

The New York State SAFE Act of 2013

Secure Ammunition and Firearms Enforcement
Enacted January 15, 2013

FEBRUARY 13, 2013

Sheriff Paul Van Blarcum

Ulster County, NY



GUNS HAVE TWO ENEMIES ?

~~~~~

RUST

AND

POLITICIANS !

# Purpose/Goals

- *Reduce gun violence through common sense and reasonable reforms. The law respects the right to bear arms and the interest of hunters, sportsmen, and legal owners who use their guns appropriately.*

*Office of the Governor*

- Keeping guns out of the hands of convicted felons and potentially dangerous mental health patients.
- Banning high capacity magazines and assault weapons.
- Ensuring all gun purchases are subject to a background check.
- Toughening criminal penalties on those who use illegal guns

**STATE POLICE BUDGET TO RECEIVE \$36 MILLION FOR  
IMPLEMENTATION**

# Bodies of NYS Law Amended

- Family Law
- Mental Hygiene Law
- General Business Law
  - Penal Law
- Criminal Procedure Law
  - Corrections Law

# Family Law

- Family Court Judge MUST make an inquiry about firearms when issuing orders of protection.
- Family Court OOP's now triggers MANDATORY suspension or revocation of a person's firearms license and surrender of guns, when judge finds certain conditions are met:
  - That there's a substantial risk of harm of future gun violence
  - There were threats of deadly force
  - The conduct which resulted in OOP involved physical injury (used to be "serious physical injury")

# Mental Hygiene Law

## **Reporting Requirement**

- Going forward, when a mental health professional makes a determination that a patient is likely to “*engage in conduct that would result in serious harm to themselves or others*”, the professional must report it.

# Mental Hygiene Law (Cont.)

## Reporting Requirement (Cont.)

- Who is a mental health professional?
  - Physician
  - Psychologist
  - Registered nurse
  - Licensed clinical social worker
- Who must the professional report to?
  - Division of Criminal Justice Services
  - Local director of community services
  - ?? Law Enforcement 9.41 MHL – Mentally Ill Person*

# Mental Hygiene Law (Cont.)

## **Outpatient Treatment**

- Person's who are receiving mental health outpatient treatment pursuant to a court order are now under more scrutiny, and can be sentenced to such treatment for 1 year (up from 6 months).
- Directors of outpatient treatment programs now have an affirmative duty to notify other directors if a patient changes or may change their county of residence.



# Mental Hygiene (Cont.)

## **Outpatient Treatment (Cont.)**

- Prior to the expiration of a court ordered term of treatment, a director of community services must review whether the patient “continues to meet the criteria for [treatment].”
- If the patient meets the criteria, the director may petition the court for an order extending the period of treatment.

# **Comprehensive Review of Mental Health Records before Firearms Permits are Granted and Review of Records to Determine if Revocation of Permits is Required.**

NY Sheriffs believe that there is an urgent need to increase funding for mental health care. The new law imposes reporting requirements on many mental health care professionals and others who may make a determination that a person is a danger to himself or others. The law further gives needed authority to courts or others who issue firearms permits to deny permit applications or to revoke permits already issued.

This issue demands a much more full and detailed discussion about how to keep guns out of the hands of such people. The Sheriffs of New York want to pursue these issues with the Governor and the State Legislature.

# General Business Law

## **New Requirements for Private Gun Sale**

- Before any sale between private individuals, a national instant criminal (NIC) background check must be preformed by a dealer, who may charge up to \$10 for this service.
- Transfers of guns between immediate family members (spouses, domestic partners, children, step-children) are exempted from this requirement.

# Penal Law

## **New Crime punishment Established**

- Marks Law (Jefferson Co EMT shot/killed 2009)
  - The intentional killing of a person known to be a first responder who is acting in the course of their official duties, now qualifies as either First Degree Murder or Aggravated Murder and can get Life without parole.

*First responders need this protection, evidenced all too often by attacks on them when they attempt to provide help, and in special recognition of the killing of two firefighters in T/Webster, NY*

## Penal Law (Con't)

### Criminal Facilitation

Any transfer of a gun by or to a prohibited person, which is then used to commit a crime, is now a felony.

The law is aimed at prosecuting those who deal in “community guns.”

# Penal Law (Cont.)

## **New Crimes Established (Cont.)**

- **Criminal Possession of a Weapon on School Grounds**
  - Similar to the previous misd. law, but it is now a class E felony...
- **Criminal Possession of a Firearm - Felony**
  - Also similar to the previous law, but now there is no requirement that the firearm be loaded to facilitate prosecution.

# Penal Law (Con't)

- Recklessly injuring a child by a firearm will become a Class D felony.
- The purchase of a gun for someone the buyer knows to be disqualified because of a conviction of a crime, an involuntary commitment or other disqualifier, will be raised to a Class D felony from a misdemeanor. This also raised to a class D felony the sale or transfer of a firearm to an individual known to be prohibited from possessing a gun.
- Tougher penalties to permit more effective gang prosecutions, allowing a prosecutor to ask for 25 to life (previously was just 15 years) for an entire group when a gang is involved in murder.
- Using or carrying a firearm during drug trafficking or a violent felony will include a 5 year mandatory minimum sentence if the gun is loaded and a 3½ year mandatory minimum if unloaded.
- Sharing a gun with an individual who is not authorized to possess a gun and commits a crime will constitute criminal facilitation crime.
- The Sheriffs' Association also suggest that the legislature consider limitations on plea bargaining for all illegal gun crimes.

# Penal Law (Cont.)

## Assault Weapon Redefinition

- Assault weapons are now defined using a “one feature” test. This test is applied to different types of weapons.
  - A semi-automatic rifle with a detachable magazine that possesses one of the following features will be classified as an assault weapon:
    - Telescoping stock;
    - Pistol grip that protrudes conspicuously beneath the action of the weapon;
    - Thumbhole stock;
    - Second handgrip that can be held by the non-trigger hand;
    - Bayonet mount;
    - Flash suppressor, muzzle break, muzzle compensator or threaded barrel;
    - Grenade launcher.



# Penal Law (Cont.)

## **Assault Weapon Redefinition (Cont.)**

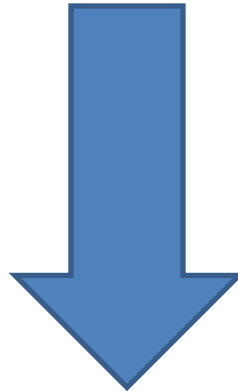
- A semiautomatic shotgun will be classified as an assault weapon if it has one of the following characteristics:
  - Telescoping stock;
  - Thumbhole stock;
  - Second handgrip that can be held by the non-trigger hand;
  - The ability to accept a detachable magazine;
  - A fixed magazine capacity in excess of 7 rounds.
  - Revolving cylinder shotguns are reclassified as assault weapons outright.

# Penal Law (Cont.)

## **Assault Weapon Redefinition (Cont.)**

- A semiautomatic pistol will be classified as an assault weapon if it has one of the following characteristics:
  - The capacity to accept an ammunition magazine that attaches to the pistol outside of the pistol grip;
  - A threaded barrel capable of accepting a barrel extender, flash suppressor, forward handgrip or silencer;
  - A shroud which allows the non-trigger hand to grip the barrel of the gun without being burnt;
  - A manufactured weight of fifty ounces or more when the pistol is unloaded.

# **BANNED FEATURES**



# FOLDING STOCK

**UNDER FOLDING**



**SIDE FOLDING**



# TELESCOPING STOCK

**TELESCOPING**



**AFTERMARKET TELESTOCK**



# PROTRUDING PISTOL GRIP

**AK TYPE PISTOL GRIP**



**AR TYPE PISTOL GRIP**



# THUMBHOLE STOCK

**AR THUMBHOLE**



**10/22 THUMBHOLE**



# SECOND HANDGRIP/ PROTRUDING

**GRIP BIPOD**



**MAGPUL GRIP**



**SECOND HANDGRIP OR PROTRUDING HAND  
GRIP THAT CAN BE HELD BY NON TRIGGER  
HAND**





# BAYONET LUG



# FLASH SUPPRESSOR

**AFTERMARKET**



**BIRDCAGE**

[www.sg0usa.com](http://www.sg0usa.com)





**Capacity to accept an  
ammunition magazine that  
attaches to the pistol outside  
the pistol grip**



**SHROUD , ETC. THAT PERMITS THE SHOOTER TO HOLD WITH NON TRIGGER HAND AND NOT BE BURNED.**

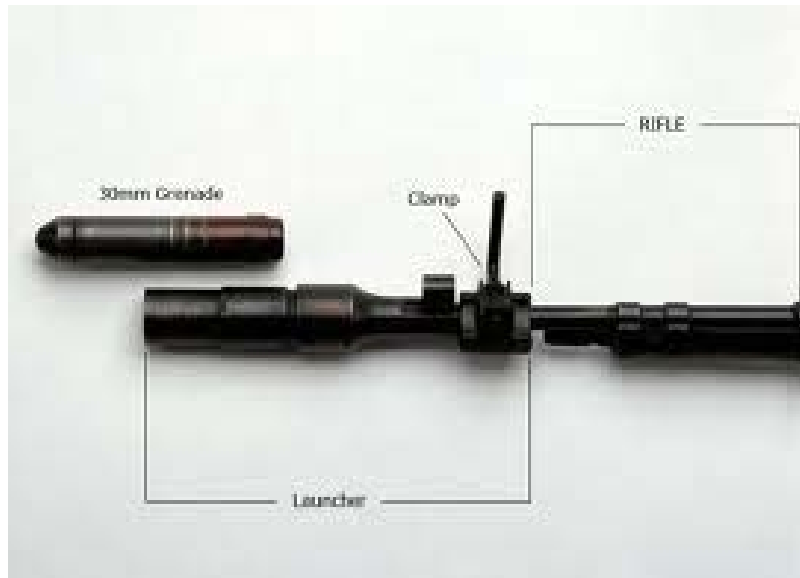


**THREADED BARREL CAPABLE OF ACCEPTING A BARREL EXTENDER, FLASH SUPPRESSOR, FORWARD HAND GRIP OR SILENCER**



**AR - 15**

# GREANADE LAUNCHER



# THUMBHOLE STOCK

**SAIGA SHOTGUN**



**SPORTING SHOTGUN**



# FIXED MAGAZINE MORE THAN 7 RNDs



# MFG UNLOADED WEIGHT OF 50 OZ OR MORE

**AR 15 PISTOL**



**HK TYPE PISTOL**



# Penal Law (Cont.)

## **Assault Weapon Redefinition (Cont.)**

- What does it mean if you own a gun that now qualifies as an assault weapon?
  - Transfer and sales restrictions—If you possess a newly classified assault weapon, you may now only transfer it to a licensed firearms dealer, or an out of state buyer.
  - Registration requirement—You must register your assault weapon with the Division of State Police by January 15, 2014. The forms for registration will be made available by April 15, 2013.



# Penal Law (Cont.)

## **Ammunition Capacity Restrictions**

- Since the federal assault weapons ban in 1994, it has been illegal in New York State to buy, for any gun, a detachable magazine, manufactured after the law took effect, that can contain more than ten rounds. This law does not change that. However.....
- The law has reduced the maximum permissible ammunition capacity for all guns in NYS **from 10 rounds to 7 rounds**. Only 7 round magazine will be sold in NYS going forward.
- Owners of 10 round magazines will be allowed to keep them, but will only be allowed to load them with 7 rounds, starting April 15, 2013.
- **Owners of magazines which can hold more than 10 rounds must either modify it so that it holds no more than 10, responsibly discard it, or sell it to a dealer or out of state purchaser by January 15, 2014.**

# Penal Law (Cont.)

## **Ammunition Sales**

- A seller of ammunition must register with the State Police. Entities currently licensed to sell firearms do not have to register.
- Prior to any sale of ammunition, a registered seller must perform a “petition to database” (*limited background check*) through the State Police’s Statewide License and Record Database (not yet developed). Required 1/15/2014.
- Those sellers capable of performing a NIC check on site may do so in lieu of using the State database.

# Penal Law (Cont.)

## **Safe Storage .....if**

- Persons possessing any type of gun must now store them in a safe or some other secure lockable container, or in the open with a trigger lock, if they cohabitate with someone who is prohibited from possessing a firearm under 18 U.S.C. 922(g). Such persons include:
  - Felons
  - The mentally ill/disabled
  - Persons guilty of domestic violence misdemeanors
  - Persons under an order of protection

# Penal Law (Cont.)

## **Pistol Licenses**

- New disqualifiers have been added when considering whether a person may obtain a pistol license. In addition to existing disqualifiers, licenses may not be given to those persons who are:
  - Fugitives from justice
  - Drug addicts (as defined by 21 U.S.C. 802)
  - Illegal aliens
  - Dishonorably discharged veterans
  - Persons who have renounced their citizenship
  - Persons who have been involuntarily committed
  - Persons under state guardianship due to mental illness

# Penal Law (Cont.)

## **Pistol Licenses (Cont.)**

- Local licensing officers must now, as part of their investigation procedures, petition the new State Police Database for any relevant information on the applicant.
- Since Sheriff's or local police do the background investigation for the County Judge we await how this "petition" will take place, etc.

# Penal Law (Cont.)

## **Pistol Licenses (Cont.)**

- License recertification:
  - A license holder is now required to recertify with the **\*\*State Police** every 5 years. Such recertification will be in a form to be determined by the State Police, and will request updated personal information from the licensee.
  - Failure to recertify shall act as a revocation of a persons license.

***\*\*State Police now desire that the County Clerks perform this task and yet the Act calls for costs to come from SP budget. Clerks are balking (UNFUNDED MANDATE) on the issue presently. Clerks will need Sheriff to do the NICS criminal history check, i.e. similar to P.P. amendments presently.***

***Stay tuned!***

# F.O.I.L.

## Freedom of Information Law

### **Pistol Licenses (Cont.)**

- FOIL Restrictions:
  - There is currently a 120 day FOIL freeze on license information which went into effect the day the law was signed.
  - Going forward, license holders and applicants will be able to request that their information not be disclosed as a public record, thereby shielding it from FOIL discovery. The “OPT-OUT” forms for such a request should be available from the State Police by February 15, 2013 (this Friday).

# Restriction on FOIL Requests about Pistol Permit Holders

By granting citizens the option “*OPT OUT*” of having their names and addresses withheld from public disclosure, the new law does provide a mechanism to allow people to decide for themselves whether their personal information should be accessible to the public. I believe, however, that no one should have to explain why their personal information should remain confidential. A better procedure, I believe, is simply to exempt all this personal information from FOIL disclosure.



## NY Court Rules That Police Agencies Can Redact Addresses in Gun Permits - February 5, 2013

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A New York appellate court ruled that the home addresses of gun-permit holders and hate-crime victims must be redacted from databases released under the state's Freedom of Information Law (FOIL), reports the New York Times. The case stemmed from several requests for data that the Times filed in 2010 with the NYPD. The city denied the requests, but in November 2011, a lower court directed the department to provide the data with the addresses. The decision by the First Department of the Appellate Division, a midlevel appeals court, reversed the lower court's decision and held that privacy concerns were legitimate grounds to deny the request.

In December, the Journal News of Westchester County published the names and addresses of thousands of gun-permit holders, a decision that drew a large number of complaints and some threats. The newspaper eventually removed the information from its Web site. Such data can be used for other research, including eliminating cases of mistaken identity and matching the information with other publicly available material. The state gun law passed last month also restricts to previously public information about gun permits. **The law requires that for its first 120 days, no information about gun-permit holders in a new statewide gun-registration database be made available publicly.**

**Modifications or Repeal
parts to the
NY SAFE Act
for consideration**



Assault Weapon Ban and Definition of Assault Weapons

I believe that the new definition of assault weapons is too broad, and prevents the possession of many weapons that are legitimately used for hunting, target shooting and self-defense. Classifying firearms as assault weapons because of one arbitrary feature effectively deprives people the right to possess firearms which have never before been designated as assault weapons. I am convinced that only law abiding gun owners will be affected by these new provisions, **while criminals will still have and use whatever weapons they want.**

Inspection of Schools by State Agencies

The new law transfers to state agencies the responsibility to review school safety plans. The Sheriffs' Association expects that funding will be transferred to these state agencies to implement safety proposals. Sheriffs and local police provide this service in all parts of the state and can perform these duties efficiently. As the chief law enforcement officer of the county, Sheriffs are in the best position to know the security needs of schools in their own counties, and the state should help to fund these existing efforts by Sheriffs and local police departments to keep our schools safe. Because Sheriffs and local police are already deeply involved with school safety plans, have developed emergency response plans, and are familiar with structural layouts of schools in their counties, they should be included along with state counterparts in any effort to review school safety plans.

Reduction of Ammunition Magazine Capacity

- The new law enacts reductions in the maximum capacity of gun magazines.

The “thinking” behind the seven-round law is convoluted. If a spree killer has three less cartridges in his gun there could be three less lives lost when he starts murdering. By the same token, the measure could (in theory) limit the lethality of gang members, armed robbers and other criminals. The theory is that reloading takes time and the time a madman/criminal spends reloading is “extra” time for innocents to escape and rescuers to intervene. That’s assuming the madman/criminal uses a magazine that only holds seven rounds. That assumption is absurd thinking. This legislation of the seven-round limit makes no sense whatsoever to a reasonable thinking person.

- I believe based on my years of law enforcement experience that this will not reduce gun violence and will unfairly limit the ability of law-abiding citizens to purchase firearms in New York and infringe on rights.

Law Enforcement Exemption Clarification

The new law has many provisions that might apply to law enforcement officers and there has been much confusion about whether existing law enforcement exemptions continue to apply. Does it apply to armed security guards? I understand that the Governor and Legislature have already agreed to review and modify these provisions where necessary, and the Sheriffs want to be part of the discussion to make the changes effective. Additionally, the exemptions should apply to retired police and peace officers, and to others in the employ of the Sheriff and other police agencies who perform security duties at public facilities and events.

Method of Bill Passage

It is my view that anytime government decides it is necessary or desirable to test the boundaries of a constitutional right that it should only be done with caution and with great respect for those constitutional boundaries. Further, it should only be done if the benefit to be gained is so great and certain that it far outweighs the damage done by the constriction of individual liberty. While many of the provisions of the new law have surface appeal, it is far from certain that all, or even many, of them will have any significant effect in reducing gun violence, which is the presumed goal of all of us. Unfortunately the process used in adoption of this act did not permit the mature development of the arguments on either side of the debate, and thus many of the stakeholders in this important issue are left feeling ignored by their government. This law was hastily enacted and the Sheriffs' Association will work with the Governor and the Legislature on correcting these issues and are ready to meet anytime.

January 30, 2013 – LAWSUIT FILED AGAINST SAFE ACT

BUFFALO, N.Y. -- Hamburg Attorney James Tresmond officially filed a lawsuit Tuesday aimed at reversing New York's "toughest in the nation" gun control law. Tresmond filed the suit on behalf of two plaintiffs that he described as **"both Erie County gun owners."** He declined to identify the two men, but court records show one is Richard Dywinski. He's suing Governor Andrew Cuomo, Assembly Speaker Sheldon Silver, Senate Leaders Dean Skelos and Jeff Klein, and State Police Superintendent Joseph D'Amico. Tresmond said the goal is to overturn the "New York Safe Act." "We're righting for the civil rights of our gun owners," Tresmond told 2 On Your Side. The attorney did not want to discuss the specifics of his legal arguments and said he will do that "in court instead of in the media." The lawsuit was filed in State Supreme Court in Erie County. The case will go before a judge on February 21.

February 1, 2013 OPPONENTS TAKE N.Y. TO COURT OVER GUN LAW

ALBANY, N.Y. -- The state Rifle and Pistol Association filed a notice of legal claim Tuesday against New York for its new gun-control law, saying it violates residents' "fundamental constitutional rights to lawfully possess, keep, bear and use firearms for self-defense and other lawful purposes." The notice of claim is the first step in filing a lawsuit against the state. The lawsuit would have to be filed in 90 days. The plaintiffs in the lawsuit include the **Westchester County Firearms Owner's Association and AR15.Com LLC**, a gun website based in Farmington. The seven-page notice, filed in Albany with the state Attorney General's Office, says there are a number of reasons why the new law is unconstitutional. It claims the law, passed Jan. 15, violates interstate travel with a lawfully possessed firearm, criminalizes and bans the possession of certain firearms and ammunition and impacts private businesses.



I understand my Constitutional obligations and the concerns of constituents. I am not called upon by this new legislation to go door-to-door to confiscate any weapons newly classified as assault weapons, and I will not do so.

I represent all the people, and I took an oath to uphold the Constitution of the United States and the Constitution of the State of New York.

I will continue to enforce all laws of the state and will protect the rights of all citizens, including those rights guaranteed by the Constitution of the United States and the Constitution of the State of New York.

NEWS

Olympic Arms cuts off business to New York over gun restrictions

February 12, 2013

[Olympic Arms](#) – the Washington-based manufacturer of AR-15 type rifles and semiautomatic pistols – announced Tuesday that because of legislation passed recently in the state of [New York](#), the company “will no longer be doing business with the State of New York or any governmental entity or employee of such governmental entity within the State of New York.”

Resources

- Governor's FAQ webpage
 - <http://www.governor.ny.gov/2013/gun-reforms-faq>
 - www.NYSAFEACT.COM
 - 1-855-529-4867 –State Police hotline
 - Division of State Police
 - Web page under construction...check periodically
 - Sheriff Paul J. Van Blarcum, pvan@co.ulster.ny.us
 - 845-340-3590---www.co.ulster.ny.us/sheriff
- I thank NYSSA Counsel Alex Wilson for his assistance