

July 20, 2016

ENFORCEMENT NOTICE

PROHIBITED ASSAULT WEAPONS

The Office of the Attorney General (AGO) is issuing this Enforcement Notice to provide a framework to gun sellers and others for understanding the definition of “Assault weapon” contained in G.L. c. 140, § 121 (“Section 121”). In particular, this notice provides guidance on the identification of weapons that are “copies” or “duplicates” of the enumerated Assault weapons that are banned under Massachusetts law.

This guidance will be applied to future transfers of “Assault weapons,” as that term is defined in Section 121. This may include, without limitation, the AGO’s enforcement of criminal laws such as G.L. c. 140, §§ 128 and 131M, and civil laws such as G.L. c. 93A.

Background:

The sale, transfer, or possession of an “Assault weapon,” as defined in Section 121, is unlawful pursuant to G.L. c. 140, §§ 128 and 131M.

“Assault weapon” is defined as a:

semiautomatic assault weapon as defined in the federal Public Safety and Recreational Firearms Use Protection Act, 18 U.S.C. section 921(a)(30) as appearing in such section on September 13, 1994, and shall include, but not be limited to, any of the weapons, **or copies or duplicates of the weapons** [emphasis added], of any caliber, known as:¹

- (i) Avtomat Kalashnikov (AK) (all models);
- (ii) Action Arms Israeli Military Industries UZI and Galil;
- (iii) Beretta Ar70 (SC-70);
- (iv) Colt AR-15;
- (v) Fabrique National FN/FAL, FN/LAR and FNC;
- (vi) SWD M-10, M-11, M-11/9 and M-12;
- (vii) Steyr AUG;
- (viii) INTRATEC TEC-9, TEC-DC9 and TEC-22; and
- (ix) revolving cylinder shotguns, such as, or similar to, the Street Sweeper and Striker 12;

provided, however, that the term assault weapon shall not include:

- (i) any of the weapons, or replicas or duplicates of such weapons, specified in appendix A to 18 U.S.C. section 922 as appearing in such appendix on

¹The enumerated weapons are slightly renumbered here for clarity in light of a redundant numbering scheme in the text of the statute.

September 13, 1994, as such weapons were manufactured on October 1, 1993;

- (ii) any weapon that is operated by manual bolt, pump, lever or slide action;
- (iii) any weapon that has been rendered permanently inoperable or otherwise rendered permanently unable to be designated a semiautomatic assault weapon;
- (iv) any weapon that was manufactured prior to the year 1899;
- (v) any weapon that is an antique or relic, theatrical prop or other weapon that is not capable of firing a projectile and which is not intended for use as a functional weapon and cannot be readily modified through a combination of available parts into an operable assault weapon;
- (vi) any semiautomatic rifle that cannot accept a detachable magazine that holds more than five rounds of ammunition; or
- (vii) any semiautomatic shotgun that cannot hold more than five rounds of ammunition in a fixed or detachable magazine.

Section 121 incorporates by reference the definition of “semiautomatic assault weapon” in the former federal assault weapons ban. This establishes that in Massachusetts weapons with the following characteristics are also within the definition of Assault weapon:²

18 U.S.C. section 921(a) (30) as appearing in such section on September 13, 1994:

(B) a semiautomatic rifle that has an ability to accept a detachable magazine and has at least 2 of—

- (i) a folding or telescoping stock;
- (ii) a pistol grip that protrudes conspicuously beneath the action of the weapon;
- (iii) a bayonet mount;
- (iv) a flash suppressor or threaded barrel designed to accommodate a flash suppressor; and
- (v) a grenade launcher;

(C) a semiautomatic pistol that has an ability to accept a detachable magazine and has at least 2 of—

- (i) an ammunition magazine that attaches to the pistol outside of the pistol grip;
- (ii) a threaded barrel capable of accepting a barrel extender, flash suppressor, forward handgrip, or silencer;
- (iii) a shroud that is attached to, or partially or completely encircles, the barrel and that permits the shooter to hold the firearm with the nontrigger hand without being burned;

²The former federal assault weapons ban also included the enumerated weapons described in the Commonwealth’s definition of “Assault weapons” together with “copies or duplicates of such weapons.”

- (iv) a manufactured weight of 50 ounces or more when the pistol is unloaded; and
- (v) a semiautomatic version of an automatic firearm; and

(D) a semiautomatic shotgun that has at least 2 of—

- (i) a folding or telescoping stock;
- (ii) a pistol grip that protrudes conspicuously beneath the action of the weapon;
- (iii) a fixed magazine capacity in excess of 5 rounds; and
- (iv) an ability to accept a detachable magazine.

Summary:

Under the Commonwealth’s statutory definition, the following are “Assault weapons”:

- 1) Weapons on the list enumerated in G.L. c. 140, § 121, such as the Colt AR-15 (“Enumerated Weapons”);
- 2) “Copies” or “Duplicates” of the Enumerated Weapons (“Copies or Duplicates”); and
- 3) Weapons with certain features as identified in former 18 U.S.C. § 921(a) (30) (“Features Test”).

The AGO is issuing this enforcement notice to explain: (i) what it will deem to be “Copies or Duplicates” of the Enumerated Weapons in Section 121, and (ii) the distinction between Assault weapons that are “Copies or Duplicates” of Enumerated Weapons and Assault weapons that are defined by the Features Test above.

Guidance:

A weapon is a Copy or Duplicate and is therefore a prohibited Assault weapon if it meets one or both of the following tests and is 1) a semiautomatic rifle or handgun that was manufactured or subsequently configured with an ability to accept a detachable magazine, or 2) a semiautomatic shotgun.³

1. *Similarity Test:* A weapon is a Copy or Duplicate if its internal functional components are substantially similar in construction and configuration to those of an Enumerated Weapon. Under this test, a weapon is a Copy or Duplicate, for example, if the operating system and firing mechanism of the weapon are based on or otherwise substantially similar to one of the Enumerated Weapons.

³ A weapon is not a Copy or Duplicate under this Guidance if it meets one or more of the exceptions ((i)-(vii)) contained in the statutory definition of Assault weapon in Section 121.

2. *Interchangeability Test:* A weapon is a Copy or Duplicate if it has a receiver that is the same as or interchangeable with the receiver of an Enumerated Weapon. A receiver will be treated as the same as or interchangeable with the receiver on an Enumerated Weapon if it includes or accepts two or more operating components that are the same as or interchangeable with those of an Enumerated Weapon. Such operating components may include, but are not limited to: 1) the trigger assembly; 2) the bolt carrier or bolt carrier group; 3) the charging handle; 4) the extractor or extractor assembly; or 5) the magazine port.

If a weapon meets one of the above tests, it is a Copy or Duplicate (and therefore a prohibited Assault weapon), even if it is marketed as “state compliant” or “Massachusetts compliant.”

The fact that a weapon is or has been marketed by the manufacturer on the basis that it is the same as or substantially similar to one or more Enumerated Weapons will be relevant to identifying whether the weapon is a Copy or Duplicate (and therefore a prohibited Assault weapon) under the applicable test(s).

Under Section 121, the Features Test in the former 18 U.S.C. section 921(a)(30) remains an independent basis for qualification as an Assault weapon.

If a weapon, as manufactured or originally assembled, is a Copy or Duplicate under one or both of the applicable tests, it remains a prohibited Assault weapon even if it is altered by the seller. Therefore, a Copy or Duplicate will be treated as an Assault weapon even if it is altered, for example, by pinning the folding or telescoping stock in a fixed position, by removing the pistol grip, by removing a bayonet mount or flash suppressor, or by preventing the weapon from accepting a detachable magazine.

Purely cosmetic similarities to an Enumerated Weapon, such as finish, appearance, or shape of the stock, or appearance or shape of the rail, will not be treated as relevant to a determination of whether a weapon is a Copy or Duplicate.

The following are examples of weapons that are not copies or duplicates of enumerated weapons under G.L. c. 140 §121: any .17 or .22 caliber rimfire rifle; any Ruger Mini 14 or substantially similar model weapon; Beretta Cx4 Storm; FN PS90 or substantially similar model weapon; IWI Tavor or substantially similar model weapon; Kel-Tec Sub-2000; Kel-Tec RFB; and Springfield Armory M1A or substantially similar model weapon.

In addition, as explained above, a weapon can still be prohibited under the Features Test incorporated in Section 121 even if the weapon is not prohibited as a copy or duplicate of an enumerated weapon.

Application of this Enforcement Notice (dealers licensed under G.L. c. 140, § 122):

The Guidance will not be applied to future possession, ownership or transfer of Assault weapons by dealers, provided that the dealer has written evidence that the weapons were transferred to the dealer in the Commonwealth prior to July 20, 2016, and provided further that a transfer made

after July 20, 2016, if any, is made to persons or businesses in states where such weapons are legal.

Application of this Enforcement Notice (individual gun owners):

The Guidance will not be applied to possession, ownership or transfer of an Assault weapon obtained prior to July 20, 2016.

The AGO reserves the right to alter or amend this guidance.