

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

House Bill 107
Judiciary

(Delegate Gutierrez, *et al.*)

Firearms - Detachable Magazines - Maximum Capacity for Ammunition

This bill reduces, from 20 to 10, the maximum capacity for ammunition in a detachable magazine for a firearm that can be manufactured, sold, offered for sale, purchased, received, or transferred in the State. The bill similarly reduces the number of rounds of ammunition in a magazine or an assault pistol which, when used by a person in the commission of a felony or crime of violence, results in that person being guilty of a misdemeanor and subject to criminal penalties.

Fiscal Summary

State Effect: Minimal increase in general fund revenues and expenditures due to applicable penalty provisions. Enforcement can be handled with the existing budgeted resources of the State Police.

Local Effect: Minimal increase in local revenues and expenditures due to applicable penalty provisions.

Small Business Effect: Minimal.

Analysis

Current Law: With the exception of a .22 caliber rifle with a tubular magazine, a person may not manufacture, sell, offer for sale, purchase, receive, or transfer a detachable magazine that has a capacity of more than 20 rounds of ammunition for a firearm. A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for three years and/or a fine of \$5,000.

A person who uses an assault pistol or a magazine that has a capacity of more than 20 rounds of ammunition, in the commission of a felony or a crime of violence is guilty of a misdemeanor and, in addition to any other sentence imposed for the felony or crime of violence, must be sentenced as follows:

- for a first violation, a nonsuspendable, nonparolable, mandatory minimum sentence of 5 years with a maximum imprisonment of 20 years;
- for each subsequent violation, a mandatory minimum sentence of 10 years with a maximum imprisonment of 20 years.

A sentence imposed under this penalty provision must be consecutive to and not concurrent with any other sentence imposed for the underlying felony or crime of violence. The Maryland District Court and the circuit courts have concurrent jurisdiction over these offenses.

Background: According to the National Conference of State Legislatures (NCSL), the following states and local jurisdictions are known to have restrictions on ammunition magazines for firearms:

California – Prohibits magazines with a capacity of more than 10 rounds without a permit.

Hawaii – Prohibits ammunition magazines with a capacity in excess of 10 rounds which are designed for or capable of use with a pistol.

Aurora, Illinois – Bans the possession, sale, or acquisition of large capacity feeding devices. Prohibits magazines with a capacity of more than 15 rounds.

Chicago, Illinois – Bans the transfer, acquisition, or possession of assault ammunition. Prohibits magazines having a capacity of more than 12 rounds.

Franklin Park, Illinois – Bans the transfer, acquisition, possession, manufacture, or distribution of assault ammunition. Prohibits magazines having a capacity of more than 16 rounds.

Oak Park, Illinois – Bans the possession and sale of large capacity feeding devices. Prohibits magazines with a capacity of more than 10 rounds.

Riverdale, Illinois – Bans the possession, transfer, acquisition, or manufacture of assault ammunition. Prohibits magazines with a capacity of more than 35 rounds.

Massachusetts – Bans the sale, transfer, or possession of large capacity feeding devices for assault weapons. Prohibits magazines with a capacity of more than 10 rounds.

New Jersey – Prohibits magazines with a capacity of more than 15 rounds without a federal firearms license.

New York – Makes it a felony to manufacture, transport, dispose of, or possess a large capacity ammunition feeding device. In January 2013, legal maximum magazine sizes were lowered from 10 to 7 rounds.

NCSL also reports that the following five states have had legislation introduced during current sessions further addressing large capacity magazines: California, Connecticut, Illinois, New York, and Virginia.

The Federal Assault Weapons Ban, which expired on September 13, 2004, as part of the law's sunset provision, set a magazine or other ammunition feeding device limit at 10 rounds. On January 16, 2013, President Obama signed 23 executive actions to strengthen existing gun laws and to take related steps addressing mental health and school safety. The President also asked Congress to reinstate and strengthen the assault weapons ban that expired in 2004, to restrict ammunition magazines to no more than 10 rounds, and to expand background checks to virtually all gun transactions. All of these Presidential Actions can be found online at: <http://www.whitehouse.gov/briefing-room/presidential-actions>.

According to the Maryland State Commission on Criminal Sentencing Policy, there were two violations relating to prohibitions against assault pistols and detachable magazines tried in Maryland's circuit courts in fiscal 2012.

According to news reports, in January 2013, two men were charged for allegedly attempting to sell a magazine with a capacity of 30 rounds at the annual Timonium Gun and Knife Show at the Maryland State Fairgrounds in Baltimore County. According to the Baltimore County Police Department, 121 additional allegedly illegal magazines were seized by police.

State Revenues: General fund revenues increase minimally as a result of applicable monetary penalties from cases heard in the District Court.

State Expenditures: General fund expenditures increase minimally as a result of applicable incarceration penalties due to more people being committed to State correctional facilities and increased payments to counties for reimbursement of inmate costs. The number of people convicted of this proposed crime is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$2,900 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new State inmate (including variable medical care and variable operating costs) is about \$370 per month. Excluding all medical care, the average variable costs total \$180 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or a State correctional facility. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A \$45 per diem grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the State but are confined in a local facility. The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in State correctional facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Local Revenues: Revenues increase minimally as a result of applicable monetary penalty provisions from cases heard in the circuit courts.

Local Expenditures: Expenditures increase minimally as a result of applicable incarceration penalties. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. A \$45 per diem State grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the State but are confined in a local facility. Per diem operating costs of local detention facilities have ranged from \$60 to \$160 per inmate in recent years.

Additional Information

Prior Introductions: HB 330 of 2011 received an unfavorable report by the House Judiciary Committee. SB 162 of 2011 received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

Cross File: SB 539 (Senator Raskin, *et al.*) – Judicial Proceedings.

Information Source(s): Maryland State Commission on Criminal Sentencing Policy, Judiciary (Administrative Office of the Courts), Office of the Public Defender, Department of Public Safety and Correctional Services, State’s Attorneys’ Association, National Conference of State Legislatures, www.whitehouse.gov, Parkville-Overlea Patch, Department of Legislative Services

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