



The Washington Report

The Newsletter of the National Association of Police Organizations
Representing America's Finest

January 25, 2013

NAPO WASHINGTON REPORT FLASH

H.R. 218 (The Law Enforcement Officers Safety Act) and the New York State Firearms Law

The State of New York last week passed sweeping new state level legislation that greatly restricts the ability to own or carry certain firearms in that state. Regrettably, the Governor and the proponents of this legislation, in their haste to push this law through the State Assembly, failed to take into account the legitimate needs of active and retired law enforcement officers to defend themselves and the public. NAPO worked with its New York groups, particularly the NYPD Detectives Endowment Association, while this bill was in the works, in an effort to prevent the new law from harming police officers, but those efforts unfortunately failed. A question then arises, as to **whether or not the federal Law Enforcement Officers Safety Act (18 U.S.C. §§ 926B et seq.) (commonly known as “H.R. 218” from its original Bill number) provides protection for active and/or retired officers who are in New York State.**

It is important to note that the federal law, H.R. 218, DOES provide SOME protection for officers, both active and retired. This is because the federal law applies “Notwithstanding any other provision of the law of any State or any political subdivision thereof . . .” (18 U.S.C. §926B(a)) HOWEVER, that protection is LIMITED by the terms of the federal statute, as far as what is covered. Thus, when an officer (active or retired) carries a firearm pursuant to the terms of H.R. 218, the FIREARM itself is protected, (18 U.S.C. §926B(e)(1)) as well as any AMMUNITION not prohibited by FEDERAL law (18 U.S.C. §926B(e)(2)) So, for example, hollowpoints are O.K., even if the locality normally prohibits them. **BUT the language of H.R. 218 is silent as to MAGAZINES. And thus provides no protection under federal law for state or local officers or deputies who wish to rely on it to overcome regulations like the new New York law which prohibits magazines of greater than 7 rounds capacity.** (See 18 U.S.C. §927, Effect on State Law) Also, it is important to remember that even under H.R. 218, the right to carry a firearm is not universal. H.R. 218 overrides State and Local laws, not federal ones, so it gives no right to carry a firearm on a commercial airliner, for example. Also, H.R. 218 by its own terms “shall not be construed to supersede or limit the laws of any State that— (1) permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; or (2) prohibit or restrict the possession of firearms on any State or local government property, installation, building, base, or park.” (18 U.S.C. §926B(b)) So a local government can still control the right to carry on its own local governmental property (as opposed to public spaces), and a private citizen or shopkeeper can still control who can carry on his or her own private property.

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