

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

June, 2022¹

New York Tightens Its Strict Gun Laws in Democrat Show of Force

The State Legislature passed a broad package of gun bills that will raise the minimum age to buy a semiautomatic rifle to 21, ban most civilians from purchasing bullet-resistant body vests and revise the state's so-called red flag laws,

New York will now become the second state, following California, to pass legislation paving the way for the "microstamping" of shell cases with a unique alphanumeric code in order to trace the bullet back to the gun it was fired from. The bill, spearheaded by State Senator Brad Hoylman of Manhattan, is meant to help officials solve crimes, but some Republicans questioned the viability of the technology and argued it amounted to an unnecessary barrier for gun manufacturers.

New York — which already bans military-style assault rifles — will also join a handful of states that have raised the minimum age requirement to 21 from 18 for the purchase of some long guns, the same age as for handguns in New York. New buyers of such weapons will now be required to obtain a permit — which includes undergoing a background check and safety course — before the purchase of a semiautomatic rifle.

On the Senate floor, Daniel Stec, a Republican, argued that the bill "does nothing more than hassle lawful gun owners and does very little" to fight gun violence.

"I want it to be a hassle," replied Senator Gustavo Rivera, a Democrat from the Bronx

<https://www.nytimes.com/2022/06/02/nyregion/guns-abortion-laws-ny.html?referringSource=articleShare>

State Introduces² Passes Ten New Bills to Tighten New York's Gun Laws

Governor Kathy Hochul, Majority Leader Andrea Stewart-Cousins and Speaker Carl Heastie on Monday announced that ten bills have been introduced in both the Assembly and Senate that would tighten New York's gun laws. The bills would:

- require that an individual obtain a license, with a minimum age of 21, to purchase a semiautomatic rifle (passed both houses 6/2/22); and
- require microstamping for new guns; (passed both houses 6/2/22)
- increase accountability for social media platforms; (passed both houses 6/2/22)
- eliminate grandfathering of large-capacity ammunition feeding devices (passed both houses 6/2/22)
- strengthen the Red Flag law by expanding the list of people who can file for Extreme Risk Protection Orders, and other measures (passed both houses 6/2/22);

¹ Current as of 6/3/22 12:24 PM

² Passed 6/2/22, not yet sent to Governor.

- close the so-called “any other weapon” loophole to include any weapon not defined in the Penal Law that is designed or may readily be converted to expel a projectile by action of an explosive (passed both houses 6/2/22)
- require information sharing between state, local and federal agencies when guns are used in crimes (passed both houses 6/2/22);
- new restrictions on gun dealers (passed 6/2/22);
- prohibit the purchase of body armor for anyone who is not engaged in an eligible profession (passed both houses 6/2/22);
- make threatening mass harm a crime (passed both houses 6/2/22);

<https://www.fingerlakesdailynews.com/2022/05/31/1456330/>

Republican Rep. Chris Jacobs says he would vote for an assault weapons ban

Without solicitation, U.S. Rep. Chris Jacobs made a statement Friday vastly in contrast with his party's recent stance when it comes to gun control in the United States.

"I want to be completely transparent of where I am in Congress," Jacobs said. "If an assault weapons ban bill came to the floor that would ban something like an AR-15, I would vote for it."

"Why does a civilian need a 30 or 50-round magazine either for recreation or hunting? I believe something along the lines of 10 is perfectly reasonable," he said.

Finally, the congressman said he would support raising the age to purchase an AR-15 style rifle from 18 to 21.

Jacobs currently represents New York's 27th Congressional District, which has a large Republican population living in rural areas

(The counties in this new district are Allegheny; Cattaraugus; Chautauqua; Chemung; Erie; Schuyler; Steuben)

<https://spectrumlocalnews.com/nys/buffalo/politics/2022/05/27/republican-jacobs-says-he-would-vote-for-an-assault-weapons-ban>

Jacobs getting external pressure to drop out of NY-23 race by Friday

Nearly a week ago, the then-prohibitive favorite to win election in New York's 23rd Congressional District, Republican Chris Jacobs, turned the race on its head when he announced he would vote for a federal ban on guns like AR-15 rifles.

Jacobs acknowledged at the time his statements could complicate his election bid and Erie County Conservative Party Chairman Ralph Lorigo says they absolutely did.

"I started getting calls Friday afternoon and they still haven't stopped," Lorigo said. "So I've heard from my people repeatedly. It's not a stance that we can support so he cannot be the person that we want to send to Congress."

Lorigo said he's spoken with a number of other candidates potentially interested in running, but his preference is New York State Republican Chair Nick Langworthy. He said Langworthy has experience and political ideology that fits the district and infrastructure to collect the required number of signatures by the June 10 deadline for new candidates.

Tompkins County Republican Chair Mike Sigler, who was running for NY-22 prior to a court decision changing the Congressional district maps, has submitted his intent to run for NY-23. He said he's watching Jacobs and Langworthy closely and could reevaluate that decision Friday.

Meanwhile, Fredonia-based businessman Marc Cenedella said he plans to continue to run, and expects to easily exceed the signature requirement to get on the ballot. He said Jacobs' gun stance was just the latest example of a politician out of touch with the voter base.

<https://spectrumlocalnews.com/nys/buffalo/politics/2022/06/02/jacobs-getting-external-pressure-to-drop-out-of-ny-23-race-by-friday>

In New York, a judge ruled that gunmakers can be held liable under public nuisance statutes.

A federal judge in New York issued a verdict in a gun-control case that could offer some gun control advocates a glimmer of hope.

The ruling, delivered Wednesday by Judge Mae D'Agostino of the U.S. District Court for the Northern District of New York, rejected a claim by gun manufacturers that a 2021 New York state law aimed at regulating their industry is unconstitutional.

In her ruling, D'Agostino noted that although a 2005 U.S. law grants the industry broad immunity from lawsuits, it could still be held liable when "a manufacturer or seller of a [firearm] knowingly violated a State or Federal statute applicable to the sale or marketing of the product."

Opponents say they will appeal the decision, potentially taking the case to the Supreme Court. But if the ruling is ultimately upheld, cases brought against gun manufacturers may be deemed allowable despite the existence of the U.S. immunity law, called the Protection of Lawful Commerce in Arms Act (PLCAA).

<https://www.nbcnews.com/business/consumer/ruling-gives-gun-control-advocates-hope-wake-deadly-texas-school-shoot-rcna30880>

Gunmaker Glock to be sued over mass shooting aboard Brooklyn subway

A Brooklyn woman shot and severely wounded in a mass shooting aboard a Brooklyn N train last month will file a lawsuit Tuesday against Glock, which manufactured the 9-mm. gun used in the 33-bullet attack on straphangers.

Ilene Steur, 49, was shot in the buttocks and suffered life-changing injuries during the gas mask-wearing gunman's rampage as the rush-hour train pulled into the 36th St. station in Sunset Park.

Her lawsuit in Brooklyn Federal Court alleges Glock — one of the world's largest gunmakers — markets its weapons and distributes them in a way that is a "public nuisance" under state law and endangers public safety.

One of the lawyers who filed the suit, Mark Shirian, said Glock's marketing emphasized that the gun can be easily concealed and has a high capacity — features that he argues appeal to people with criminal intent.

The suit relies on a New York State law signed by Gov. Andrew Cuomo in March 2021. Victims of gun violence can seek to hold gunmakers accountable in court by arguing the companies are liable for creating "a public nuisance" through unreasonable marketing or distribution. The law notes that roughly 75% of guns used in crimes in New York are bought out of state.

The lawsuit follows the landmark \$73 million settlement in February paid by gun manufacturer Remington to families of the victims of the 2012 mass shooting at Sandy Hook Elementary School in Newtown, Conn. The families argued the company recklessly marketed the Bushmaster AR-15-style rifle to young adults.

<https://www.nydailynews.com/new-york/nyc-crime/ny-gun-maker-glock-sued-subway-shooting-victim-20220531-5vlkwjmjgzhmzahfg72ffnl5mu-story.html>

Assembly Leader Pushing To Make Gun Makers Pay For Deadly Buffalo Shooting

Leader Peoples-Stokes is pushing to use legislation to hit gun-makers' bottom lines. The law, signed by former Gov. Cuomo last year holds gun makers financially liable for the damages caused by their weapons.

Crystal Peoples-Stokes plans to use this legislation in the mass shooting in Buffalo to make the gun manufacturer of the weapon Gendron used pay for damages

https://wblk.com/gun-makers-pay-ny/?utm_source=tsmclip&utm_medium=referral

SCOTUS could soon overturn New York's gun law. Here how the state could respond

Questions from Supreme Court justices during oral arguments made in the case last November left some observers doubtful that New York's law would survive, at least in its current form. "It seems like there's a majority of the Supreme Court who is skeptical about the constitutionality of New York's restriction," said Eric Ruben, an assistant professor at Southern Methodist University's Dedman School of Law and a fellow at the Brennan Center for Justice.

Chief Justice John Roberts compared the Second Amendment – which the case will be decided on – to the protections in the First Amendment. "You don't have to say, when you're looking for a permit to speak on a street corner or whatever, that, you know, your speech is particularly important," Roberts said in November. "So why do you have to show in this case, convince somebody, that you're entitled to exercise your Second Amendment right?"

Though New York is preparing for an adverse ruling, legal experts said that there may be steps the state can take to maintain some restrictions on who can carry a weapon in public. It all depends on the specifics of the court's opinion.

In a more narrow ruling, the court could strike down the "proper cause" standard, in which case state lawmakers would have to rewrite the licensing law.

In a broader ruling, the court could declare any kind of licensing regime unconstitutional. Experts are hesitant to speculate about the ruling, but some are skeptical that it will be so broad. "I would be surprised if the court ruled that licensing regimes are per se unconstitutional," said Joseph Blocher, a professor at Duke Law School. "That would be an enormous change from both the tradition and even the current practice across the country."

Blocher said it's possible that short of declaring all licensing regimes unconstitutional, a majority could find that the state has too much discretion in issuing licenses, and rules that "may issue" regimes like New York's are unconstitutional. An alternative is what's called a "shall issue" permitting system, in which New York – and other states with similar licensing laws on the books – would have to issue licenses as long as applicants met a certain set of qualifications.

Depending on the scope of the ruling, there may be other options for restricting how and where guns are carried that New York and other affected states could pursue – even if the "proper cause" standard is struck down.

During oral arguments in November, some of the justices expressed some receptiveness to the idea of banning concealed carry in certain sensitive settings, such as college campuses and populated settings like Times Square on New Year's Eve. "I'd expect a focus on trying to closely look at where the security needs are heightened, whether it's the subway or highly populated tourist areas in New York City, or other places, and to be clear about where the state is forbidding license holders to carry their guns," Ruben said, if it comes to that.

<https://www.nynmedia.com/content/scotus-could-soon-overturn-new-yorks-gun-law-here-how-state-could-respond>

Gun-control measures eyed as concealed carry rules face court test

A state gun-control requirement opposed by the New York affiliate of the National Rifle Association and supported by the Hochul administration has officials preparing for the possibility that the measure could be struck down by the nation's highest court.

One measure that attempts to impose new limitations on the ability of New York gun owners to carry guns outside their homes has been introduced by Assemblywoman Jo Anne Simon, D-Brooklyn.

It calls for the prohibition of firearms on public transportation, at large gatherings and at food and drink establishments.

After a gunman wounded 23 commuters on a Brooklyn subway train last month, Simon said such incidents demonstrate the need for concealed-carry restrictions to protect public safety.

Referencing the Supreme Court case involving the Rifle & Pistol Association, Simon said: "We should all be very clear that a finding of unconstitutionality is unacceptable and would make all New Yorkers extremely vulnerable, particularly in public places like subways, train stations and airports, houses of worship, bars, and other places."

But Rep. Elise Stefanik, R-Saratoga, and dozens of other GOP congressional members have signaled their support for... the two gun owners seeking to overturn New York's restrictions on concealed carry permits.

On Wednesday, Stefanik criticized Hochul's effort to keep restrictions on the ability of gun owners to have access to their weapons outside their homes.

https://www.niagara-gazette.com/news/local_news/gun-control-measures-eyed-as-concealed-carry-rules-face-court-test/article_2a274a19-7a09-5a2f-bd22-5891c7b00daf.html

New York AG Letitia James seeks NRA babysitter

State Attorney General Letitia James is seeking an independent monitor to oversee the finances of the National Rifle Association, according to an amended complaint filed in the Manhattan Supreme Court this week. James' request comes after New York County Supreme Court Judge Joel Cohen in March rejected James' attempt to dismantle the organization, but said the overarching lawsuit alleging misuse of funds by NRA leaders could continue.

In the amended complaint, James sought injunctive relief from the Supreme Court to appoint an "independent compliance monitor" that would report to her office and the court, along with an independent governance expert to recommend reforms to the organization.

An attorney for the NRA said the association will "vigorously defend its commitment to good governance in the best interest of its members" when asked for comment on the new filing by City & State.

<https://www.nynmedia.com/content/new-york-ag-letitia-james-seeks-nra-babysitter>

Bronx district attorney urges credit card companies to cut ties with ghost gun sellers

Bronx District Attorney Darcel Clark shared a letter she sent this week to both Mastercard and Visa, urging them to cut ties with ghost gun manufacturers.

"We're asking Mastercard and Visa to get involved, asking them, 'don't let your cards be used for that,' because what is happening with those gun parts and pieces, putting them together, people are dying."

<https://abc7ny.com/ghost-guns-gun-sellers-darcel-clark-credit-card-companies/11841896/>

Biden Calls for National Red Flag Laws, 'Assault Weapons' Ban, Gun Storage Laws, Ability to Sue Gun Makers

President Biden stated that the Second Amendment is "not absolute," then segued into a gun control push that included at least eight different gun law proposals.

Here are a list of Biden's proposed gun controls:

- Ban "Assault Weapons" Ban "high capacity" magazines. If banning is not possible, then raise purchase age for AR-15s and similar rifles to 21
- "Strengthen background checks"
- "Enact [a] safe storage law"
- "red flag law"
- "Repeal the immunity of gun manufacturers from liability."
- Address the mental health crisis

Biden elaborated on the "assault weapons" ban proposal, saying that the previous ban (1994-2004) specifically banned "nine categories of semiautomatic weapons, like AK-47s and AR-15s."

He added, "We should limit how many rounds a weapon can hold"

<https://www.breitbart.com/politics/2022/06/02/biden-calls-for-national-red-flag-laws-assault-weapons-ban-gun-storage-laws-ability-to-sue-gun-makers/>

Ghost Stories: Joe Biden's 'Ghost Gun' Scheme Under Fire

Home gunsmiths have been building their own firearms for generations. But Biden and his administration have chosen to treat such people like criminals, apparently because some criminals have been using such guns. Criminals use cars, too, but the administration hasn't decided to treat all motorists like Bonnie and Clyde.

Biden's plan could be headed for trouble if it hasn't already arrived by the time you read this. Alan Gottlieb, founder and executive vice president of the Second Amendment Foundation—the group responsible for the lion's share of gun rights litigation over the past few years—told me via email within hours of Biden's press event announcing the new rules, SAF attorneys were already looking at legal action.

“We do not believe that the Biden Administration has the legal authority to redefine what a gun is,” Gottlieb wrote. “Only Congress has that authority. This is a blatant attempt to usurp the constitution. Our attorneys are exploring a lawsuit.”

The White House simplified the administration’s final rule: “This final rule bans the business of manufacturing the most accessible ghost guns, such as unserialized ‘buy build shoot’ kits that individuals can buy online or at a store without a background check and can readily assemble into a working firearm in as little as 30 minutes with equipment they have at home. This rule clarifies that these kits qualify as ‘firearms’ under the Gun Control Act, and that commercial manufacturers of such kits must therefore become licensed and include serial numbers on the kits’ frame or receiver, and commercial sellers of these kits must become federally licensed and run background checks prior to a sale—just like they have to do with other commercially-made firearms.”

<https://gunsmagazine.com/discover/ghost-stories-joe-bidens-ghost-gun-scheme-under-fire/>

House Judiciary Committee Passes Robust Gun Omnibus Legislation

The (so-called) “Protecting Our Kids Act” would:

- Raise the lawful age to purchase a semiautomatic centerfire rifle from 18 to 21 years old
 - Establish a new federal offense for the import, sale, manufacture, transfer, or possession of a large capacity magazines, with exceptions for certain law enforcement uses and the possession (but not sale) of grandfathered magazines;
- Establish new federal offenses for gun trafficking and straw purchasers and authorize seizure of the property and proceeds of the offense
- Establish voluntary best practices for safe firearm storage; award grants for Safe Firearm Storage Assistance Programs; provide a tax incentive to dealers for 10% of amounts received from the sale of safe storage devices
- Establish requirements to regulate the storage of firearms on residential premises; create criminal penalties for violation of the requirements
- Build on ATF’s regulatory bump stock ban by listing bump stocks under the National Firearms Act (like machineguns) and statutorily banning the manufacture, sale, or possession of bump stocks for civilian use
- Build on ATF’s regulatory ban of ghost guns by ensuring that ghost guns are subject to existing federal firearm regulation by amending the definition of “firearm” to include gun kits and partial receivers and changing the definition of “manufacturing firearms” to include assembling firearms using 3D printing

<https://nadler.house.gov/news/documentsingle.aspx?DocumentID=394856>

Senate Democrats Introduce Bill Requiring A Federal Firearms License To Buy And Own A Gun

Democratic New Jersey Senators Bob Menendez and Cory Booker, and Connecticut Senator Richard Blumenthal introduced the “Federal Firearm Licensing Act” Thursday (May 19). The bill would institute a requirement for gun purchasers to obtain a firearms license through the Department of Justice before buying or receiving a gun.

The bill ..outlines the procedure for establishing the license under the Department of Justice, directing the attorney general to establish a system for issuing them. In order to be eligible to obtain the license itself, a prospective licensee must first complete a firearms safety course, which includes “a written test, to demonstrate knowledge of applicable firearms laws; and hands-on testing, including firing testing, to demonstrate safe use and sufficient accuracy of a firearm.” After that, the licensee must pass a federal background check and a criminal history; submit proof of identification; fingerprints; and information about the firearm the licensee intends to buy or obtain, including “make, model, and serial number, and the identity of the firearm seller or transferor.”

https://www.dailywire.com/news/senate-democrats-introduce-bill-requiring-a-federal-firearms-license-to-buy-and-own-a-gun?%3Futm_source=twitter&utm_medium=social&utm_campaign=dwtwitter

New Hampshire State legislature votes on a bill to override all federal gun legislation

On Friday, May 6, 2022, the state legislature of New Hampshire, voted to pass the HB1178 bill, which makes it illegal for anyone to enforce any federal gun laws:

This bill prohibits the state of New Hampshire, a political subdivision of this state, or any person acting under the color of state, county, or municipal law from using any personnel or financial resources to enforce, administer, or cooperate with any law, act, rule, order, or regulation of the United States Government or Executive Order of the President of the United States that is inconsistent with any law of this state regarding the regulation of firearms, ammunition, magazines or the ammunition feeding devices, firearm components, firearms supplies, or knives.

The bill also makes it clear that state, county, or local officials are still *allowed* to cooperate with a law enforcement agency that's investigating a violation of federal gun laws, provided that the person of interest has *also* violated some other New Hampshire laws.

<https://boingboing.net/2022/05/07/new-hampshire-state-legislature-votes-on-a-bill-to-override-all-federal-gun-legislation.html>