

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

July, 2022¹

Supreme Court Strikes Down New York Concealed-Carry Restriction

The Court voted 6–3 to strike down the New York law, which has been in place since 1913 and required that people show a special need to obtain a license to carry a concealed handgun outside the home.

Justice Clarence Thomas wrote in the majority **opinion** in *New York State Rifle & Pistol Association v. Bruen* that the Second Amendment protects the right of individuals to carry a gun outside the home, adding that the state’s “proper cause” requirement “violates the Fourteenth Amendment by preventing law-abiding citizens with ordinary self-defense needs from exercising their Second Amendment right to keep and bear arms in public for self-defense.”

The three liberal justices dissented. Justice Stephen Breyer wrote a dissent accusing the majority opinion of deciding the case “without discussing the nature or severity” of gun violence.

Justice Samuel Alito dismissed Breyer’s concern in his concurring opinion, arguing that the New York law did not stop the 18-year-old shooter who killed ten people in a grocery store in Buffalo, N.Y., last month.

New York governor Kathy Hochul responded to the ruling.

“We are not powerless to respond to this,” she said, adding that she plans to call the legislature back into session to identify “sensitive locations” where new restrictions can be imposed.

New York State Senate Majority Leader Andrea Stewart-Cousins, a Democrat, (said) that the state “will rise up to this latest challenge to pass additional gun safety legislation.”

<https://www.nationalreview.com/news/supreme-court-strikes-down-new-york-concealed-carry-restriction/>

NY Senate OKs bill barring guns in (“sensitive locations”), requiring social media info for permit,

The New York state Senate approved **sweeping legislation** Friday afternoon that would ban concealed weapons from so-called “sensitive locations” like Times Square, public transit and other venues — while requiring gun permit applicants to give the state information about their social media accounts as well as character references.

¹ Current as of 7/1/22 7:54 PM

The Assembly was on track to pass the bill and send it to Hochul's desk by Friday evening.

Among other information, potential firearm owners would be asked to divulge all social media accounts maintained over the past three years as well as provide references attesting to their "good moral character."

Permit applicants will also have to complete at least 16 hours of in-person training, while private businesses will be off-limits to firearms unless their owners post conspicuous signage indicating otherwise.

Weapons will also be barred from places of worship, public transit, sports arenas, parks, libraries, government buildings, playgrounds, entertainment venues, protests and businesses that serve alcohol, among other venues.

Future ammunition purchases will require background checks in the future under the new law, with information on the buyer's "date, name, age, occupation and residence" entered into a state database, according to the legislation.

"They didn't just go up to the line. They trampled on the Supreme Court decision," said Tom King, president of the New York State Rifle and Pistol Association, the plaintiff in the Supreme Court case.

<https://nypost.com/2022/07/01/new-york-bill-would-require-social-media-info-for-gun-carry-permit/>

How (Might) Courts Evaluate Gun Regulations After *Bruen*?

Here is (a) very tentative summary of what appears to (be) on first read, based on Justice Thomas's majority opinion (joined by Chief Justice Roberts and Justices Alito, Gorsuch, Kavanaugh, and Barrett) plus a bit from Justice Kavanaugh's concurrence, joined by Chief Justice Roberts:

[1.] The right to keep and bear arms generally includes the right to have arms available for self-defense, whether at home or outside the home.

[2.] This right can be limited to the extent that there is a historical tradition of limitation.

[3.] The right can also be limited by regulations that impose only a modest burden on law-abiding people's ability to defend themselves.

[4.] But if a law substantially burdens the right without having sufficient historical support, it can't then be upheld under "intermediate scrutiny," "strict scrutiny," or a similar test.

[5.] In particular, the Court signaled that some specific kinds of restrictions are constitutional:

[a.] Restrictions on carrying in "sensitive places such as schools and government buildings"

- [b.] Bans on concealed carry *but only if* open carry is allowed.
- [c.] As noted above, nondiscretionary licensing restrictions, unless they involve "lengthy wait times in processing license applications or exorbitant fees" or otherwise substantially burden the ability of responsible, law-abiding gun owners to get a license.
- [d.] Restrictions on gun ownership by felons and the mentally ill.
- [e.] Restrictions on machineguns and other "dangerous and unusual" weapons—which probably means unusually dangerous weapons.
- [f.] "[L]aws imposing conditions and qualifications on the commercial sale of arms" Nonetheless, presumably if the laws substantially burden the rights of people to possess guns (rather than just regulating the behavior of the commercial sellers), they may well be unconstitutional.

[6.] Much of course remains unresolved—as is common for any foundational Supreme Court decision (for instance, the Court's early free speech decisions, which left much to be decided in future cases). For example:

- [a.] Does the right kick in at age 18 (the general age of majority in the U.S. today) or at age 21 (the age of majority through most of American history)?
- [b.] Where would one place bars, restaurants that sell alcohol, or even stores that sell alcohol for off-premises consumption?
- [c.] What does all this mean for "red flag" laws?

<https://reason.com/volokh/2022/06/23/how-should-courts-evaluate-gun-regulations-after-bruen/>

Could All of New York City Be Designated a Gun Free Zone?

Speaker Adams wants declared as "sensitive locations" any area within 1,000 feet of mass transit systems, hospitals, parks, government buildings, schools, child care facilities, places of worship, cemeteries, financial institutions, theaters, bars, libraries, homeless shelters and courts.

<https://www.nbcnewyork.com/news/local/could-all-of-new-york-city-be-designated-a-gun-free-zone/3747911/>

NY Gov. Hochul Says Law-Abiding Gun Owners Make People Feel 'Very Unsafe'

New York Gov. Kathy Hochul said Friday morning law abiding gun owners make people feel "unsafe" just one day after the Supreme Court overturned a more than century old gun law.

Speaking on CBS This Morning, Hochul said the right to carry outside the home makes individuals feel "unsafe" and seemed to insinuate it should not be allowed.

<https://dailycaller.com/2022/06/24/kathy-hochul-law-abiding-gun-owners-make-people-unsafe/>

2022 New York Gun Control Bills (Prior to July 1)

List of gun control bills which passed in 2022 (before 07/01/22).

- **A-1023A/S-4970A**, Requires the creation and imposition of restrictive commercial practices and stringent recordkeeping and reporting to prevent gun and ammunition sales to individuals with a criminal record.
- **A-3998/S-687**, Clarifies the definition of imitation weapon.
- **A-7926A/S-4116A**, Requires semiautomatic pistols manufactured or delivered to any licensed dealer in this state to be capable of microstamping ammunition.
- **A-8102A/S-6363A**, Requires the court to order the search for and immediate seizure of certain firearms when a defendant willfully refuses to surrender such firearms.
- **A-8735/S-7760**, Requires the **Division of Criminal Justice Services** to publish quarterly reports providing information related to firearms, rifles and shotguns used in the commission of crimes in the state of New York.
- **A-8736/S-7796**, Amends the definition of a “disguised gun” to include any firearms designed and intended to appear to be a toy gun.
- **A-8741/S-7736**, Amends the “Scott J. Beigel Unfinished Receiver Act” relating to unserialized frames or receivers.
- **A-8786/S-7705**, Criminalizes the sale of ghost guns; requires any person licensed as a gunsmith or a dealer in firearms to register with the **Division of Criminal Justice Services** any unserialized firearm, rifle or shotgun, finished frame or receiver, or unfinished frame or receiver.
- **A-8846/S-7716**, Relates to the Firearm Violence Research Institute; makes technical changes to the institute’s procedures, goals and activities.
- **A-10428A/S-9229A**, Relates to the definition of large capacity ammunition feeding device for purposes of the offense of criminal possession of a weapon in the third degree; and repeals section 265.36 of the penal law.
- **A-10497/S-9407B**, Relates to the unlawful purchase and the unlawful sale or delivery of a body vest.
- **A-10502/S-9113A**, Authorizes certain health care providers to file an application for an Extreme Risk Protection Order against a person examined by such health care provider in certain circumstances.
- **A-10503/S-9458**, Relates to the purchase or taking possession of a semiautomatic rifle; requires a license to purchase or take possession of a semiautomatic rifle; establishes the crimes of criminal purchase of a

semiautomatic rifle and criminal sale of a semiautomatic rifle; requires recertification of licenses to purchase or take possession of a semiautomatic rifle every five years.

- **A-10504/S-9456**, Relates to defining firearm; provides that the term firearm shall also include any other weapon that is not otherwise defined containing any component that provides housing or a structure designed to hold or integrate any fire control component that is designed to or may readily be converted to expel a projectile by action of explosive.

http://www.gunpoliticsny.com/?page_id=25517

What sportsmen should know about ammo following NY's legislative session

Shooters should not think they've skated on the lead issue. The U.S. Fish and Wildlife Service committed to a lead ban on any new hunting opportunities on National Wildlife Refuges across the country, according to a June 8 filing. The ban is being imposed via the regulatory process, thereby by-passing the need to involve Congress.

The Fish and Wildlife Service also proposed to ban lead ammunition on existing hunting areas on 18 refuges located in New York, as well as California, Illinois, Indiana, Maryland, Maine, Oregon, Pennsylvania, Rhode Island, South Carolina, Virginia and West Virginia. Finally, the proposal included a new study on the impacts of lead ammunition and tackle on wildlife refuges.

The fear is that the proposal creates a precedent that will be utilized to ban lead ammunition and tackle on all public lands where hunting and fishing occur. Again, until supply issues are remedied, removing lead from the mix would impact recreational hunting, shooting and fishing industry.

To submit public comment online, visit the Federal eRulemaking Portal at www.regulations.gov and find docket number FWS-HQ-NWRS-2022-0055 and find the correct document "2022-2023 Station-Specific Hunting and Sport Fishing Regulations." You can also mail a comment to: Public Comments, Processing, Attn: FWS-HQ-NWRS-2022-0055, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: PRB (JAO/3W), Falls Church, VA 22041-3803

The deadline to comment is Aug. 8.

<https://www.poughkeepsiejournal.com/story/sports/recreational/2022/06/15/lead-ammunition-ban-still-possible-after-ny-legislative-relief/7629373001/>

'Extreme risk' orders to seize guns surge, but lack of legal resources lead to dismissals

ALBANY — The number of "extreme risk protection orders" being filed by State Police has surged in the wake of an executive order issued by Gov. Kathy Hochul last month that mandated troopers pursue the court applications whenever they encounter a person who is "likely" to be at risk of harm to themselves or to others.

The civil cases almost always involve firearms, and whether a person who poses a potential public safety threat should have those weapons seized by police through a court order — either temporarily or for up to a year.

Although district attorneys' offices are also allowed to file petitions for these orders, they are not mandated by law to represent police officers or other petitioners in the cases. Still, law enforcement sources said that some district attorneys' office are representing police in the civil proceedings.

In 2021, the State Police filed applications for 36 temporary or final extreme risk protection orders between Jan. 1 and June 22. This year, the number of those applications during that same time period has soared to 146 — including 85 over the past two months.

<https://www.timesunion.com/state/article/Extreme-risk-protection-orders-17258122.php>

'Red Flag' Laws Require a Tricky Balance

"The notion that we can identify mass killers before they act is, as yet, an epidemiologic fiction," psychiatrist Richard Friedman noted in a 2019 *New York Times* essay. "Experienced psychiatrists fare no better than a roll of the dice at predicting violence."

Even if certain "red flags" are common among mass shooters, almost none of the people who display those signs are bent on murderous violence. While "there may be pre-existing behavior markers that are specifiable," a 2012 Defense Department study noted, those markers "are of low specificity and thus carry the baggage of an unavoidable false alarm rate."

RAND Corporation researchers Rosanna Smart and Terry Schell made the same point in a 2021 essay. "Policies targeting individuals based on risk factors would result in an extremely high rate of false positives," they wrote. "Even the best available risk factors can identify only a subpopulation in which the risk of committing a mass shooting is on the order of one in a million."

In the face of all this uncertainty, it is vitally important that red flag laws include robust safeguards to minimize "false positives." But the 19 states that have already passed such laws typically have weak due process protections, which means people can be stripped of their constitutional rights based on little more than unvalidated allegations.

Temporary red flag orders, which are issued without a hearing and sometimes without evidence that a threat is imminent, can last for weeks. For final orders, which usually last a year and can be renewed, some states require nothing more than showing that the respondent is more likely than not to pose an unspecified level of risk—meaning that orders are issued even when the target is highly *unlikely* to hurt someone.

<https://reason.com/2022/06/15/red-flag-laws-require-a-tricky-balance/>

Senate Group Reaches Bipartisan Compromise on Gun Control Bill

A bipartisan team of senators on Sunday announced what they billed as a "commonsense" legislative package that would encourage "red flag laws," create the first federal law against gun trafficking and straw purchasing, and enhance background checks for firearms buyers under 21 years old.

According to a summation.. the package would provide "major funding" to help states pass "red flag" laws to keep guns out of the hands of criminals and mentally ill people. It would also provide billions of dollars for mental health and school safety, including cash for community health clinics.

The package also includes the long-sought closure of the so-called "boyfriend loophole," denying domestic abusers, including serious dating partners, the ability to buy a gun if they are convicted of abusing their partners.

The law would also be clarified to make sure all truly commercial firearms sellers are doing required background checks.

The measure does not provide for universal background checks, something Democrats wanted and the vast majority of Americans support, according to numerous polls. Nor does it ban the purchase of assault weapons by people under 21. The Uvalde shooter was 18 and used an assault weapon on his rampage.

In what appears to have been a compromise to address those concerns, the bipartisan deal would provide for enhanced background checks for those under 21 and a short pause to conduct the check. Young buyers can only get the gun after the background check is completed, Murphy said in his summation of the deal.

Finally, the deal would create a new law banning gun trafficking and straw gun purchasing, a measure intended to reduce the flow of guns into cities where the firearms are illegal.

<https://www.usnews.com/news/politics/articles/2022-06-12/senate-group-reaches-bipartisan-compromise-on-gun-control-bill>.

White House Aims To Shut Down Ammunition Sales While Dems Claim To Engage In Good Faith Gun Talks

In northwestern Missouri, a major government-owned ammunition plant is now facing closure as the Biden administration escalates its war on American gun owners, The Federalist has learned.

The Lake City ammunition factory is one of the largest manufacturers of M855/SS109 ammo which is the most popular caliber for the most targeted firearm in the country: the AR-15. In operation since 1941 to produce ammunition for the U.S. Army, the government contracts with the private firm Winchester to run the enterprise and sell any

excess supplies on the open market. The plant also produces XM855 and XM193 ammunition.

Mark Oliva, a spokesman for the National Shooting Sports Foundation (NSSF), told The Federalist “Winchester was informed that the government is considering restricting the manufacturing and commercial sale of legal ammunition produced at the Lake City, Mo., facility.”

Such restrictions, Oliva said, would place 400 to 500 jobs in immediate jeopardy, reduce available ammunition in the market, and sever the nation’s wartime readiness.

“This policy to deny the sale of excess ammunition not only would freeze over 30 percent of the 5.56mm/.223 caliber ammunition used by law-abiding gun owners,” Oliva said, “it risks the ammunition industry’s ability to surge production capacity for national defense if the costs to maintain the present workforce isn’t recouped through sales to the civilian market.”

<https://thefederalist.com/2022/06/17/white-house-aims-to-shut-down-ammunition-sales-while-dems-claim-to-engage-in-good-faith-gun-talks/>

A judge has ruled New York's lawsuit against the NRA can move forward

The New York case began when Attorney General Letitia James, a Democrat, filed a lawsuit that accused some top NRA executives of financial improprieties and [sought to dissolve the group](#). The attorney general's job includes oversight of nonprofit organizations incorporated in the New York, where the NRA was chartered in 1871.

In March, Manhattan Judge Joel M. Cohen rebuffed James' bid to shutter the NRA. But the judge let the case go on, with the potential for fines or other remedies if the attorney general prevails.

The NRA accused James in a court filing last year of waging "a blatant and malicious retaliation campaign" because of its views. The group sought to halt the lawsuit.

Cohen rejected those arguments.

<https://www.npr.org/2022/06/11/1104361673/new-york-lawsuit-nra-attorney-general>

Oxford (MI) High School students sue for changes after deadly mass shooting last year

Students at a Michigan high school who survived a mass shooting that killed four of their classmates have sued the school district, seeking to force it to alter its policies before the next school year commences.

The federal lawsuit against the Oxford Community School District and school officials seeks a third-party investigation into the shooting allegedly committed by Ethan Crumbley, who was sent back to class the day of the attack despite indications of violent thoughts.

The students, who are not seeking monetary damages, also want the district to improve training for administrators and institute other protective policies, such as keeping students who may be suicidal out of classrooms.

https://www.npr.org/2022/06/19/1106139811/oxford-high-school-students-sue-for-changes-after-deadly-mass-shooting-last-year?utm_campaign=nys-academy-of-trial-lawyers-eclips&utm_source=membercentralpublications&utm_medium=email&utm_content=june-20-2022

The Field of Firearms Forensics Is Flawed

Forensic experts continue to employ unproven techniques, and courts continue to accept their testimony largely unchecked. However, courts have recently begun to recognize the scientific limitations of one forensic field: firearms identification, in which an examiner visually compares fired bullets or cartridge cases and opines on whether the items were fired by the same gun. Contrary to its popular reputation, firearms identification is a field built largely on smoke and mirrors....

The same examiner looking at the same bullets a second time reached the same conclusion only two thirds of the time. Different examiners looking at the same bullets reached the same conclusion less than one third of the time. So much for getting a second opinion! And yet firearms examiners continue to appear in court claiming that studies of firearms identification demonstrate an exceedingly low error rate.

<https://www.scientificamerican.com/article/the-field-of-firearms-forensics-is-flawed/>

New York business groups urge federal action on gun reform

A coalition of business organizations in New York on Monday called for federal action on gun reform legislation following a string of mass shootings across the country.

The backing of federal legislation from the Business Council of New York State, the Buffalo Niagara Partnership, the Greater Rochester Chamber of Commerce and the Business Council of Westchester also comes as Gov. Kathy Hochul signed new measures into law that, among other provisions, require licensing of semiautomatic rifles in the state.

<https://spectrumlocalnews.com/nys/central-ny/ny-state-of-politics/2022/06/06/new-york-business-groups-urge-federal-action-on-gun-control>

The Push To Not Name Mass Shooters Is Growing

Perpetrators of these heinous attacks are telling us that they are committing these acts in such a public manner in order to gain fame and notoriety. A number of research studies, including one by Sherry Towers and colleagues, have found that mass shootings are contagious events, such that the occurrence of one – coupled with the media coverage it receives – can lead to an increase in copycat attacks in the first two weeks following.

<https://empirereportnewyork.com/the-push-to-not-name-mass-shooters-is-growing/>