

**REPORT ON A SURVEY OF THE USE OF "ASSAULT WEAPONS"  
IN CALIFORNIA IN 1990.**

by  
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Introduction

Though much is being said, there has been a dearth of hard data relating to the actual use of the so called "assault weapons" as listed in §12276 PC. The California Criminalistics Institute undertook this survey, at the request of Deputy Attorney Paul Bishop of the Office of the Attorney General, to attempt to develop a more accurate picture of the "assault weapon" use in homicides and assaults in California in order to respond to inquiries from members of the legislature.

One of the underlying reasons to undertake a survey such as this is in response to question "is the cost of this 'assault weapon' control legislation to the taxpayer, justified by the extent of the problem and potential results". To help answer this, it would be useful to know exactly what the cost has and will be. Unfortunately, this is not possible. When estimating the cost of implementation, public notification and education, actual registrations and enforcement, it appears the cost will be significant. In the equation, one must consider potential effect on law enforcement (training and work load impact), courts (prosecuting violators, sorting out vagaries of law, training of prosecutors) and technical support (expert testimony, training). The cost due to the lack of uniform enforcement and the litigation which will result because of confusion in the law will continue to be extremely difficult to track.

Summary of Results

It is clear from this data that assault weapons play a very small role in assault and homicide cases submitted to city and county labs. This data shows that in the neighborhood of less than 5% of homicide and assault weapons fall into the §12276 PC list. This is in agreement with previous data collected on firearms submitted to CA DOJ labs prior to the enactment of the AWCA as well as for the year following the effective date of that law.

This data counted 4844 guns which included 45 "assault weapons" (>1% assault weapons). This percentage of "assault weapons" is

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low due to the 3881 gun (destroyed) that LASO reported. If the LASO data is ignored, the total number of guns is 963 which includes 36 "assault weapons" ( $\approx 3.7\%$ ) which is probably a more accurate reflection of numbers of "assault weapons" actual encountered in homicides and assaults.

### Methods

On July 17, 1991 a letter and simple questionnaire (appendix A) was sent to 21 city and local crime laboratory directors (appendix B). This data was to be compared to data previously collected from California Department of Justice, Bureau of Forensic Services (BFS) laboratories.

### Limitations

There are limitations to this type of survey because:

- Most laboratories have not kept data in a manner or with sufficient detail to answer many of the questions we posed. Because of the variety of ways data was recovered, much of the data cannot be easily, directly compared and totalled.

- We made the assumption that if a gun is used in a homicide or assault, and is recovered, it will be submitted to a crime laboratory before the case is adjudicated by the courts. We cannot be sure all guns went through crime laboratories, however we believe this is still the best assessment of the proportion of assault weapons used for several reasons. First, if all guns are not being examined by forensic laboratories, many of those not seen will be the usual pistols and revolvers which make up the bulk of guns used in violent crimes thus maintaining the proportions. It is likely that, if there is a skewing of the data, that it will be to accentuate the apparent use of "assault weapons". This is because these weapons are infrequently seen by law enforcement so they are unfamiliar with them as a group and there is frequently a question of whether the firearms is or has been converted to full automatic fire (machine gun). This results in an increased likelihood that a recovered "assault weapon" will be examined by a forensic specialist.

- Because of the wide range of possibilities of firearms use and seizure, some vagaries may be encountered in firearm counts. For example, some homicides or assault cases may have resulted in multiple guns seized. There are also multi-homicides committed with only one firearm. Some cases exist where the victim was shot with two guns. This may have been counted as two shootings. Our hope was to count only the weapon actually used in the homicide or assault but due to difficulties with how data is kept this is not always possible.

- Some laboratories gave us data which includes what are called "open shootings". These are incidents in which the

suspects have not been found and in which firearms have not yet been recovered. Frequently, general information about the firearms type and manufacture may be developed from the examination of recovered bullets and/or cartridge casings. We have included the numbers from this type of data in a way to raise the apparent number of assault weapons. Thus any .223, .30, and 7.62mm bullets in 'open-shootings' would be counted as "assault weapons" even though they might be shown subsequently to non-§12276 weapons.

- All of our "assault weapon" counts are with respect to the list of firearms in §12276 PC. Since there are extensive problems<sup>19,21,2</sup> interpreting what is actually on the §12276 list, we asked that most generous interpretation be used. That is to say, though in may not be technically correct, if there is a possibility that a particular firearm may have been included in the §12276 list, it was to be counted. This will give the worst case results.

- The data collected and retained by many agencies was not detailed enough to allow very specific information to be developed. When this was encountered, the data was interpreted in favor of increasing the apparent numbers of "assault weapons" if that is possible. In any case, questionable numbers are footnoted. For example, some labs counted guns by caliber only, including any .223 cal., .30 cal., 7.62mm firearms. This would, of course, lose any .45 cal. and 9mm §12276 weapons and was so footnoted.

### Data

The following lists the responses and actual numbers as reported by the individual crime labs.

Laboratory	Total # of Guns	Number of <u>12276</u> Guns	187's	poss- ess'n	other
Alameda County	- <sup>3</sup>				
Contra Costa Co	91	12	8	4	0
El Cajon PD	0	0	0	0	0

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<sup>2</sup> California Department of Justice, Division of Law Enforcement, Information Bulletin No 91-17-BJIS, Roberti-Roos Assault Weapon Control Act of 1989, dated June 18, 1991.

<sup>3</sup> Data is not readily available. Due to sever staff cutbacks, do not have resources to research numbers.

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Fresno County	24 <sup>4</sup>	0			
Huntington Beach	264	7	1	1	5
Kern County	38	1	1	0	0
Los Angeles County SO	3881 <sup>5</sup>	8 <sup>6</sup>	8		
Los Angeles Police Dpt	- <sup>7</sup>				
Oakland PD	93	13 <sup>8</sup>	12	1	
Orange Co.	199	6	5	0	1
Sacramento County DA	- <sup>9</sup>				
San Bernardino	- <sup>10</sup>	- <sup>11</sup>			
San Diego County SO	- <sup>12</sup>				
San Diego Police Dpt	127	2	1	1	0
San Francisco	<sup>13</sup>				
San Mateo Co SO	55 <sup>14</sup>	2	?	?	
?					

<sup>4</sup> Estimate. Number of firearms used is very low in this area. Assaults are more commonly with "bats, sticks, shock absorbers, and cars (very popular)."

<sup>5</sup>Total number of firearms destroyed; number of guns through lab is not available.

<sup>6</sup> Data does not allow absolute determination of weapon type or model - includes all 7.62mm, .223 and .30 caliber rifles. Also misses any 9mm or .45 caliber 12276 firearms.

<sup>7</sup> data not available. In 1990 very few firearm cases were examined due to extraneous factors. When trying to give a qualitative feel for number of \$12276 guns, one examiner quipped, "we saw more Roberti's through the lab than Assault Weapons".

<sup>8</sup> 13 guns is with loose interpretation of \$12276 list. A more precise application of \$12276 would reduce this number to 7 (6 homicides, 1 illegal possession).

<sup>9</sup> Data not readily available. Firearms examiner reported they "do see some" \$12276 weapons.

<sup>10</sup> Data not available

<sup>11</sup> Estimated at 12 or less per year (not included in totals here).

<sup>12</sup> Data not readily available

<sup>13</sup> Data not kept

<sup>14</sup> numbers from property clerk. No information on why two \$12276 weapons were seized.

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San Mateo Police Dept	- <sup>15</sup>				
Santa Ana PD <sup>16</sup>					
Santa Clara Co.	33	2	2	0	0
Ventura Co.	63	0	0	0	0
<b>Totals</b>	<b>4844<sup>17</sup></b>	<b>45</b>	<b>28</b>	<b>7</b>	<b>6</b>

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Discussion

The discussions that surround the question of gun control, particularly efforts on the area of assault weapon control are fraught with lack of data and tremendous misinformation in media, literature, and confusion in the law. The lack of data was pointed out on in 1982<sup>18</sup> in the report of a \$287,203 National Institute of Justice study. Anyone looking for answers to questions about the relationships between crime and weapons encounter "a near-total absence" of reliable research data. The authors referred to an "information vacuum". The misinformation and errors in the media, literature and confusion in the law have been pointed out by Fackler et al,<sup>19</sup> Fackler<sup>20</sup>, Helsley<sup>21</sup>, Wolberg<sup>22</sup>, Krauss<sup>23</sup> and Johnson<sup>24</sup>.

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<sup>15</sup> No response. Assume data not available.

<sup>16</sup> Laboratory does not process homicide evidence which instead goes to Los Angeles County Sheriff's laboratory

<sup>17</sup> total includes actual gun counts, estimates not totaled.

<sup>18</sup> Editors, Researchers Find Lack of Data Hampers Study of Relationships Between Weapons, Crime, Violence, Justice Assistance News, Vol. 2, No. 10, Dec. 1981/Jan. 1982.

<sup>19</sup> Fackler, Dr. Martin L., Malinoski, John A., Hoxie, Stephen, and Jason, Alexander, Wounding Effects of the AK-47 Rifle Used by Patrick Purdy in the Stockton Schoolyard Shooting of 17 January 1989.

<sup>20</sup> Fackler, Dr. Martin L. MD, Stockton -- The Facts

<sup>21</sup> Helsley, S.C., Memorandum to G.W. Clemons, Director, Division of Law Enforcement, California Department of Justice, re: Assault Rifles, dated October 31, 1988.

<sup>22</sup> Wolberg, Eugene, "Assault Weapon" List in P.C. 12276, Memo to Paul Bishop, Office of the Attorney General, State Of CA. dated June 30, 1991.

Wolberg<sup>22</sup>, Krauss<sup>23</sup> and Johnson<sup>24</sup>.

In January of 1989, the Purdy schoolyard shooting incident in Stockton was used to spur efforts to promulgate gun control, targeting what are now referred to as "assault weapons".

When this new 'assault' weapon legislation was proposed, the California Department of Justice, Bureau of Forensic Services (BFS) believed that the incidence of 'assault' weapon use was very low. A survey of "Assault Rifles" submitted to BFS crime laboratories was conducted<sup>25</sup> (Appendix 1). The survey, which covered weapons submitted between July 1, 1986 and May 15, 1987, was directed at what was at the time being loosely referred by the legislature and media to as "Assault Rifles". The scope of the survey was thus limited to long guns (rifles) of caliber .223, .30 and 7.62mm. This did not count 9mm and .45 caliber handguns which are now included in the broader term "Assault Weapon" created by the legislature. Out of 215 firearms identified in this study, 5 (2.3%) could be considered "assault rifles". There were also 22 handguns in calibers .45 or 9 mm which were identified but it is unlikely that many of these fall in the "assault weapon" designation. However, if we make the worse case assumption that all 22 handguns were "assault weapons", the total of "assault weapons" (rifles + handguns) would be only 27 (12.6%).

Further confirmation that "Assault weapons" play a very small part in firearm assaults comes from the scarcity of representative specimens of "assault weapons" in crime laboratory reference firearms collections (if they had been used in crimes they would have become available and presumably would have been incorporated into official law enforcement agency collections). Firearm examiners generally agree that these weapons are

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<sup>22</sup> Wolberg, Eugene, "Assault Weapon" List in P.C. 12276, Memo to Paul Bishop, Office of the Attorney General, State Of CA. dated June 30, 1991.

<sup>23</sup> Krauss, Robert S., Report Re: Colt Sporter Target Model rifle, to Fred H. Wymbrandt, Asst. Director, Criminal Identification and Information Branch, California Department of Justice, dated January 17, 1991.

<sup>24</sup> Johnson, Torrey D., "Assault Weapon " List in S12276 PC, memorandum to Paul Bishop, Deputy Attorney General, California Department of Justice, dated February 14, 1991.

<sup>25</sup> Helsley, S.C., Memo to Allen Sumner, Senior Assistant Attorney General Re: AB1509 (Agnos) dated June 2, 1987

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infrequently encountered in casework relating to homicides and assaults.

When attempts were made to find and photograph \$12276 PC weapons, it became obvious that there is a dearth of these firearms in private collections and in retail sales as well as in law enforcement collections. In a large degree this shortage is somewhat understandable in light of the cost of many of these guns (which range in price to around \$9000).

Since there is so little hard data on the use of these weapons, we felt that this survey was necessary to determine the extent to which "assault weapons" were used in violent crime.

It appeared that surveying the crime laboratories provided a good handle on the numbers and types of weapons used in homicides and assaults. This is because most or all homicide evidence would be examined by a laboratory prior to prosecution. We also believe that information about the firearms such as manufacturer and model, provided by firearms examiners, should be more reliable than that provided by the media, police officers or many pathologists. This is because of the training and expertise of the firearm examiners and the technical complexity of the discipline.

Conclusion: The incidence of the use of "assault weapons" is very much lower than the media and law makers seem to represent. The levels are consistent with those predicted by forensic firearms examiners in many laboratories prior to the enactment of the AWCA. The levels of use in 1990 are consistent with the levels of use found in BFS laboratories from July 1986 to May 1987. Accordingly, the cost to potential benefit ratio may be very high.

The cost versus benefit question is further clouded in the big picture with the realization that "assault weapons" play a small part in the homicide assault problem, the law appears to impact mainly law abiding citizens and not the criminals and really may only serve to cause a different weapon to be selected by criminals.