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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>HCPAC</u>	<b>LAST UPDATED</b> _____
	<b>ORIGINAL DATE</b> <u>2/16/2023</u>
<b>SHORT TITLE</b> <u>Large-Capacity Magazines and Assault Weapons</u>	<b>BILL NUMBER</b> <u>CS/House Bill 101/HCPACS</u>
	<b>ANALYST</b> <u>Rabin</u>

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\* (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Costs to DPS	\$947.6	\$547.6	\$547.6	\$2,042.8	Recurring	General Fund
Costs to NMCD	\$0.0	At least \$53.2	At least \$75.2	At least \$128.3	Recurring	General Fund
<b>Total</b>	<b>\$747.6 to \$947.6</b>	<b>At least \$600.8</b>	<b>At least \$622.8</b>	<b>At least \$2,171.1</b>	<b>Recurring</b>	<b>General Fund</b>

Parentheses ( ) indicate expenditure decreases.  
\*Amounts reflect most recent analysis of this legislation.

Relates to Senate Bill 116  
Conflicts with House Bill 72 and Senate Bill 171

### Sources of Information

LFC Files

### Responses Received From

Administrative Office of the Courts (AOC)  
Administrative Office of the District Attorneys (AODA)  
Public Defender Department (PDD)  
New Mexico Attorney General (NMAG)  
Sentencing Commission (NMSC)  
Department of Health (DOH)  
Corrections Department (NMCD)  
Department of Public Safety (DPS)

## SUMMARY

### Synopsis of HCPAC Substitute for House Bill 101

The House Consumer and Public Affairs Committee Substitute for House Bill 101 creates the Assault Weapons Regulation Act. The bill creates fourth-degree felony penalty (carrying a basic sentence of 18-months imprisonment) for knowingly manufacturing, delivering, selling, importing, purchasing, or causing to be manufactured, delivered, sold, imported, or purchased by another an assault weapon, assault weapon attachment, .50 caliber rifle, or .50 caliber cartridge, and for knowingly possessing an assault weapon, .50 caliber rifle, or .50 caliber cartridge after March 1, 2024.

**Exceptions.** The bill provides exceptions from prohibitions related to purchase or possession for law enforcement agencies and officers, wardens, members of the armed services, some companies (and employees thereof) that provide armed security, and licensed private security contractor agencies and contractors. HB101 provides exceptions from prohibitions related to manufacture, delivery, sale, import, purchase, or possession for sale or transfer to such persons or the United States or any department or agency thereof.

HB101 also provides exceptions from its prohibitions for use in Olympic sporting events, for individuals travelling through the state, and for use as props, but provides more restrictions on when those exceptions can be employed.

HB101 further provides a more narrow exception for individuals already in possession of the prohibited items on March 1, 2024, if they provide an affidavit of ownership prior to that date, and may possess the item only in specified areas and when traveling to or from such areas. Limitations are further placed on how these individuals may transfer ownership of such property. Similar provisions apply to individuals who inherit such items and individuals who move to the state, who must complete the endorsement affidavit within 60 days. Failure to submit an endorsement affidavit is punishable as a fourth degree felony (carrying a basic sentence of 18-months imprisonment).

**Other Provisions.** HB101 requires the Department of Public Safety (DPS) to carry out the act, including developing and implementing a public notice and public outreach campaign. Sales or transfers of weapons for which a background check has already been initiated prior to the effective date of the bill are allowed to be completed. The bill exempts official actions taken in good faith compliance with this act from the provisions of the New Mexico Civil Rights Act.

**Prohibited Items.** HB101 defines an assault weapon as any of the following:

- A semiautomatic rifle that has the capacity to accept a detachable magazine or that may be readily modified to accept a detachable magazine, and that has one or more of the following: 1) a pistol grip or thumbhole stock; 2) any feature capable of functioning as a protruding grip that can be held by the nontrigger hand; 3) a folding telescoping, thumbhole, or detachable stock or a stock that is otherwise foldable or adjustable in a manner that operates to reduce the length, size, or any other dimension or otherwise enhances the concealability of the weapon; 5) a flash suppressor; 6) a grenade launcher; or 7) a shroud attached to the barrel, or that partially or completely encircles the barrel, allowing the bearer to hold the firearm with the non-trigger hand without being burned, but excluding a slide that encloses the barrel;
- A semiautomatic rifle that has a fixed magazine with the capacity to accept more than 10 rounds, except for an attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition;
- A semiautomatic pistol that has the capacity to accept a detachable magazine or that may be readily modified to accept a detachable magazine, and that has one or more of the following: 1) a threaded barrel; 2) a second pistol grip or another feature capable of functioning as a protruding grip that can be held by the nontrigger hand; 3) a shroud attached to the barrel, or that partially or completely encircles the barrel, allowing the bearer to hold the firearm with the nontrigger hand without being burned, but excluding a slide that encloses the barrel; 4) a flash suppressor; 5) the capacity to accept a detachable magazine at some location outside of the pistol grip; or 6) a buffer tube, arm brace, or

other part that protrudes horizontally behind the pistol grip and is designed or redesigned to allow or facilitate a firearm to be fired from the shoulder;

- A semiautomatic pistol that has a fixed magazine with the capacity to accept more than 15 rounds;
- A shotgun with a revolving cylinder;
- A semiautomatic shotgun that has one or more of the following: 1) a pistol grip or thumbhole stock; 2) a feature capable of functioning as a protruding grip that can be held by the nontrigger hand; 3) a folding or thumbhole stock; 4) a grenade launcher; 5) a fixed magazine with the capacity of more than five rounds; or 6) the capacity to accept a detachable magazine;
- A semiautomatic firearm that has the capacity to accept a belt ammunition feeding device;
- A firearm that has been modified to be operable as an assault weapon; or
- A part or combination of parts designed or intended to convert a firearm into an assault weapon, including a combination of parts from which an assault weapon may be readily assembled if those parts are in the possession or under the control of the same person.

The definition of assault weapon explicitly excludes unserviceable or inoperable firearms, antique firearms or replicas of antique firearms, and firearms manually operated by bolt, pump, lever, or slide action, unless the firearm is a shotgun with a revolving cylinder.

HB101 defines an **assault weapon attachment** as a device capable of being attached to a firearm that is specifically designed for making or converting the firearm into an assault weapon.

HB101 defines a **.50 caliber rifle** as a centerfire rifle capable of firing a .50 caliber cartridge, but the definition explicitly excludes antique firearms, shotguns with rifle barrels, or muzzle –loaders that use black powder for hunting or historical reenactments.

HB101 defines a **.50 caliber cartridge** as a cartridge in .50 BMG caliber, either by designation or actual measurement, that is capable of being fired from a centerfire rifle, but the definition explicitly excludes memorabilia or display items filled with a permanent inert substance or otherwise permanently altered in a manner that prevents ready modification for use as live ammunition or shotgun ammunition with a caliber measurement that is equal to or greater than .50 caliber.

**Effective Date.** This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law. However, the bill contains several provisions that do not appear to be practically effective until March 1, 2024. The bill explicitly references the effective date of the Assault Weapons Regulation Act, which would be June 16, 2023, but it is not clear if that is the intended effective date of the act.

## FISCAL IMPLICATIONS

**Administrative Costs.** The Department of Public Safety (DPS) notes it would have significant costs for rulemaking, creating the form of the endorsement affidavit, and tracking the ownership and transfers of assault weapons. DPS estimates a need for four staff to manage the program, including two legal staff and two staff tasked with monitoring and handling records, with an estimated annual cost of \$447.6 thousand. The agency further estimates the cost of an effective

public outreach campaign would be \$300 thousand to \$500 thousand in the first year, with recurring annual costs of \$100 thousand in subsequent fiscal years.

**Incarceration Costs.** Incarceration drives costs in the criminal justice system, so any changes in the number of individuals in prison and jail and the length of time served in prison and jail that might result from this bill could have moderate fiscal impacts. The creation of any new crime, increase of felony degree, or increase of sentencing penalties will likely increase the population of New Mexico’s prisons and jails, consequently increasing long-term costs to state and county general funds. The Corrections Department (NMCD) reports the average cost to incarcerate a single inmate in FY22 was \$54.9 thousand; however, due to the high fixed costs of the state’s prison facilities and administrative overhead, LFC estimates a marginal cost (the cost per each additional inmate) of \$26.6 thousand per year across all facilities. HB101 is anticipated to increase the number of incarcerated individuals and increase the time they spend incarcerated.

Two new crimes are proposed by this bill: one related to possessing, manufacturing, delivering, selling, importing, or purchasing of one of the banned items and the other related to failing to submit an endorsement affidavit, both of which are fourth-degree felonies carrying an 18-month prison sentence. The Sentencing Commission (NMSC) estimates the average length of time served by offenders released from prison in FY21 whose highest charge was for a fourth-degree felony was 516 days. Based on the marginal cost of each additional inmate in New Mexico’s prison system, each offender sentenced to prison for these crimes could result in estimated increased costs of \$37.6 thousand to NMCD.

It is difficult to estimate how many individuals will be charged, convicted, or spend time in prison or jail based on the creation of a new crime. Without additional information, this analysis assumes at least one person will be admitted to prison each year for each of the new crimes created by this bill, a cost of \$75.2 thousand. Because the estimated time served is greater than one year, the costs of one year (\$53.2 thousand) would be incurred in the first year of incarceration, while the cost of the remaining 151 days (\$22 thousand) would be incurred in the second year of incarceration. To account for time to adjudication, no costs are anticipated to be incurred until one year after the bill takes effect, in FY25. Because the estimated time served is greater than one year, costs are anticipated to increase in FY26, as an offender admitted in FY25 serves the remainder of their term and another offender is admitted, but will level out that same year (as offenders begin to be released from prison) and remain level in future fiscal years.

**Other Costs.** Additional increased criminal justice system costs beyond incarceration, such as costs to the judicial branch for increased trials or to law enforcement to investigate and arrest individuals for the new crimes under HB101, are not included in this analysis, but could be moderate.

## SIGNIFICANT ISSUES

**Gun Violence, Assault Weapons, and High-Caliber Firearms.** The Department of Health (DOH) reports four incidents of firearm violence where four or more people (not including the perpetrator) were killed in the U.S. in the first half of 2022,<sup>1</sup> including two that occurred in states bordering New Mexico. DOH reports such incidents resulted in 33 percent more fatalities and

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<sup>1</sup> <https://www.themarshallproject.org/2022/07/06/what-you-need-to-know-about-the-rise-in-u-s-mass-shootings>

500 percent more injuries between 2017 and 2021 than between 2012-2016.<sup>2</sup>

DOH further reports research has found large-capacity magazines are used in at least 20 percent of incidents with multiple fatalities and in one-half to two-thirds of incidents with six or more fatalities.<sup>3</sup> Research on the frequency and lethality of 69 shootings resulting in six or more deaths (not including the perpetrator) between 1990 and 2017 found the use of large-capacity magazines resulted in 62 percent more deaths on average.<sup>4</sup>

According to a 2023 meta-analysis of research evidence on the effects of gun policies in the United States from the Rand Corporation, there is limited evidence high-capacity magazine bans may decrease mass shootings. Studies provided inconclusive evidence regarding both the existence and direction (increase or decrease) of the impact of assault weapons bans on mass shootings. Evidence of the existence and direction of the relationship between bans on either high-capacity magazines or assault weapons on firearm suicides or homicides was similarly inconclusive.<sup>5</sup>

DOH also reports the caliber of firearms has a substantial impact on fatality of gunshot injury. A study of gunshot wounds in assault cases in Boston between 2010 and 2014 found medium-caliber firearms (.38 and 9mm) were 125 percent more likely to result in death compared with small-caliber firearms (.22, .25, and .32), while large-caliber firearms (.357 magnum, .40, .44 magnum, .45, 10mm, and 7.62 x 39mm) were 354 percent more likely to result in death. The study estimated replacing medium- and large-caliber firearms with small-caliber firearms would reduce firearm homicides by almost 40 percent.<sup>6</sup>

**Constitutional Concerns.** The office of the New Mexico Attorney General (NMAG) explains HB101 may be subject to a challenge under the Second Amendment of the U.S. Constitution. NMAG explains, due to a recent Supreme Court ruling, “...the law might now need to be found ‘consistent with this Nation’s historical tradition of firearm regulation’ to be upheld if it is found to address conduct covered by the plain text of the Second Amendment.” NMAG adds “The enumerated list of what qualifies as an “assault weapon” under HB101 is extensive, and runs the risk of being challenged as inconsistent with said historical tradition of firearm regulation.

NMAG further notes the proposed bill could be challenged under the New Mexico Constitution, as Article 2, Section 6 states “No law shall abridge the right of the citizen to keep and bear arms for security and defense, for lawful hunting and recreational use and for other lawful purposes, but nothing herein shall be held to permit the carrying of concealed weapons. No municipality or county shall regulate, in any way, an incident of the right to keep and bear arms.” Although similar statutes in other states have been upheld under their state constitutions, those states had different constitutional language regarding this issue.

**Other Concerns.** The Administrative Office of the District Attorneys (AODA) notes the bill uses the term “endorsement affidavit” throughout, but there is no requirement DPS endorse an affidavit; only submission of an affidavit is required for the rebuttable presumption that the

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<sup>2</sup> <https://www.theviolenceproject.org/mass-shooter-database/>

<sup>3</sup> <https://onlinelibrary.wiley.com/doi/abs/10.1111/1745-9133.12485>

<sup>4</sup> <https://ajph.aphapublications.org/doi/full/10.2105/AJPH.2019.305311>

<sup>5</sup> [https://www.rand.org/pubs/research\\_reports/RRA243-4.html](https://www.rand.org/pubs/research_reports/RRA243-4.html)

<sup>6</sup> <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2688536>

person is entitled to possess the weapon. AODA adds DPS “is not required to endorse, to conduct a background check, or make any inquiry that ensures the person is not a felon, not mentally ill, not the subject of a protection order, and...is authorized to carry an ordinary firearm. This is especially problematic because of the involvement of a state agency and the denial of civil rights redress by those who may fall victim to assault weapons.” AODA suggest that if no duty or action is required of DPS, the term “endorsement” could be removed, and simply “affidavit” could be used instead.

AODA further notes the bill does not place restrictions or conditions on the transfer of an assault weapon to an heir. AODA writes “While a transferor must report a transfer to the department when transfer is made to a nonresident or to a federal firearms dealer, there is no requirement to report a transfer to an heir. In fact, the bill directs the transferor NOT to notify the department.” AODA notes notifying the department could be useful, as “the department could notify the heir of the duty to submit an affidavit in 60 days which, if not submitted, is a fourth degree felony. In addition, the department would not know the transfer was made and may lose track of those assault weapons.”

Finally, AODA notes that while members of the armed services, security officers, and contractors “are allowed to possess those weapons only while performing their official duties...there is no such restriction on peace officers, law enforcement agencies, wardens and jailers who may purchase and possess assault weapons in their personal capacities without restriction, including transferring these weapons to their heirs.”

The Public Defender Department writes “The requirements specified for endorsement affidavits may not be well adapted to some of the items covered by the Act. For example, many accessories, in particular detachable magazines, may not bear serial numbers.”

## **CONFLICT, RELATIONSHIP**

HB101 relates to Senate Bill 116, which prohibits someone under 21 years old from purchasing or possessing an automatic or semiautomatic firearm.

HB101 conflicts with House Bill 72 and Senate Bill 171, both of which restrict equipment used for converting firearms to automatic firearms, which are included in HB101’s definition of “assault weapon,” with differing definitions and exemptions than provided for in HB101.

## **TECHNICAL ISSUES**

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law. However, the bill contains several provisions that do not appear to be practically effective until March 1, 2024. The bill explicitly references the effective date of the Assault Weapons Regulation Act (on page 7, line 21, and page 15, line 5), which would be June 16, 2023, but it is not clear if that is the intended effective date of the act.

The bill generally uses the term “endorsement affidavit” as a requirement for a person to possess an assault weapon, but in two instances refers simply to “endorsement” (page 7, line 25, and page 9, line 21) and in one refers to “endorsement application” (page 10, line 20). It is unclear if

these terms are used interchangeably with “endorsement affidavit,” or if they have some other meaning, but it is not clear what that meaning is.

AODA notes the wording of Subsection A of Section 4 (page 7, lines 9-17) is unclear.

The Administrative Office of the Courts notes “On page 10, line 3, the action verb is missing from the sentence. The missing verb is likely ‘transfer’.”

## OTHER SUBSTANTIVE ISSUES

DOH provides the following analysis:

### THE FEDERAL BAN ON ASSAULT WEAPONS

In an effort to reduce firearm injury from these incidents in the early 1990s, the U.S. Congress enacted the Public Safety and Recreational Firearms Act of 1994 which implemented a 10-year prohibition on the manufacture, transfer, or possession of “semi-automatic assault weapons.” (<https://crsreports.congress.gov/product/pdf/R/R46958> ). The federal ban expired in 2004 and has not been renewed according to Congressional Research Services. Nine states and the District of Columbia have subsequently implemented assault weapons bans. (<https://giffords.org/lawcenter/gun-laws/policy-areas/hardware-ammunition/assault-weapons/>)

Post et al. (2021) estimated the impact of the ten-year federal ban (1994-2004) on assault weapons prevented at least 11 shootings with 4 or more fatalities (<https://publichealth.jmir.org/2021/4/e26042?fs=e&s=cl> ). Post et al. also projected that a continuation of the federal ban between 1995 to 2019 would have prevented 30 of these incidents with 4 or more fatalities that included 339 fatalities and 1139 firearm injuries. Huang et al. examined the ban’s effects on three major cities and found that the ban “steadily and significantly decreased firearm-related homicides.” (<https://www.sciencedirect.com/science/article/abs/pii/S0002961022002057>)

### LIMITATIONS ON FEDERAL ASSAULT WEAPONS BANS AND IMPROVEMENTS WITH HB101CPS

However, the federal firearms ban did suffer from notable limitations. The act defined the phrase “semiautomatic assault weapon” to include 19 named firearms and copies of those firearms, as well as certain semi-automatic rifles, pistols, and shotguns with at least two specified characteristics from a list of features. 18 U.S.C. § 921(a)(30). This two-feature test and the inclusion of some purely cosmetic features created a loophole that allowed manufacturers to successfully circumvent the law by making minor modifications to weapons they already produced. ([https://giffords.org/lawcenter/gun-laws/policy-areas/hardware-ammunition/assault-weapons/#footnote\\_8\\_5603](https://giffords.org/lawcenter/gun-laws/policy-areas/hardware-ammunition/assault-weapons/#footnote_8_5603))

HB101CPS avoids this pitfall by primarily targeting weapons with a detachable magazine and any one feature that make the firearm most useful for assaultive purposes, including features that provide high-volume firing capacity, enhanced control when the firearm is rapidly repeatedly fired, enhanced weapon concealability, and other features such as flash suppressors and grenade launchers that increase assaultive purposes. For example, features like pistol grips, second hand grips, or barrel shrouds, that make the gun easier to hold with two hands. This allows the shooter to control the gun for long periods of sustained fire without getting burned as the barrel heats up. These features, most of which were specifically designed for the military, are unnecessary for hunting, target shooting, or home defense. (<https://efsgv.org/learn/policies/assault-weapons-and-large-capacity-magazines/>)

The presence of a detachable magazine for these categories of weapons is importance because detachable magazines give guns practically unlimited capacity. The number of cartridges a detachable magazine can hold is not limited by the size of the gun, because the magazine can extend well beyond the frame. Detachable magazines are readily available for most semi-automatic guns, making both military-style and non-military-style weapons more lethal. Detachable magazines are especially lethal when used with a military-style firearm that has features that allow the shooter to have enhanced control while firing multiple rounds. (<https://efsgv.org/learn/policies/assault-weapons-and-large-capacity-magazines/>)

HB101CPS also prohibits high caliber (i.e., .50 caliber) rifles, which are capable of piercing police armor. (<https://nationalinterest.org/blog/reboot/body-armor-can-stop-50-caliber-bullets-look-no-further-184578>)

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