

SENATE BILL REPORT

SB 5062

As Reported by Senate Committee On:
Law & Justice, January 24, 2019

Title: An act relating to high capacity magazines.

Brief Description: Concerning high capacity magazines.

Sponsors: Senators Kuderer, Hunt, Dhingra, Keiser, Pedersen, Darneille, Saldaña and Frockt;
by request of Attorney General.

Brief History:

Committee Activity: Law & Justice: 1/21/19, 1/24/19 [DPS, DNP].

Brief Summary of First Substitute Bill

- Prohibits the manufacture, possession, sale, or transfer of a large capacity magazine (LCM) with the capability of holding more than ten rounds of ammunition, unless the possession falls within one of the stated exceptions.
- Makes the possession of a LCM a gross misdemeanor.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5062 be substituted therefor, and the substitute bill do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Kuderer and Salomon.

Minority Report: Do not pass.

Signed by Senators Padden, Ranking Member; Holy and Wilson, L..

Staff: Melissa Burke-Cain (786-7755)

Background: A firearm magazine holds shells under spring pressure in preparation for feeding into the firearm's chamber. A large capacity magazine ban restricts detachable firearm magazines that hold more than a certain number of ammunition rounds.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

In 1994, Congress passed the Federal Assault Weapons Ban of 1994. The federal law limited magazines that could hold more than ten rounds. The law expired in September 2004, and Congress has not renewed it.

At least nine states and a number of local governments ban or regulate magazines they define as high capacity, generally with a limit of 10 to 20 rounds. These states include California, Colorado, Connecticut, Hawaii, Maryland, Massachusetts, New Jersey, New York, and Vermont. At this time, no court has overturned a ban on high-capacity guns or magazines. In March 2015, the federal Ninth Circuit Court of Appeals upheld a magazine capacity restriction, ruling that it does not violate the Second Amendment. Several legal challenges to high capacity magazine laws are pending in state and federal courts.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (First Substitute): An LCM is an ammunition-feeding device with the capacity to accept more than ten ammunition rounds, or any conversion kit, part, or combination of parts, from which such a device can be assembled if those parts are in the possession or under the control of the same person. The following are not LCM devices:

- an ammunition feeding device that has been permanently altered so that it cannot accommodate more than ten rounds of ammunition;
- a 22 caliber tube ammunition feeding device; or
- a tubular magazine that is contained in a lever-action firearm.

No person in this state may manufacture, possess, distribute, import, transfer, sell, offer for sale, purchase, or otherwise transfer any LCM except as specifically provided. The LCM ban does not apply to:

- possession by a person who legally possesses an LCM on the effective date of this section or who acquires possession by operation of law upon the death of a person who legally possesses an LCM;
- possession by any government officer, agency, or employee;
- members of the armed forces or law enforcement officers;
- manufacture of an LCM for eventual lawful transfer to any branch of armed forces or to a law enforcement agency;
- transfer to a properly licensed dealer from a person legally authorized to possess or transfer the LCM for the purpose of selling the LCM to a person who does not reside in this state;
- transfer to a federally licensed gunsmith for the purpose of repair and the return to the lawful owner;
- transfer for the purpose of permanently relinquishing an LCM to a law enforcement agency;
- possession for lawful participation in a sporting event;
- possession by marshals, sheriffs, prison or jail wardens, or other law enforcement officers while acting within the scope of their duties whether on duty and off duty;
- possession by law enforcement officers retired for service or physical disabilities when the LCM was acquired as part of the officer's separation of service;
- possession by members of the armed forces or National Guard, when on duty;
- possession by officers or employees of the United States duly authorized to possess LCM's;

- possession by persons lawfully engaged in shooting at a duly licensed, lawfully operated shooting range; or
- possession for the purpose of permanently relinquishing it to a law enforcement agency in this state.

To continue to possess an LCM on the effective date of this section, a person possessing the LCM under the exception in Sec. 2 (2)(a) must store the LCM in secure gun storage and possess the LCM only on property owned or immediately controlled by the person, while engaged in the legal use of the LCM at a duly licensed firing range, or while engaged in a lawful outdoor recreational activity. This requirement does not apply to the other exceptions in Sec. 2 (2). Secure gun storage means a locked box, gun safe, or other secure locked storage space that is designed to prevent unauthorized use or discharge of a firearm; and the act of keeping an unloaded firearm stored by such means.

A person who unlawfully possesses an LCM is guilty of a gross misdemeanor.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute):

- Clarifies that Sec. 2(3) applies to lawful owners of LCMs under Sec. 2(2)(a)
- Authorizes law enforcement officers to possess large capacity magazines acting within the scope of their duties while on duty and off duty

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Proposed Substitute: *The committee recommended a different version of the bill than what was heard.* PRO: Mass shootings are bleakly routine. The proposal's purpose is to interrupt the cycle of mass shootings. Recent shootings in Thousand Oaks, Las Vegas, Mukilteo, and Burlington show that carnage in mass shootings is increased because of high capacity magazines. NRA data shows an average of two shots fired in self-defense situations and rarely more than ten shots fired. In the past, school children practiced emergency tornado drills. Now schools hold active shooter drills, and some carry bullet-proof backpacks. The psychological harm caused to children by the potential for mass shooting events in their schools is just now being known. It is surprising that there are no limits in this state on firearm magazine capacity. Four federal courts have upheld magazine limits. High capacity magazines make shootings more deadly because there is no need to stop and reload. At Freeman High, the shooters AR-15 jammed, and he continued shooting with a pistol. Tragically, one student was killed, and others were physically and emotionally injured. Had the rifle not jammed, many more may have died because the halls were full of students. Common sense gun laws will save lives. Some of the worst injuries seen in the pediatric critical care unit are caused by gun violence, failed suicides, accidental, and intentional shootings. Survivors of gun shot wounds face weeks to

months in a hospital if they are lucky enough to survive. These injuries are largely preventable. They are devastating tragedies. Large capacity magazines allow more rounds to be fired faster, hitting more targets and the same targets more than once. At the Mukilteo mass shooting, the shooter emptied a 30 capacity magazine in 35 seconds. This is not a unique case. Half of mass shooters use high capacity magazines. Limiting them reduces crimes and saves lives. Supporting these bills honors the victims. As an attorney, a former deputy prosecutor, and an army reservist who attained the rank of colonel, I can say that high capacity magazines have no place in self defense and no place in civilian communities. LCMs make lethal weapons deadlier. The mass shooter in Tucson, one of whose victims was Representative Gaby Gifford, was overcome when he stopped to reload. As a victim of the Las Vegas mass shootings, there were 90 shots fired in ten seconds. I do not know how I survived, but even now fireworks on the Mariner's opening day makes me relive the event. A bullet doesn't need to enter your body to injure you; gun violence does not discriminate. As a high school student and member of March for Life Seattle, we demand action and hold elected officials accountable. As a competitive target shooter, lifelong NRA member, and veteran, what differentiates high capacity is the high rate of fire; LCMs are a key enabler of that capability and the killing becomes indiscriminate. In a combat situation the targets are the enemy, but outside the military setting, in a civilian community the victims potentially include family, bystanders, and first responders. Regulating these critical link of LCMs to sustained high rates of firing will not compromise shooting sports or self defense. My wife was shot in a drive by shooting. The shooter had a high capacity magazine. She experienced two operations, life threatening complications, and our children saw their mother injured and suffering. With unregulated LCMs more people are injured and more people are killed. The number of anti-Semitic and other hate crimes is growing. We have all seen what hate can do when fueled by a gun. Consider the attack on the Synagogue in Pittsburgh, a place of peace. LCMs make hate crimes more lethal and we can and should do more to keep guns that are deadlier out of the hands of those who wish harm on others.

CON: LCMs typically come with semi-automatic handguns; they are standard. Half the magazines owned in the US are large capacity magazines. They are owned by a majority of law abiding citizens. A congressional study found the limit of ten rounds enacted for a ten year period from 1994 through 2004 had virtually no effect on reducing crime. Persons from a community who are subjected to hate crimes have a right to defend themselves. I was confronted by two men in my home. Having LCMs levels the fight between a woman and her attacker. They are necessary in a personal defense situation. This bill puts women at risk. As a certified firearm instructor I know that elderly women or disabled persons often do not have the dexterity to easily operate small pistols with less than ten rounds. A larger weapon has less recoil, it is easier to rack the slide . This bill punishes law abiding women who want to protect themselves. As a firearm instructor and former military policeman the US already had a ten year experiment with restrictions on large capacity magazines. In a study of the ten-year regulation by Congress, gun violence was not reduced. The federal law had no impact. In an average home invasion there are two to five assailants. Police officers have a hit rate of between ten to forty percent. At Virginia Tech, one of the worst mass school shootings, the shooter used ten round magazines; that was the most lethal incident. Law enforcement officers carry more than ten round capacity magazines to immediately reduce or remove the attacker. It is even more difficult with multiple assailants. Attackers could wear bullet proof vests, be high on drugs, or wear thick layers of clothes. It is no different for citizens defending themselves. A federal law did not reduce the number of

victims and the criminals will not care. After losing my son to murder, I have been an advocate for crime victims for 25 years. I have been insulted and ignored as a victim because I want criminals held accountable for their crimes. As a licensed firearm dealer I know it is impossible to legislate away evil intent. Limiting LCMs is the wrong approach because it is trying to solve a demand side problem with a supply side response. More gun laws do not reduce violence. Violent confrontation ends when met by equal force. The criminals do not obey magazine capacity restrictions. This bill takes away civil rights. We are denied the right to defend ourselves. We have no expectation that we will be protected by the government from a criminal or a madman. High capacity is standard capacity. After being raped at knifepoint at age eighteen, if I had a firearm I might have been able to stop him. I do not think that ten rounds would be enough because of the adrenalin and shaking that occurs during an attack. I am not a marksman or a trained police officer. I need more than ten rounds. The requirement to travel with unloaded magazines limits my rights and choices to self defense. My heart goes out to people who are injured through hand gun violence or any violence. This bill will just legislate the state into lawsuits. I have heard some of the proponents of the bill relying on emotion to make their arguments, but we also need to rely on facts. We should not allow law enforcement to outgun private citizens. That is not what the founding fathers intended. The ten round magazines are standard capacity, normal capacity magazines. Instead of criminalizing LCMs, define an extreme penalty for persons who act with a high capacity firearm and use 30 percent of the capacity that they have.

Persons Testifying: PRO: Senator Patty Kuderer, Prime Sponsor; Bob Ferguson, Washington State Attorney General; Ami Strahan, citizen; Mike Van Dyke, citizen; Adam Cornell, Snohomish County Prosecutor; Matt Vadnal, citizen; Emily Cantrell, citizen; Robert Klaus Brauer, citizen; Colin English, citizen; Charlene Kahn, citizen; Nara Kim, citizen.

CON: Radona Devereaux, The Liberty First Foundation, The Gun Rights Coalition, founder, #silentnomore; Gregory Patnude, citizen; Sharyn Hinchcliffe, Pink Pistols Seattle; Dana Morgan Jr., citizen; Jane Milhans, citizen; Daniel Mitchell, citizen; Brett Bass, Bellevue Gun Club; Allen Ernst, citizen; Tom Kwieciak, NRA; Ralph Myers, citizen.

Persons Signed In To Testify But Not Testifying: PRO: Tim Moses, citizen; Jane Weiss, citizen; Jimmy Martin, citizen; James Warren, citizen.

CON: Jonathan Conley, citizen; Mike Silvers, Pink Pistols Seattle; Rasyidah Conley, citizen; Bea Christophersen, citizen; Ira Moser, citizen; Erik Firm, citizen; Blake Gardner, citizen; Luis Berbesi, citizen; James Affeld, citizen; Jay Greening, citizen; Mary Wilkes, citizen; Ryan Hurey, citizen; Chris Spieth, citizen; Gavin Nishiyori, citizen; Simon McFarlane, citizen; Cole Ballard, citizen; Davin Jaggard, citizen; Ernest Rodriguez, citizen; Daniel Rybicki, citizen; Donn Pratt, citizen; Robert McKercher Jr., citizen; Bobbye Choate, citizen; Aaron Cooper, citizen; Todd McKellips, citizen; Amelia Silverman, citizen; Travis Hafner, citizen; Connie Krier, citizen; Piper Krier, citizen; Charles Pracna, citizen; John Metcald, citizen; Robert Kennar, citizen; Adam Florenzen, citizen; Joseph Lukasunis, citizen.