

ASSAULT FIREARMS

Guidelines Regarding the "Substantially Identical" Provision in the State's Assault Firearms Laws

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TO: Director Terrence P. Farley, Division of Criminal Justice
All County Prosecutors
All Law Enforcement Chief Executives

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SUBJECT: Guidelines Regarding the "Substantially Identical" Provision in the State's Assault Firearms Laws

I. Introduction

In recent weeks there has been a question about the meaning of the term "substantially identical" in New Jersey's assault firearms law. The Legislature addressed this question in the provisions of the Code of Criminal Justice, and despite the clarity of the law, it is appropriate for the Attorney General to provide guidance to the prosecutors in order to ensure that the law is administered uniformly and effectively throughout the State. N.J.S.A. 52:17B-98. I am directing the prosecutors, as chief law enforcement officers of their respective counties, to share this guidance with local police departments, who in turn should provide copies of this memorandum to any member of the public who requests information on assault firearms.

II. Guidelines

New Jersey law lists firearms that are prohibited "assault firearms." N.J.S.A. 2C:39-1w.(1). In addition, the law provides that the term "assault firearm" includes, "Any firearm manufactured

under any designation which is substantially identical to any of the firearms listed" in the law. N.J.S.A. 2C:39-1w.(2). Thus, a firearm is an assault firearm if it is included on the list of banned firearms or if it is manufactured under a different designation than a firearm on the list but is "substantially identical" to a specific listed firearm.

We believe "substantially identical" is clear by its plain meaning. The Criminal Code provides that the statutes in the Code must be read "according to the fair import of their terms." N.J.S.A. 2C:1-2c. The Criminal Code explains that where language may be susceptible to different readings it must be construed to "give fair warning of the nature of the conduct proscribed." N.J.S.A. 2C:1-2a.(4), c. Simply put, the phrase "substantially identical" must be given its plain meaning, one that gives fair warning.

The term "substantial" means pertaining to the substance, matter, material or essence of a thing. The term "identical" means exactly the same. Hence, a firearm is substantially identical to another only if it is identical in all material, essential respects. A firearm is not substantially identical to a listed assault firearm unless it is identical except for differences which do not alter the essential nature of the firearm.

The following are examples of manufacturer changes that do not alter the essential nature of the firearm: name or designation of the firearm; the color of the firearm; the material used to make the barrel or stock of the firearm; the material used to make a pistol grip; a modification of a pistol grip. This is not an exclusive list.

A semi-automatic firearm should be considered to be "substantially identical," that is, identical in all material respects, to a named assault weapon if it meets the below listed criteria:

semi-automatic rifle that has the ability to accept a detachable magazine and has at least 2 of the following:

1. a folding or telescoping stock;
2. a pistol grip that protrudes conspicuously beneath the action of the weapon;
3. a bayonet mount;
4. a flash suppressor or threaded barrel designed to accommodate a flash suppressor; and
5. a grenade launcher;

B. a semi-automatic pistol that has an ability to accept a detachable magazine and has at least 2 of the following:

1. an ammunition magazine that attaches to the pistol outside of the pistol grip;
2. a threaded barrel capable of accepting a barrel extender, flash suppressor, forward handgrip, or silencer;
3. 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;
4. manufactured weight of 50 ounces or more when the pistol is unloaded; and
5. a semi-automatic version of an automatic firearm; and,

C. a semi-automatic shotgun that has at least 2 of the following:

1. a folding or telescoping stock;
2. a pistol grip that protrudes conspicuously beneath the action of the weapon;
3. a fixed magazine capacity in excess of 5 rounds; and
4. an ability to accept a detachable magazine.

III. Inquiries from Private Citizens

Law enforcement officers should, whenever possible, attempt to be helpful and to respond to inquiries concerning particular firearms. Private citizens should also be encouraged to consult with their own attorneys and, where necessary, referred to the Firearms Unit of the Division of State Police.

IV. Purpose and Effect of these Guidelines

In enforcing this law, prosecutors and police should remember that an assault firearms offense requires proof that the defendant knows he or she possesses an assault firearm, e.g., that the defendant knows that the firearm is "substantially identical" to one of the named assault weapons.

These guidelines should be followed by all county prosecutors and all law enforcement officers in this State so that the State's assault firearms laws will be uniformly enforced throughout the State.