

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

## August, 2022

### New York State Police, DEC to issue enforcement guidelines for new concealed carry rules

Gov. Kathy Hochul's office is directing New York State Police and the state Department of Environmental Conservation to issue guidance to law enforcement personnel about how to interpret certain provisions of the legislation, which also expands eligibility requirements to apply for a permit, new storage requirements for firearms and allows state-conducted ammunition background checks.

Guidance will also include an assessment of how the state constitution applies to the new law, according to the governor's office.

Hochul directed the agencies to issue the guidance, but representatives with the governor's office would not specify a timeline when it would be finalized.

<https://spectrumlocalnews.com/nys/central-ny/politics/2022/07/07/ny-state-police--dec-to-issue-enforcement-guidelines-for-new-concealed-carry-rules>

### New York Social Media Requirement Prevents Authorization of Permits (editorial)

Here is Section IV of the bill:

(IV) a list of former and current social media accounts of the applicant from the past three years to confirm the information regarding the applicants character and conduct as required in subpara-graph (ii) of this paragraph; and

Section IV appears to directly require the formation of an opinion, rather than “narrow, objective, and definite standards”, as required by Bruen. Bruen states if times to process are “lengthy” or if fees are “exorbitant”, shall issue regimes are likely to fail a Second Amendment test.

Authorities who are empowered by New York State law to issue permits face extreme danger if they approve of permits under the recently passed scheme. Section IV is a nearly impossible task for one person who is required to process dozens or hundreds of applications. This appears to be by design.

Not many people who have the authority to approve a permit will be able to take the time to meticulously go through three years of social media data to determine if there is one off-color or politically incorrect post among tens of thousands. The process is necessarily subjective and lengthy.

The risk for the approving authority will be perceived as very high if they do not do this.

If one of the approved permit applicants becomes involved in a shooting, even if fully justified, of someone in a government-approved “victim” class, their career will be in jeopardy.

The incentive to deny permits en masse is extreme. An alternative would be to delay permit approval by months or years.

The social media requirement is a blatant wrench thrown into the gears of the approval process.

<https://www.ammoland.com/2022/07/new-york-social-media-requirement-prevents-authorization-of-permits/#axzz7ainO8zLT>

### **Onondaga County DA on new concealed carry social media review law: "it's unenforceable"**

Onondaga County District Attorney Bill Fitzpatrick is calling a new law set to take effect September 1st “unenforceable.” Anyone who wants to apply for a license to carry a concealed weapon in New York State will have to hand over access to their social media accounts, starting September 1st. “I thought it was somebody pranking me, but sadly it's true,” said Fitzpatrick. He says he and other leaders in law enforcement were not included in decisions about this law. His biggest worry is how to enforce it.

“People are being shot out there and I'm sitting here in an office reading about your trip to Disney World? It's unbelievable the lack of thought and foresight,” said Fitzpatrick.

<https://cnycentral.com/news/local/onondaga-county-da-on-new-concealed-carry-social-media-review-law-its-unenforceable>

### **NY county clerks question feasibility of enacting gun permit changes**

County clerks from across New York state are calling on Gov. Kathy Hochul and the state Legislature for answers, guidance and funding.

“I can't reiterate enough from a practical standpoint, this new legislation has created so many more questions with really no answers at this point,” said the president of the New York State Association of County Clerks and Putnam County Clerk Michael Bartolotti.

He says there are too many unknowns to be able to properly inform the public.

The Association of Clerks sent a letter to the governor's office ... that read, in part, “In haste to pass the new regulations as a reaction to the recent United States Supreme Court ruling, the process as it stands now will be riddled with complex, confusing and redundant barriers of compliance.”

[https://spectrumlocalnews.com/nys/rochester/news/2022/07/18/ny-county-clerks-question-feasibility-of-enacting-gun-permit-changes?cid=share\\_twitter](https://spectrumlocalnews.com/nys/rochester/news/2022/07/18/ny-county-clerks-question-feasibility-of-enacting-gun-permit-changes?cid=share_twitter)

## **New gun rules stoke blowback, could have unintended Consequences for Adirondack residents**

The swift passage of major new concealed carry restrictions on New York gun owners — a measure passed with no public hearings — is being met with strong reactions from upstate elected leaders...Questions are also swirling about just how the restrictions will impact the approximately 132,000 full-time residents of the sprawling Adirondack Park — the largest state-owned public park in the lower 48 states.

The legislation... forbids concealed carry permit holders from bringing their weapons into parks. The public roads within the Adirondack Park are part of the park territory.

Rep. Elise Stefanik, R-Saratoga, whose congressional district includes parts of the Adirondack Park, called it “a disgrace” that residents were never given an opportunity to review or comment on the legislation before its hurried passage on the Friday leading into the Fourth of July weekend.

She added: “When you walk outside your house now and you have a firearm, that makes you a criminal in Kathy Hochul’s reality.” She also said visitors to the Adirondack Park who are authorized to carry concealed handguns could also face criminal charges if they drive into the Adirondack Park.

[https://www.nny360.com/top\\_stories/new-gun-rules-stoke-blowback-could-have-unintended-consequences-for-adirondack-residents/article\\_05a18c8a-edf2-5652-b4c4-4a3bb4df0155.html?fbclid=IwAR35FzEr2jLtLfYX5WmyPaYtOcYoo-NY3-m9oULt2HQAj8964Rv\\_YWDta6l](https://www.nny360.com/top_stories/new-gun-rules-stoke-blowback-could-have-unintended-consequences-for-adirondack-residents/article_05a18c8a-edf2-5652-b4c4-4a3bb4df0155.html?fbclid=IwAR35FzEr2jLtLfYX5WmyPaYtOcYoo-NY3-m9oULt2HQAj8964Rv_YWDta6l)

## **Lawsuits take aim at New York’s new gun-control rules for carry permits**

Gov. Kathy Hochul tried to thwart the US Supreme Court with a new law that makes virtually all of New York a gun-free zone and requires applicants for carry permits to give the state information about their social media accounts, according to a federal lawsuit filed Monday.

The suit — filed against State Police Superintendent Kevin Bruen by an upstate gun owner and three affiliated gun-rights groups — says the “Concealed Carry Improvement Act” signed by Hochul on July 1 contains a slew of “blatantly unconstitutional” provisions and should be thrown out as unenforceable.

The Northern District of New York filing alleges that Hochul was “unhappy” with (June’s) ruling in which the high court struck down a 1913 state law that required permit applicants show “proper cause” for wanting to pack heat.

The suit also says that despite the Supreme Court’s “clear pronouncements,” Hochul and state legislators “apparently did not ‘get the memo.’”

Court docs say provisions that designate 20 categories of public places as “sensitive locations” and “by default” designate all private property as a “restricted location” mean that “it is hard to imagine how a carry license holder could so much as leave home without running afoul of the CCIA.”



It also says that the requirement for applicants to provide lists of their social media accounts for the past three years could limit their free expression, in violation of the First Amendment, out of fear that their postings “may one day give a licensing officer pause in issuing a license.”

The suit was filed by upstate resident Ivan Atonyuk, who’s had a carry permit since 2009 and who immigrated to New York from Ukraine, “not seeking to exchange one totalitarian regime for another,” it says.

The other plaintiffs are the Gun Owners of America, its New York state chapter and its nonprofit arm, the Gun Owners Foundation.

Another suit challenging the law was filed Monday in Manhattan federal court, where lawyer Jon Corbett, who’s representing himself, took aim at the social-media provisions, saying they effectively ended the ability for pistol-permit applicants to post online anonymously.

<https://nypost.com/2022/07/11/lawsuits-take-aim-at-new-yorks-new-gun-control-rules-for-carry-permits/>

### **Gun rights group sues to block New York assault weapons ban**

A national gun rights group has sued New York in an effort to block the state's ban on assault weapons saying it violates the right to bear arms under the 2nd Amendment of the U.S. Constitution.

In a complaint filed Tuesday in federal court in Central Islip, New York, the Firearms Policy Coalition said that, while the 2nd U.S. Circuit Court of Appeals previously upheld the ban, the U.S. Supreme Court's recent ruling striking down the state's law on concealed carry permits had recognized a broader right to own guns.

New York banned assault weapons, defined as guns with certain features that may include a folding stock and a secondary grip for the non-trigger hand, in 2013. In 2015, the 2nd Circuit rejected a challenge to the ban, finding that it did not infringe on the core protections of the 2nd Amendment and that it served a public purpose.

FPC, however, said in its lawsuit that the Supreme Court's ruling last month in *New York State Rifle and Pistol Association v. Bruen*, had explicitly rejected the kind of interest-balancing that the 2nd Circuit had used in upholding the ban.

The case is *Vanchoff v. James*, U.S. District Court for the Eastern District of New York, No. 2:22-cv-04075.

<https://www.reuters.com/legal/government/gun-rights-group-sues-block-new-york-assault-weapons-ban-2022-07-13/>

## **New York State Police developing red flag database to track threats**

A state database is being created to catalog who has been red flagged — their guns taken away— by a judge.

Statewide, 658 people have had an ERPO filed against them, between January 1, 2021 and June 28, 2022. That includes 34 Western New Yorkers

<https://www.wkbw.com/news/i-team/new-york-state-police-developing-red-flag-database-to-track-threats>

## **Red Flag law generates due process concerns**

Weeks after lawmakers embraced expansions to a law that allows firearms to be seized from persons deemed to be dangerous, the revamped “Red Flag” statute is flawed with “significant deficiencies “ including potential threats to due process rights, according to the New York State Bar Association’s leader.

Sherry Levin Wallach, president of the lawyers’ group, expressed concern that judges are required to make rulings regarding an individual’s mental state in the absence of a requirement for a psychiatric evaluation. She also pointed out the New York Red Flag law forces individuals to represent themselves when they lack funds to hire a lawyer or don’t understand the importance of being represented by an attorney.

Thomas Mungeer, president of the New York State Troopers Police Benevolent Association, said the Red Flag requirements have become “an unfunded mandate” for already strained State Police.

Assemblyman Robert Smullen, R-Fulton County, said the Red Flag law, in his view, remains flawed, while much of the package of new gun laws has the effect of hindering the ability of law-abiding people to exercise their right to have firearms to protect themselves.

[https://www.lockportjournal.com/news/local\\_news/red-flag-law-generates-due-process-concerns/article\\_f51749ec-0703-11ed-a2df-5f73f219bbf3.html](https://www.lockportjournal.com/news/local_news/red-flag-law-generates-due-process-concerns/article_f51749ec-0703-11ed-a2df-5f73f219bbf3.html)

## **New York’s governor race set for clash over guns and abortion**

Republican leaders in New York have spent over a year touting Rep. Lee Zeldin as their best hope to recapture the executive branch. But while his conservative positioning and clout easily pulled him through Tuesday’s primary, Zeldin must now repaint himself as a viable gubernatorial candidate with multi-party appeal in a deep-blue state.

Zeldin faces the daunting task of challenging incumbent Democratic Gov. Kathy Hochul in November after they each emerged victorious from their respective primaries Tuesday night....

Zeldin sees a path to victory by seizing on rising crime, population losses in the state and its high cost of living.

“This isn’t just a red wave,” Zeldin said in his victory speech Tuesday. “This is a common sense wave that reaches out to everybody across our state.”

Hochul has [worked] with the Democratic-led state Legislature to pass stronger gun laws and abortion protections....Zeldin, meanwhile, has stuck with the conservative themes through the primary campaign.

Zeldin blasted New York’s strict gun laws — including the red flag law that allows guns to be restricted from people who pose danger to themselves or others— and said people should “have a right to stand [their] ground.”

<https://www.politico.com/news/2022/06/29/hochul-zeldin-new-york-governor-election-00043020>

### **Additional gun bills proposed**

Several new pieces of gun legislation have been proposed in the state Legislature even as the ink is still drying on the state’s most recent batch of firearms-related bills.

Only days after the end of the legislature’s extraordinary session on July 1, six bills either tightening gun sales laws ... have been proposed for discussion during the 2023 state legislative session.

Syracuse Democrat Amy Paulin introduced A.10624 to require proof of a mental health examination which a doctor, psychologist or state-licensed social worker says the person is competent and not likely to be a danger to the public before a license to carry a firearm is granted. Paulin has proposed additional training requirements in A.10619. The Syracuse Democrat wants the state to require 40 hours of training and pass a test to to receive a conceal carry test, while also proposing a requirement that any gun license require passage of a firearms safety course and test devised by the state.

State Sen. Kevin Thomas, D-Garden City, wants to make it illegal to spread or publish files or instructions digitally to manufacture a gun or its components. S.9324 proposes that anyone who does so could face a class C felony charge punishable by as many as 15 years in jail.

Assemblyman Phil Steck, D-Schenectady, proposes requiring any firearm, rifle or shotgun to be manufactured so they are incompatible with rapid-fire modification devices. The bill (A.10557) also would require gun makers to make those modifications to their weapons at no cost to gun owners and gun dealers. Gun owners would be given one year to make their weapons compliant if Steck’s legislation is passed.

Anyone who makes or ships a gun not meeting the state’s requirement would face a class E felony.

<https://www.observertoday.com/news/page-one/2022/07/additional-gun-bills-proposed/>



## House Passes 'Assault Weapons' Ban

The House narrowly approved a bill outlawing the sale of “assault weapons” on Friday (July 29), the first time in almost 30 years that lawmakers have passed a measure to reinstate the expired federal ban.

The bill passed with a vote of 217–213, largely along party lines...

The measure, called “Assault Weapons Ban of 2022,” would make it illegal for a person to import, manufacture, sell, or transfer “a semiautomatic assault weapon,” according to the bill’s summary.

Ninety days after the Assault Weapons Ban of 2022, H.R. 1808, is enacted, if it passes the Senate and the president’s desk, it would be “unlawful for any person” to sell, gift, or loan “a grandfathered semiautomatic assault weapon to any other person,” with exceptions, according to the bill.

The bill covers the most popular rifles in the U.S. — the AR-15 and AK-47.

The bill now heads to the Senate, where it’s not expected to get 60 votes to bypass the filibuster.

<https://www.nationalreview.com/news/house-passes-assault-weapons-ban/>

## The Federal Government’s Own Study Concluded Its Ban on 'Assault Weapons' Didn't Reduce Gun Violence

Nearly two decades ago the Department of Justice funded a study to analyze this very topic, and it concluded that the assault weapon prohibition had “mixed” results.

Researchers noted there was a decline in crimes committed with firearms classified as assault weapons, but noted “the decline in AW use was offset throughout at least the late 1990s by steady or rising use of other guns.”

In other words, there was a decline in crimes committed with firearms that were banned, but the drop was replaced by crimes committed with other types of firearms that were not banned.

While gun violence overall fell in the US during this period—just like many other countries around the world—the decline continued even after the Federal Assault Weapons Ban ended in 2004. Authors of the government-funded study plainly stated “we cannot clearly credit the ban with any of the nation’s recent drop in gun violence” and any future reduction in gun violence as a result of the ban was likely “to be small at best and perhaps too small for reliable measurement.”

(O)ther studies since then have yielded similar conclusions.

A RAND review of gun control studies, which was updated in 2020, concluded there’s “inconclusive evidence for the effect of assault weapon bans on mass shootings.” Research

published in *Criminology & Public Policy* the same year (2020) concluded that bans on assault weapons “do not seem to be associated with the incidence of fatal mass shootings.”

<https://fee.org/articles/the-federal-government-s-own-study-concluded-its-ban-on-assault-weapons-didnt-reduce-gun-violence/>

### **Senate confirms former prosecutor to run agency overseeing gun laws**

The Bureau of Alcohol, Tobacco, Firearms and Explosives will have its first permanent leader in seven years after a ... Senate vote Tuesday confirmed former federal prosecutor Steven Dettelbach for the role.

Following the passage in June of the first bipartisan legislation to address gun violence in decades, Biden has faced pressure from Democrats and gun control groups for tougher measures. At a White House event touting the law on Monday, Biden’s remarks were interrupted by a man arguing “You have to do more.”

Biden withdrew his first nominee to the position, David Chipman, last year after Chipman’s gun control advocacy drew criticism from conservatives and some Democrats. Moderate Sens. Joe Manchin III, D-W.Va., and Jon Tester, D-Mont., withheld their support from Chipman, but supported Dettelbach.

The agency has only had one Senate-confirmed director, B. Todd Jones, since a 2006 law made it subject to Senate confirmation. Jones left the agency in 2015.

<https://rollcall.com/2022/07/12/senate-confirms-former-prosecutor-to-run-agency-overseeing-gun-laws/>

### **New York Attorney General Asks Judge to Reject NRA’s Second Attempt at Dismissing Her Case, Defends Request for a ‘Compliance Monitor**

New York Attorney General Letitia James (D) asked a Manhattan judge to reject the National Rifle Association’s motion to dismiss her lawsuit after the original attempt to boot the complaint mostly failed.

In early March, Manhattan Supreme Court Justice Joel Cohen advanced most of the attorney general’s lawsuit against the NRA save for the count described as the “corporate death penalty” — seeking the 150-year-old gun advocacy group’s dissolution.

James responded with an amended complaint asking the judge to appoint a “compliance monitor and a governance expert,” calling the request a “narrowly tailored remedy that will ensure that the NRA’s charitable assets are administered properly in furtherance of its charitable mission and for the benefit of its members.”

<https://lawandcrime.com/high-profile/new-york-attorney-general-asks-judge-to-reject-nras-second-attempt-at-dismissing-her-case-defends-request-for-a-compliance-monitor/>



## **Appeal Asks the Supreme Court To Reject Warrantless Gun Seizures Justified by 'Special Needs**

The Supreme Court last year unanimously ruled that police could not rely on a "community caretaking exception" to justify their warrantless seizure of firearms from the home of a man who had consented to a psychiatric evaluation after a dispute with his wife. Yet six months later, the U.S. Court of Appeals for the 2nd Circuit (which covers New York State) approved a warrantless seizure of firearms in strikingly similar circumstances.

Instead of "community caretaking," the appeals court cited "special needs," an even more commodious exception to the presumption that the Fourth Amendment requires police to obtain a warrant before entering someone's home and seizing his property. In a brief asking the Supreme Court to hear an appeal of that decision, the Institute for Justice urges the justices to renounce that seemingly all-purpose excuse for dispensing with warrants, warning that it threatens to nullify the general rule.

The brief goes to the heart of the main question raised by the appeal: "whether a so-called 'special-needs exception' to the Fourth Amendment exists and allows warrantless entry into the home of someone who is not subject to penal control or supervision." In separate briefs, the Firearms Policy Coalition, Gun Owners of America, and the New Civil Liberties Alliance join the Institute for Justice in asking the Court to hear the case and reconsider that alarming loophole.

<https://reason.com/2022/07/13/this-appeal-asks-the-supreme-court-to-reject-warrantless-gun-seizures-justified-by-special-needs/>

## **The Good Samaritan With A Gun In Indiana Serves To Refute Four Common Gun Control Myths (editorial)**

First, a good guy with a gun can stop a bad guy with a gun. Recently, (there were) other similar instances of defensive gun use.

Second, constitutional carry ensures that good samaritans can carry, even if they do not satisfy onerous carry regimes. I imagine that if this incident happened in New York, the good samaritan would be indicted for illegal possession of a firearm.

Third, a common argument in favor of "high capacity" magazine bans is that defensive gun use never needs more than a few bullets. Here, the good samaritan used ten bullets, and he could have needed even more. In California, for example, magazines are limited to ten rounds. Had the good samaritan needed one more bullet to drop the assailant, he would have been out of luck in California.

Fourth, it is commonly argued that a person armed with a handgun cannot take down a person armed with larger rifles. This incident proves that myth is wrong.

<https://reason.com/volokh/2022/07/19/the-good-samaritan-with-a-gun-in-indiana-serves-to-refute-four-common-gun-control-myths/>