

CALIFORNIA FIREARMS LAW ADVISORY/WARNING

“ASSAULT WEAPON MODIFICATIONS”

I. INTRODUCTION

Some California firearm owners are subjecting themselves to possible criminal prosecution by leaving a “tool” (similar to the “AR Mag Magnet” or “Wonder Wrench”) *within or attached to* a device (such as a “bullet button”) that prevents a magazine from being “removed readily from the firearm.” (11 CCR §5469, California Attorney General Assault Weapons Identification Guide 3rd Edition Nov. 2001, pg 80).

While it can be argued that this practice is legal, it is at best a gray area of the law. Police are frankly not likely to accept that position and are likely to make an arrest and let prosecutors decide how to proceed. As a practical matter, prosecutors and the criminal court judges will likely be hard to sway.

This advisory should serve to warn gun owners of the dangers of engaging in this practice, and provide ways to minimize potential legal liability.

II. BACKGROUND

Certain firearms are regulated as “assault weapons” under California law. There are several definitions of “assault weapon” in the California statutes and regulations, and a firearm can be deemed an “assault weapon” under any of these definitions.¹

¹ The Department of Justice has, for the purposes of determining whether a firearm is an “assault weapon,” created an “Assault Weapon Identification Guide” which classifies “assault weapons” into three categories. These are: Category 1 – Penal Code section 12276 subdivisions (a), (b), (c); Category 2 – Penal Code section 12276 subdivisions (e) and (f) (Repealed 2006); and Category 3 – Penal Code section 12276.1 (SB23 - Generic Characteristics “assault weapons”).

The California legislature passed legislation deeming certain firearms to be “assault weapons” twice. The first was the Roberti-Roos Assault Weapons Control Act of 1989 (Stats. 1989, ch. 19, § 3, p. 64; hereafter AWCA), where the Legislature imposed restrictions on a class of semiautomatic firearms it characterized as “assault weapons.” (Pen. Code, § 12275 et seq.; *Kasler v. Lockyer*, 23 Cal. 4th 472, 477 (Cal. 2000).) The firearms which were required to be registered under the 1989 law are commonly known as “Category 1” firearms.

On August 16, 2000, based on the decision of *Kasler v. Lockyer*, (23 Cal. 4th 472 (Cal. 2000)), which was decided on June 29 that year, the list of prohibited firearms was supplemented by DOJ regulation to include certain additional firearms, mostly ones based on the same design as the Colt AR-15 and the AK-47. These firearm have been classified as “Category 2” firearms.

On January 1, 2000, the AWCA was amended to define “assault weapons” “in section 12276.1, subdivision (a) in terms of generic characteristics, for example, a 'semiautomatic, centerfire rifle that has the capacity to accept a detachable magazine' and also has a 'pistol grip that protrudes conspicuously beneath the action of the weapon.' ([Pen. Code, § 12276.1(a)(1)(A), Stats. 1999, ch. 129, § 7.])” (*Harrott v. County of Kings*, 25 Cal. 4th 1138, 1141-1142 (Cal. 2001).) These firearms are known as “Category 3” firearms.

One legal definition of “assault weapon” is contained in Penal Code section 12276.1, a.k.a “Category 3” “assault weapon” firearms . Under §12276.1, a rifle is considered an “assault weapon” if the firearm has three prerequisite attributes, and then also has any one of a list of features.

Those three prerequisite attributes are that the rifle must be 1) semi-automatic, 2) centerfire, and 3) have the “capacity to accept a detachable magazine.” If a firearm has these attributes, and then also has any one of the below listed features, it is considered an “assault weapon” under California law:

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

Cal Pen 12276.1(a)(1)(A-F)

III. ANALYSIS

There has been a great deal of controversy and conflict with the California Department of Justice Firearms Bureau, as well as with local law enforcement agencies, about what constitutes an “assault weapon.” Lately the controversy has centered on what modifications, particularly with respect to the magazine, can be made to a rifle without turning it into an “assault weapon;” as well as what modifications can be made so that a firearm would *not* be considered an “assault weapon” any longer.

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

The California Department of Justice regulations define a “detachable” magazine as “an ammunition feeding device that can be removed readily from the firearm with neither disassembly of the firearm action nor use of a tool being required. A bullet or ammunition cartridge is considered a tool. “Ammunition feeding device” includes any belted or linked ammunition, but does not include clips, en bloc clips, or stripper clips that load cartridges into the magazine.” (11 CCR 5469, see also California Attorney General Assault Weapons Identification Guide 3rd Edition Nov. 2001, pg 80).²

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

A. The “Bullet Button” Device

In order to eliminate this “detachable magazine” attribute, individuals have typically retrofitted their rifles with an aftermarket product commonly called a “bullet button.” The “bullet button” replaces the firearm’s original magazine release button. The original magazine release can typically be operated with the push of a finger, so no “tool” is required to release the magazine.

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



Bullet Button Ar-15 Mag lock



AK Raddlock (AK Series)

recessed within the outer button and is too small and recessed to be pushed by a finger, a tool is required to depress the inner button to actuate the spring for magazine removal. The most common “tool” used to depress the bullet button and remove the magazine is a bullet tip, hence the term “bullet button.”

B. Magnetic “Tools,” “AR Mag Magnet” & “Wonder Wrenches”

In some instances, other items have been used instead of a bullet tip to depress the inner button, and this is where potential liability lies. An increasingly used practice is to use a replacement or extension button (a “Wonder Wrench”), or magnetic device (a “AR Mag Magnet”), instead of a bullet tip to depress the inner button. These buttons and magnets are typically narrow enough to depress the inner button and release the magazine. Also, in the case of magnets, the “tool” now can stay magnetically attached to the inner metal button, even during and after firing of firearm. In essence, this device extends the magazine release button so it can be operated by the push of a finger while attached.



The Wonder Wrench



The Wonder Wrench installed

But when the owner leaves the “tool” within the “bullet button” device or attached to the firearm, the operator can then use the “bullet button” and “tool” exactly as he or she would use the standard magazine release mechanism that came originally equipped to the firearm.

Recently, an individual was prosecuted for a violation of California Penal Code section 12280(b), possession of an “assault weapon” because he possessed a rifle that was: semi-automatic; centerfire; with an attached “bullet button” and magnet (the magnet was placed within the “bullet button”); a pistol grip; and collapsible stock. The magnet had allegedly been left within the “bullet button” when the firearm was seized by law enforcement. It was California Department of Justice’s opinion that as configured the rifle still had the “capacity to accept a detachable magazine.” Consequently, the rifle was considered an illegal “Category 3” firearm being semi-automatic, centerfire, with the capacity to accept a detachable magazine, a pistol grip, and collapsible stock. Fortunately, a charge for manufacturing an “assault weapon” (a straight felony) was not filed. But a creative prosecutor could have with possible success.

IV. CONCLUSION

Our office strongly cautions against the practice of leaving the “tool” within or attached to the magazine releasing device (i.e., the bullet button), or even just attached to the rifle. Doing so, either temporarily or permanently, will likely subject the individual to felony criminal prosecution for possessing an “assault weapon” and potentially even for manufacturing an “assault weapon.”

Although an argument can be made that despite leaving the “tool” on the firearm, the firearm still requires the “tool” to release the magazine, we do not need or want to test this argument in a criminal court, and neither should you. The time and considerable legal expense in making that argument as a defense to a criminal charge can be avoided by simply never leaving the tool attached to the firearm for longer than is necessary to use it to remove the magazine.

Other more significant challenges to California’s “assault weapon” statutes are pending, and challenges to “assault weapon” laws in other parts of the country are ongoing and active.

After the tool is used to release a magazine, the tool should be removed from the firearm. DO NOT ever leave the tool attached to the firearm. Leaving the tool attached to the firearm may result in felony criminal prosecution.