Reg. 39, 320 (July 29, 1996) (amending 27 C.F.R. § 178.119). As a result, these devices continued to be readily available nationwide, except where specifically banned by state or local law.

[4] For more information about the federal law, please see Legal Community Against Violence, *Regulating Guns in America: An Evaluation and Comparative Analysis of Federal, State and Selected Local Gun Laws* 28-29 (February 2008), available at: http://www.lcav.org/library/reports_analyses/RegGuns.Classes.of.Weapons.pdf.

[5] Christopher S. Koper, *An Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets and Gun Violence, 1994-2003*, Report to the National Institute of Justice, United States Department of Justice 3 (June 2004).

[6] Penal Code § 12020(a)(2), (b). A "large capacity magazine" is defined as any ammunition feeding device with the capacity to accept more than ten rounds, but does not include any .22 caliber tube ammunition feeding device, any feeding device that has been permanently altered so that it cannot accommodate more than ten rounds, or any tubular magazine that is contained in a lever-action firearm. Penal Code § 12020(c)(25). California law contains certain exceptions. *See* Cal. Penal Code § 12020; Cal. Code Regs. tit. 11, §§ 5480 – 5484.

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Sec. 2 Definition

"Large capacity magazine" means any ammunition feeding device with the capacity to accept more than 10 rounds, but shall not be construed to include any of the following:

a) A feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds;

b) A .22 caliber tube ammunition feeding device; or

c) A tubular magazine that is contained in a lever-action firearm.[7]

Sec. 3 Prohibition on possession of large capacity magazines

(a) No person, corporation, or other entity in the City/County* may possess a large capacity magazine.

(b) Any person who, prior to the effective date of this chapter, was legally in possession of a large capacity magazine shall have 90 days from such effective date to do either of the following without being subject to prosecution:

(1) Remove the large capacity magazine from the City/County; or

(2) Surrender the large capacity magazine to the Police/Sheriff's Department for destruction.

Sec. 4 Exceptions

Section 3 shall not apply to the following:

(a) Any government officer, agent, or employee, member of the armed forces of the United States, or peace officer, to the extent that such person is otherwise authorized to possess a large capacity magazine, and does so while acting within the scope of his or her duties;

(b) A person licensed pursuant to Penal Code § 12071;

(c) A gunsmith for the purposes of maintenance, repair or modification of the large capacity magazine;

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[7] This definition is identical to the definition in the state law. Penal Code § 12020(c)(25). The expired federal law defined "large capacity ammunition feeding device" as "(1) a magazine, belt, drum, feed strip, or similar device manufactured after the date of the enactment of the Violent Crime Control and Law Enforcement Act of 1994 that has the capacity of, or can be readily restored or converted to accept, more than 10 rounds of ammunition; but (2) does not include an attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition." Violent Crime Control and Law Enforcement Act of 1994, P.L. 103-322, codified at: 18 U.S.C. §§ 921(a)(31), 922(w)(1), (2).

* Where the words "Chief of Police/Sheriff," "City/County" or similar variations appear, simply select the appropriate designation for your jurisdiction.

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(d) Any entity that operates an armored vehicle business pursuant to the laws of the state, and an authorized employee of such entity, while in the course and scope of his or her employment for purposes that pertain to the entity's armored vehicle business;

(e) Any person, corporation or other entity that manufactures the large capacity magazine for a person mentioned in subsection (a) or for export pursuant to applicable federal regulations;

(f) Any person using the large capacity magazine solely as a prop for a motion picture, television, or video production;

(g) Any holder of a special weapons permit issued pursuant to Penal Code § 12095, 12230, 12250, 12286, 12305, for any of the following purposes:

(1) For use solely as a prop for a motion picture, television, or video production;

(2) For export pursuant to federal regulations; or

(3) For resale to law enforcement agencies, government agencies, or the military, pursuant to applicable federal regulations;

(h) Any person issued a permit pursuant to Penal Code § 12079 by the California Department of Justice upon a showing of good cause for the possession, transportation, or sale of large capacity magazines between a person licensed pursuant to Penal Code § 12071 and an out-of-state client, when those activities are in accordance with the terms and conditions of that permit;[8]

(i) Any federal, state or local historical society, museum, or institutional collection which is open to the public, provided that the large capacity magazine is properly housed, secured from unauthorized handling, and unloaded;

(j) Any person who finds the large capacity magazine, if the person is not prohibited from possessing firearms or ammunition pursuant to federal or state law, and the person possesses the large capacity magazine no longer than is necessary to deliver or transport the same to a law enforcement agency for that agency's disposition according to law; or

(k) A forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her authorized activities.[9]

Sec. 5 Penalty

Any person violating this chapter is guilty of a misdemeanor.

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[8] Penal Code § 12079 allows the Department of Justice (DOJ) to issue a permit for the possession, transportation, or sale between a state-licensed firearm dealer and an out-of-state client, upon a showing of good cause. This model law exempts persons granted this permit from its provisions, in deference to the DOJ's determination of good cause.

[9] This list of exceptions is based on state law. *See* Cal. Penal Code § 12020; Cal. Code Regs. tit. 11, §§ 5480 – 5484.

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Sec. 6 Severability

If any section, subsection, sentence or clause of this Chapter is for any reason declared unconstitutional or invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity or the enforceability of the remaining portions of this chapter or any part thereof. The City Council/County Board of Supervisors hereby declares that it would have adopted this chapter notwithstanding the unconstitutionality, invalidity or unenforceability of any one or more of its sections, subsections, sentences or clauses.

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