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FISCAL IMPACT REPORT

SPONSOR <u>Roybal Caballero/Lopez/Chávez</u> SHORT TITLE <u>Possession of Large Capacity Gun Magazine</u>	LAST UPDATED _____ ORIGINAL DATE <u>2/6/2023</u> BILL NUMBER <u>House Bill 50</u> ANALYST <u>Rabin</u>
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APPROPRIATION* (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY23	FY24		
\$0.0	\$1,500.0	Nonrecurring	General Fund

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

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Costs to NMCD	\$0.0	At least \$26.6	At least \$37.6	At least \$64.2	Recurring	General Fund

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

Relates to Senate Bill 116
 Conflicts with House Bill 101

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 House Bill 50

House Bill 50 creates the new crime of possessing or transferring a large-capacity magazine (a fourth-degree felony, carrying a basic sentence of 18 months in prison). The crime does not apply in the following circumstances:

- A resident of another state who transports the magazine into New Mexico exclusively for use in a shooting competition;
- A peace officer, in accordance with their law enforcement agency's policies;
- A member of the armed services;
- A federally licensed firearm manufacturer manufacturing such magazines for sale to the armed forces or law enforcement agencies;
- An entity that operates an armored vehicle business (or an employee thereof) in circumstances in which the magazine is for use exclusively in the course and scope of the business;
- A forensic laboratory (or employee or agent thereof) in circumstances in which the magazine is for use exclusively in the course and scope of authorized activities; or,
- A federal, state, or local historical society, museum, or institutional collection that is open to the public, provided the magazine is properly housed and unloaded.

HB50 appropriates \$1.5 million from the general fund to the Department of Public Safety (DPS) to carry out the provisions of the act, including providing funding to additional local and statewide law enforcement, court processes, and incarceration.

The effective date of this bill is July 1, 2023.

FISCAL IMPLICATIONS

Appropriation. The appropriation of \$1.5 million contained in this bill is a nonrecurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY24 shall revert to the general fund.

The Department of Public Safety (DPS) notes it will incur costs related to the distribution of the funds appropriated in this bill, and suggests appropriations to DPS be made solely for use by the New Mexico State Police and funding for other law enforcement agencies be routed through the Department of Finance and Administration's Local Government Division. As currently written, DPS estimates it would require \$80 thousand of the appropriation for administration costs and \$300 thousand for enforcement costs. The agency also notes it may incur additional costs for activities such as gun magazine buyback programs.

Because the majority of the costs associated with this bill are recurring, and many will not be realized until FY25 or later, this appropriation is not expected to fully cover the costs of the bill. Additional costs are noted under additional operating budget impact.

Additional Operating Budget Impact. 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. HB50 is anticipated to increase the number of incarcerated individuals and increase the time they spend incarcerated.

The proposed new crime of possessing or transferring a large-capacity magazine is a fourth-degree felony, which carries 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 this crime 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 this crime, at a cost of \$37.6 thousand. Because the estimated time served is greater than one year, the costs of one year (\$26.6 thousand) would be incurred in the first year of incarceration, while the cost of the remaining 151 days (\$11 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.

Additional increased 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 HB50, are not included in this analysis, but could be moderate. Notably, the appropriation contained in this bill should help cover those costs for FY24, but the costs will be recurring.

SIGNIFICANT ISSUES

Gun Violence and Bans on Assault Weapons and Large-Capacity Magazines. 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 2022,¹ including two that occurred in states bordering New Mexico. DOH reports such incidents resulted in 33 percent more fatalities and 500 percent more injuries between 2017 and 2021 than between 2012-2016.²

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.³ 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.⁴

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

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

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

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

Bans on large-capacity magazines may have positive impacts on public safety. The same review of 69 mass shootings between 1990 and 2017 found the rate of these incidents in states without bans on large-capacity magazines was double that of states with such bans.⁵ A 2020 study examining mass shootings between 1976 and 2018 further found state-level large-capacity magazine bans were associated with 38 percent fewer fatalities and 77 percent fewer nonfatal injuries during such incidents.⁶

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.⁷

Constitutional Concerns. The office of the New Mexico Attorney General (NMAG) explains HB50 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 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.

DPS notes restrictions on gun magazine sizes have been upheld by federal courts.

CONFLICT, RELATIONSHIP

HB50 relates to Senate Bill 116, which prohibits someone under 21 years old from purchasing or possessing a firearm capable of accepting a large-capacity feeding device.

HB50 conflicts with House Bill 101, which would restrict the possession, manufacture, purchase, sale, or transfer of a large capacity ammunition feeding device, with differing definitions and exemptions than provided for in HB50.

TECHNICAL ISSUES

NMAG notes the term “established shooting competition” in Section 1 is not defined and would likely create interpretation issues, including whether a competition must be public or if a private

⁵ *Ibid.*

⁶ <https://pubmed.ncbi.nlm.nih.gov/33090863/>

⁷ https://www.rand.org/pubs/research_reports/RRA243-4.html

competition would be sufficient for the exception. The office also notes this exception applies only to residents of other states, and does not provide an exception for New Mexico resident participating in such a competition.

NMAG also notes satellite law enforcement academies are not included in the exception related to law enforcement, and federal law enforcement is also not included in any of the exceptions.

The Administrative Office of the District Attorneys (AODA) notes “HB 50 allows the possession and transfer of large-capacity magazines by active or reserve members of the military or national guard, without limitation, and regardless of whether such possession or transfer is conducted within or outside the course and scope of their duties in the military or national guard.”

AODA also notes the bill does not provide any guidance as to what lawful actions can be taken by persons who currently possess large-capacity magazines.

OTHER SUBSTANTIVE ISSUES

DPS reports:

NMSP has found it increasingly difficult to get destruction orders approved by both District Attorney Offices and the Courts due to various administrative concerns from those entities. Therefore, the NMSP believes it would be beneficial to include language in the bill to protect law enforcement agencies from any liability related to an agency possessing and destroying items covered by this bill. Additionally, an automatic destruction clause related to items in this bill, which would prevent any law enforcement agency from having to obtain a destruction order in carrying out the terms of the new law, would simplify compliance. Possible language could include something to the effect of “any property taken into an agency’s possession pursuant to this statute shall be destroyed after 180 days.”

The Public Defender Department writes:

Because enactment of this law would declare to be criminal certain ordinary activities that have previously been legal since the founding days of New Mexico, any such enactment include public awareness campaigns to prevent innocents from inadvertently becoming criminals by continuing behavior they have legally done all their lives. *See State v. Montoya*, 1977-NMCA-134, ¶ 14, 91 N.M. 262 (stating the “general rule is that ignorance of the law is not a defense.”). At a minimum, some sort of grace period to turn currently legal gun accessories in to authorities should be included.

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