

S.C.O.P.E. Legal Update

June, 2023

New York Pending Legislation:

- S-4879, Relates to fees charged for a license to carry or possess a pistol or revolver in the county of Westchester, has been Reported. Companion A-5092.
- A-2413, Requires police officers to take temporary custody of firearms for not less than one hundred twenty hours when responding to reports of family violence, is on the Codes Committee agenda for Tuesday the 23rd @ 11:00am. Companion S-2102.
- S-4818, Establishes a 10 day waiting period for the purchase of any firearm, has been ordered to 3rd Reading. Companion A-5696.

<http://www.gunpoliticsny.com/?p=27066>

Conservation groups fight back against Biden admin's 'misguided' regulation efforts on hunting, fishing

New regulations from the Biden administration, in collaboration with environmentalists, would limit hunting and fishing in multiple states across the country.

The U.S. Fish and Wildlife Service is expected to publish regulations that would limit the equipment allowed on public refuge properties and expand the area where cost-effective lead ammo and fishing tackle is banned.

International Order of T. Roosevelt (IOTR) Executive Director Luke Hilgemann, is spearheading the effort to get constitutional amendments on the ballot in several states in 2024 to secure the right to hunt and fish across the country.

IOTR is aiming to secure the constitutional right to hunt and fish in all 27 states that don't currently have the right to do so, with Florida, Ohio, South Dakota and Iowa the four priority states for the 2024 ballot. Right now, only 23 states have an explicit state constitutional right to hunt and fish, but IOTR believes that a majority of the states can achieve that right by 2025.

<https://www.foxnews.com/media/conservation-groups-fighting-back-against-misguided-biden-admins-regulation-efforts-hunting-fishing>

St. Lawrence County legislators push back on state bills that would ban lead ammunition for hunting

State lawmakers in both the Senate and Assembly are aiming to ban the use of lead ammunition for hunting but St. Lawrence County legislators are pushing back on the bills.

Legislator Nicole Terminelli said she made the decision to oppose the legislation after a meeting with the fisheries advisory committee.

“This is one more time that we see this state bringing through legislation that largely impacts New York City as far as water quality goes,” Terminelli said.

Under the proposed legislation, hunters would not be allowed to use lead ammunition in wildlife management areas, state forests, forest preserves, state parks and any other state-owned land that is open for hunting and on land contributing surface water to the New York City water supply, according to the resolution.

Terminelli was critical of the state’s legislation, saying the move to ban lead ammunition so quickly will cause a ripple effect on many people.

“It’s not logical or feasible,” she said.

<https://www.northcountrynow.com/news/st-lawrence-county-legislators-push-back-state-bills-would-ban-lead-ammunition-hunting-0340252>

Priced out? Counties issuing fewer pistol permits as new regulations increase costs to apply

Pistol permit applications in Monroe County are down by more than half so far this year and nearby counties are seeing a similar drop.

Officials suspect the falloff stems from changes in state law making it harder for would-be handgun owners to obtain a permit and buy a firearm. Included in the new rules is a requirement for hours of safety training that has been expensive and, until recently, in short supply.

Elsewhere:

- Livingston County had issued 76 pistol permits as of May 1 — by far the lowest in recent years and a drop from the 95 it issued at the same point last year.
- Wyoming County approved just 25 pistol permit applications in the same period, and is on pace to fall well short of the 300 permits it has issued annually in recent years.

- Yates County issued fewer than 100 pistol permits so far this year — down 25% from the 130 issued a year ago.

<https://www.wxxinews.org/local-news/2023-05-11/pistol-permits-down-new-york-counties>

Gun Control Changes in the state budget bill

There are some changes to the CCIA in one of the state budget bills A-3005C/S-4005C which was just enacted. Here is what changed:

- Exemption from place of worship sensitive location for “those persons responsible for security at such place of worship.”
- Privately held land within a public park is excluded from the private park section of the definition of sensitive location.
- The “forest preserve” as defined in subdivision six of section 41 9-0101 of the environmental conservation law is excluded from the definition of public park as a sensitive location. This effectively excludes parts, but not the entirety, of the Adirondack and Catskill Parks from falling under the public park sensitive location definition.
- Summer camps have a narrow exemption that allows them to maintain and use guns in some circumstances.
- Sensitive location exemption for hunting expanded and reworded. “persons while lawfully engaged in taking of wildlife or attempts to take wildlife pursuant to a hunting permit or license issued by the department of environmental conservation, or as otherwise authorized pursuant to the environmental conservation law, and persons while lawfully engaged in hunter education training, marksmanship practice, marksmanship competition or training, or training in the safe handling and use of firearms, in accordance with all applicable local, state, and federal laws, rules, and regulations.”
- Sensitive location exemption for employees of the revenue control and security departments of the MTA and the NYC transit authority who are authorized to carry a firearm as part of their employment.
- Sensitive location exemption for persons engaged in historical reenactments and motion picture or theatrical productions while in compliance with local, state, and federal law.
- Sensitive location exemption for persons while participating in military ceremonies, funerals, and honor guards.

- Sensitive location exemption for storage or display of antique firearms, rifles or shotguns at museums and historic sites.
- Sensitive location exemption for individuals traveling to or actively competing or training in biathlon, while complying with local, state, and federal law.
- Restricted location exemption for hunting. “persons while lawfully engaged in taking of wildlife or attempts to take wildlife pursuant to a hunting permit or license issued by the department of environmental conservation, or as otherwise authorized pursuant to section 11-0707 and 11-0709 of the environmental conservation law.”
- Restricted location exemption for employees of the revenue control and security departments of the MTA and the NYC transit authority who are authorized to carry a firearm as part of their employment.
- Police and military exemption for mandatory unload and lock of rifles, shotguns, and firearms when left in a vehicle.

<http://www.gunpoliticsny.com/?p=27020>

New York Loosens Church Gun Restrictions, But Religious Advocates Say It’s Not Enough

New York recently amended part of its concealed carry law to give houses of worship more freedom to protect themselves, but religious advocates that spoke with the Daily Caller News Foundation say the law isn’t enough to adequately protect religious communities.

The state passed Democratic Gov. Kathy Hochul’s 2024 budget earlier this month, amending New York’s Concealed Carry Improvement Act (CCIA), which bans persons from carrying firearms inside places of worship, to exempt armed “persons responsible for security at such place(s) of worship.” Despite this, religious advocates and experts argue it does little to protect churches from rising hatred, pointing to vague language in the law that makes it unclear how churches can defend themselves.

New York’s ban has been the subject of controversy since the Supreme Court ruled in *New York State Rifle & Pistol Association Inc. v. Bruen* in 2022 that the state’s citizens did not need to demonstrate a need to defend themselves to obtain a concealed carry license. Weeks later, the state passed the CCIA, which, among other things, banned individuals from carrying firearms in “sensitive locations,” including houses of worship with the exception of private security.

In the changes adopted through the governor’s 2024 budget, the term “security guard” is defined as individuals “who have been granted a special armed registration card, while at the location of their employment and during their work hours as such a security guard.”

(Amy Swearer, a senior legal fellow in The Heritage Foundation's Edwin Meese III Center for Legal and Judicial Studies) told the DCF that Hochul's changes to the CCIA are "vague" and don't give religious communities clear guidelines to work with.

"[I]t's kind of vague as to whether that can just be a concealed carry permit holder who is assigned to a security team or whether it has to be a licensed, paid security officer," Swearer said.

First Liberty Institute (FLI) filed a lawsuit on behalf of His Tabernacle Family Church in New York in 2022 against the CCIA. FLI Senior Counsel Jeremy Dys told the DCF that he believed the recent changes were only made in an attempt to halt any legal repercussions.

<https://dailycaller.com/2023/05/14/new-york-guns-churches-law/>

State Police investigators say they are overworked with Red Flag cases

The Red Flag statute, or ERPO-S for Extreme Risk Protection Order law, was really enhanced by Gov. Kathy Hochul in the wake of the Tops shooting case. That was even though the then-18-year-old gunman had undergone a psychiatric evaluation for a threat against his high school graduation and was subsequently cleared and able to purchase weapons.

Whatever happened in that situation, state police are now ordered to intervene in cases and go to court to seek the order to confiscate weapons if authorities decide an individual could harm others or his or her own self.

State Police investigators and senior investigators are assigned to these cases in which they must spend an average of eight hours on paperwork and other documentation and then actually go out with troopers to take the weapons. Then there is a court appearance for the police and gun owner to determine if a judge can order the weapons to be held by police for up to a year.

The leader of the New York State Police Investigators Association, which is their specific union, says the 1,100 investigators are being spread too thin with extremely difficult duty. That occurs even as they have to handle other felony cases, such as those involving murder, assault, and robbery.

The association lists statistics showing that the number of ERPO cases have grown from 95 in 2021, then up to 584 in 2022, and now 377 so far this year with a pace to reach over 1,000.

<https://www.wgrz.com/article/news/crime/state-police-overworked-red-flag-cases/71-196fed24-fd04-4acc-882d-3b5b9be790d0>

NY passed a microstamping gun law. It's already months behind schedule.

A New York state law requiring microstamping capability in new pistols is already five months behind schedule, with final results from a required study of the technology not expected until later this year.

Last June, Gov. Kathy Hochul and state lawmakers made New York the second state in the country to approve a measure requiring microstamping technology — in which a small, unique code is etched into bullet casings when they're fired — in new semiautomatic pistols. The bill's passage came amid worries over instances of gun violence statewide.

But the law came with a major caveat: Four years before the measure takes effect, the state Division of Criminal Justice Services must certify whether microstamping is "technologically viable." Under the law, that was supposed to happen within 180 days of Hochul's signature — which put the deadline in December 2022.

But DCJS missed that deadline and continues to study the technology— which means the four-year clock for the law to take effect hasn't started yet....

gun owner organizations have long pushed back. They argue that the technology, which is still relatively new, is unproven and unfeasible since it's not widely used anywhere in the U.S.

<https://gothamist.com/news/ny-passed-a-microstamping-gun-law-its-already-months-behind-schedule>

NY Attorney General sues gun maker over Buffalo mass shooting

New York Attorney General Letitia James has filed a lawsuit against the manufacturer of a rifle accessory used in a 2022 Buffalo shooting, where a gunman killed 10 people in a racially motivated attack.

In the lawsuit, filed in New York Supreme Court, James argues that the device Payton Gendron used to modify his AR-15 rifle in the Buffalo grocery store massacre turned it into "an even deadlier" weapon.

The target of the legal challenge is Mean Arms LLC, a company that makes and sells a device meant to lock a magazine filled with ammunition onto a semiautomatic rifle. James alleges the company "falsely" advertised that the so-called MA Lock device makes the weapon legal in New York but included instructions on how to remove the lock. The lawsuit notes the lock can "easily be removed" so that high-capacity magazines — illegal in New York — can be inserted into an AR-15 rifle.

https://www.thecentersquare.com/new_york/article_2d0ca050-f334-11ed-aeb0-03dc4ef8b1c4.html

Gun control looks to dry up legal talent for gun industry

Giffords Courage to Fight Gun Violence and March for Our Lives, gun control groups headed by former U.S. Rep. Gabby Giffords and antigun billionaire Michael Bloomberg, respectively, are canvassing campuses to convince law students to sign a pledge they won't represent the firearm industry or firearm owners when it comes to protecting and preserving Second Amendment rights. The gun control groups' pledge peddles verifiably false claims to convince the aspiring lawyers that the firearm industry is responsible for violent crime in America.

Not criminals. Not gang violence. Not the illicit drug trade. They're blaming the industry for crimes committed by violent offenders and ignoring basic legal foundations to sway law students to deny legal services to companies and individuals that follow the law.

<https://www.nssf.org/articles/gun-control-looks-to-dry-up-legal-talent-for-gun-industry/>

Gun rights group sues Biden DOJ over 'unconstitutional' waiting period for adults under 21

A "no compromise" gun rights group is suing the Biden administration over part of the ...gun safety law enacted last summer, arguing that the law imposes unconstitutional waiting periods to purchase firearms on young adults under 21.

Gun Owners of America (GOA) on Friday filed a lawsuit in the Northern District of Texas challenging enhanced background check requirements established by the Bipartisan Safer Communities Act last year. The lawsuit names Attorney General Merrick Garland and the FBI as defendants and argues that new requirements for the National Instant Criminal Background Check system to review juvenile records for adults aged 18-20 create a "de facto" waiting period that violates their Second Amendment rights.

https://www.foxnews.com/politics/gun-rights-group-sues-biden-doj-unconstitutional-waiting-period-adults-under-21?intcmp=tw_fnc

Federal court deals blow to ATF pistol brace rule ahead of gun accessory registration deadline

A federal appeals court has temporarily blocked the Biden administration from fully enforcing new regulations on pistols with stabilizing braces, gun accessories that President Biden has called "especially dangerous" after they were used in several mass shootings.

The Fifth Circuit Court of Appeals on Tuesday enjoined the Bureau of Alcohol, Tobacco, Firearms and Explosives from enforcing its new rule against gun owners and Second Amendment groups who filed a lawsuit challenging the regulation. The temporary injunction comes days before a deadline for individuals to register their pistol braces with ATF, destroy them, or remove the accessories from their weapons. Those that do not comply with the regulation by May 31 will be forced to pay a fee.

Gun rights groups have argued in court that the stabilizing brace rule violates the Constitution by requiring millions of gun owners to register their weapons. The Firearms Policy Coalition (FPC), one of the plaintiffs in the case, has called the rule "onerous and unconstitutional." FPC brought the case to the Fifth Circuit after appealing a lower-court order from a Texas judge who declined to block enforcement of the rule while the challenge proceeds through court.

ATF's rule, which was finalized on Jan. 13, categorizes pistols with attached stabilizing braces as short-barreled rifles...At least three million guns with stabilizing braces are in circulation in the U.S., according to the ATF. Estimates by the Congressional Research Service indicate there are currently between 10 million and 40 million stabilizing braces in circulation.

Second Amendment advocates dispute the government's characterization of stabilizing braces, pointing out that the accessories were designed to help disabled combat veterans continue to enjoy recreational shooting. They also have argued ATF previously said the addition of a stabilizing brace does not transform a pistol into a long gun in a ruling made a decade ago.

The full impact of the court's decision wasn't immediately clear. The order applied only to the plaintiffs in the case: two gun owners, a company that makes pistols with stabilizing braces, and a gun-rights group. The appeals court did not say whether the rule was blocked for others

<https://www.foxnews.com/politics/federal-court-deals-blow-atf-pistol-brace-rule-gun-accessory-registration-deadline>

The Myth of Big-Time Gun Trafficking and the Overinterpretation of Gun Tracing Data

In recent years the gun control movement has increasingly shifted its efforts from lobbying for new gun-control legislation to facilitating lawsuits against the gun industry, especially those based on claims of negligent distribution of firearms. These lawsuits are based on the premise that organized gun trafficking, much of it involving corrupt or negligent licensed dealers, plays an important role in supplying guns to criminals. This paper first assesses the extant evidence bearing on this claim, as well as on underlying assertions as to how one can tell whether a crime gun has been trafficked or whether a licensed dealer is involved in trafficking. Law enforcement evidence indicates that high-volume trafficking is extremely unusual, and that average "traffickers" handle fewer than a dozen guns. The aggregate volume of guns moved by known traffickers is negligible compared to even low estimates of the number of guns stolen.

City-level data on crime guns recovered in fifty large U.S. cities in 2000 are then analyzed to investigate (a) whether supposed indicators of gun trafficking are valid, (b) what factors affect trafficking levels, (c) the impact of gun trafficking on gun possession levels among

criminals, and (d) the impact of gun trafficking on crime rates. The findings suggest that most supposed indicators that a crime gun has been trafficked have little validity. One possible exception is whether a gun has an obliterated serial number (OSN). Using the share of crime guns with an OSN as a city-level indicator of the prevalence of gun trafficking, the analysis showed that trafficking is more common where guns are scarcer. The analysis also showed that laws regulating the purchase of guns, including one-gun-a-month laws specifically aimed at trafficking, show no effect on trafficking activity. Finally, the research indicates that trafficking levels show no measurable effect on gun possession among criminals (measured as the share of homicides committed with guns), and generally show no effect on violent-crime rates.

<https://www.uclalawreview.org/the-myth-of-big-time-gun-trafficking-and-the-overinterpretation-of-gun-tracing-data/>

US judge upholds gun ban for people on probation for misdemeanor

A federal judge declined to challenge the government's ability to disarm defendants as part of their sentences. This was one of the first decisions to uphold the constitutionality of a gun ban for those on misdemeanor probation.

At least 58 courts have dismissed challenges to statutes prohibiting firearms by criminals, but (t)his opinion is the first to address gun restrictions as a probationary condition for misdemeanor offenses in the county and appears to be one of the first nationwide.

Boasberg noted that Shaw was already on probation for drunk driving with an underage child when he entered the Capitol, and that the firearms restriction would deter another future offense, make it easier to monitor, and promote public safety, especially since it was a short one received prison sentences.

Ultimately, the court noted that, like the First Amendment right to free speech and the Fourth Amendment right to due process, the Second Amendment right "is the epitome of a right that may be restricted during a period of probation."

<https://ustoday.news/us-judge-upholds-gun-ban-for-people-on-probation-for-misdemeanor/>

New Jersey's Restrictions on Public Gun Possession Are 'Plainly Unconstitutional,' a Federal Judge Says

After the U.S. Supreme Court upheld the right to bear arms last June, New Jersey responded the same way New York did: by making it easier to obtain a carry permit but much harder to use it. "Although an individual seeking to carry a handgun for self-defense is no longer required to show a 'justifiable need,'" U.S. District Judge Renée Marie Bumb notes, "the State's expansive list of 'sensitive places' effectively prohibits the carrying of

that handgun virtually everywhere in New Jersey." The message to gun owners, Bumb says, was pretty clear: "leave your Second Amendment rights and guns at home."

The preliminary injunction that Bumb issued yesterday, which follows a temporary restraining order that she granted in January, is the latest judicial rebuke of legislative attempts to defy the Supreme Court's June 23 ruling in *New York State Rifle & Pistol Association v. Bruen* while pretending to comply with it. New Jersey politicians, like their counterparts in New York, are discovering that federal judges are not inclined to approve that transparent end run.

"Clearly, the State disagrees with Bruen," Bumb writes in her 235-page opinion. "But it cannot disobey the Supreme Court by declaring most of New Jersey off limits for law-abiding citizens who have the constitutional right to armed self-defense."

<https://reason.com/2023/05/17/new-jerseys-restrictions-on-public-gun-possession-are-plainly-unconstitutional-a-federal-judge-says/>

Age Restrictions on Handgun Sales Are Unconstitutional, a Federal Judge Rules

Since 1968, the federal government has barred firearm dealers from selling handguns to anyone younger than 21. Last week, a federal judge in Virginia said that rule, which applies to federally licensed dealers but does not cover private sales, is unconstitutional because "prohibitions on the rights of 18-to-20-year-olds to purchase handguns are not supported by our Nation's history and tradition."

The government argued that 18-to-20-year-old Americans are not part of "the people" whose "right to keep and bear arms" is guaranteed by the Second Amendment. When that amendment was ratified in 1791, the Justice Department noted, the age of majority was 21.

In granting the plaintiffs' motion for summary judgment, Robert E. Payne, a judge on the U.S. District Court for the Eastern District of Virginia, rejected that argument for several reasons. The Supreme Court has said "the people" protected by the Second Amendment, like "the people" protected by the First and Fourth Amendments, "refers to a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community." The government therefore was arguing that 18-to-20-year-olds, who today can vote and are treated as adults in most other respects, are not part of "the political community."

The argument that the current meaning of that category is the same as the one that was accepted in the late 18th century, Payne notes in his 71-page opinion, has troubling implications. If the category is defined as people who are qualified to vote, for example, "the political community at the time of the Founding only included white, landed men."

<https://reason.com/2023/05/15/age-restrictions-on-handgun-sales-are-unconstitutional-a-federal-judge-rules/>

California Waiting Period Law Challenged Under Supreme Court Bruen Decision

On May 1, in the Federal District Court for the District of Southern California, a number of plaintiffs, including San Diego County Gun Owners PAC, California Gun Rights Foundation, Firearms Policy Coalition, Inc., and Second Amendment Foundation, filed a lawsuit challenging the California statute requiring a ten-day waiting period before a person may purchase a firearm in California. The case is *Richards v Bonta*.

<https://www.ammoland.com/2023/05/california-waiting-period-law-challenged-under-supreme-court-bruen-decision/#axzz821N2C7nH>

US Supreme Court (temporarily) keeps Illinois assault weapons ban in place

The U.S. Supreme Court on Wednesday has declined to block Illinois' assault weapons ban from being enforced as a legal challenge continues...The case is set to be heard by the Seventh Circuit Court of Appeals in the coming months.

The gun rights advocates say theirs is an "exceedingly simple case" and that the Illinois laws violate the Second Amendment under the Supreme Court's standard set forth last year in *New York State Rifle and Pistol Assn v. Bruen*.

They say the plaintiffs want to keep and bear arms for a lawful purpose -- defense of their home -- and that there is no founding era precedent to ban an entire category of arms.

The state says it's far from clear that its laws are unconstitutional. They argue that gun owners who possessed assault weapons prior to the law can continue to do so lawfully, but must submit an affidavit to State Police attesting to prior purchase.

<https://abc7ny.com/illinois-assault-weapons-ban-update-il-2023/13260217/>

NRA sues Maryland over new gun control laws

The National Rifle Association (NRA) promptly sued Maryland Gov. Wes Moore (D) on Tuesday, after he signed into law several new gun control measures.

The state arm of the NRA, the Maryland State Rifle & Pistol Association, alleged in the suit that the new laws violate the Second and Fourteenth Amendments by placing "unconstitutional restrictions" on where Maryland citizens can carry a gun outside the home and how they can obtain a carry permit.

The lawsuit is challenging Senate Bill 1 and House Bill 824, both of which were signed by Moore on Tuesday, as well as pre-existing Maryland state laws....

The NRA's Institute for Legislative Action claimed in a press release on Tuesday that the measures make "carry[ing] illegal in so much of the state that a law-abiding individual cannot effectively carry for self-defense."

<https://thehill.com/homenews/state-watch/4009381-nra-promptly-sues-maryland-over-new-gun-control-laws/>

DeSantis Signs Bill Barring Credit Cards from Tracking Gun Sales in Florida

Gov. Ron DeSantis (R) signed legislation Friday that prohibits credit card companies from tracking gun sales in Florida.

His office posted an announcement to the Florida Governor's home page saying, "Today, Governor Ron DeSantis signed Senate Bill (SB) 7054 and SB 214 to protect the personal finances of Floridians from government overreach and woke corporate monitoring."

The post noted, "SB 214 prohibits credit card companies from using firearm-specific Merchant Category Codes and institutes a fine for violations of Florida's consumer protections against gun owner registries."

On August 28, 2022, Breitbart News noted Gabby Giffords' gun control group, Giffords, was urging major credit companies to flag gun and ammunition purchases via the new code. On August 30 Breitbart News noted Democrat New York lawmakers were urging major credit card companies to create and use a new firearms-specific code which would in effect flag gun purchases in the state and around the country.

<https://www.breitbart.com/2nd-amendment/2023/05/12/gov-desantis-signs-bill-barring-credit-cards-tracking-gun-sales-florida/>

A "Red State" or "Blue City" Murder Problem?

In recent years, Democratic enclaves have been conducting an experiment with soft-on-crime policies. Predictably, the national homicide rate has increased alongside these highly-visible efforts.

Understanding that most of the voting public doesn't condone the intentional promotion of lawlessness, some prominent Democrats have attempted to shift the narrative by making misleading claims about homicide in Republican-controlled "red states." According to the left-wing talking point, murder rates are worse in these "red states." Part of the implication is that the lack of gun control in these states is part of the problem.

It should be noted that New Hampshire has a Republican governor that enacted Constitutional Carry in 2017 and both houses of the New Hampshire General Court are controlled by Republicans.

As the American Enterprise Institute's Marc A. Thiessen pointed out in an October 20, 2022 piece for the Washington Post, the "red state" murder claim is "bogus." Thiessen explained, "In most of these red states, the high murder rates are driven by the lethal violence in their blue cities."

Drilling down even further, the research shows that violent crime is concentrated, both geographically and within social networks, even within cities. So, smearing "red" jurisdictions to try to blame the crime wave on a lack of gun control is beyond misleading. But of course, that's the point.

<https://www.nraila.org/articles/20230515/a-red-state-or-blue-city-murder-problem>

