

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

July, 2023

New York: 2023 Legislative Session Ends in Albany

While New Yorkers were snoozing last [month], multiple gun bills passed. Fortunately, most of those bills only cleared one chamber, but not the other. In order to become law, the legislation has to be approved by both chambers and signed by the Governor.

So what happened this year? The Assembly passed A.2084A which bans lead ammunition during the taking of game on state lands. The Senate companion bill remained in committee. The Senate passed several of its own bills without the Assembly companion bill being adopted. The Senate approved a 10-day waiting period on all firearm transfers by a vote of 42-19, but that legislation stalled in committee on the Assembly side. Several other bills had the same outcome:

- S.1892, which added ammunition to the list of items prohibited from being purchased or destroyed by those convicted of certain crimes, passed the Senate but did not advance beyond committee in the Assembly.
- S.2102 allows law enforcement to take temporary custody of firearms when called to domestic disputes. Again, the Senate adopted the bill without Assembly floor action.
- S.6980A is a child access prevention bill that mandates the dissemination of materials. New York already has a storage law, but this bill mandates the posting of loaded propaganda. It shared the same outcome as the previous two bills.
- Finally, S.138 was a terrible bill, which would have moved the certification of firearm instructors away from the NRA, to a state agency. The bill sponsor, Sen. Sean Ryan provided a telling justification for the bill. According to this anti-gun Senator, "The NRA has a monopoly on firearm training in New York. This bill will revoke that privilege from the chief opponent of our state's gun laws." That shocking admission translates into the real purpose behind the bill – political payback.

New York continues to push gun control. Incredibly, what we did not see this session was any sort of an attempt to fix New York's soft-on-crime criminal justice system or bail reform. Again, that is because this is about politics and not public safety.

<https://www.nraila.org/articles/20230613/new-york-2023-legislative-session-ends-in-albany>

New York State Legislature: End of session wrap-up

Here is the list of relevant gun control bills which passed this session:

- A-2209/S-816, Makes clarifying changes to the definition of imitation weapon.
- A-5092/S-4879, Provides that the legislative body of the county of Westchester shall fix the fee to be charged for a license to carry or possess a pistol or revolver and provide for the disposition of such fees.
- A-5791A/S-6238A, Defines the term mass shooting for purposes of emergency response measures and access to emergency funding.
- A-5835/S-3436, Exempts applications for an Extreme Risk Protection Order from requiring an index number fee.

<http://www.gunpoliticsny.com/?p=27151>

New (proposed) legislation strives to combat ghost guns in NYC

Rep. Ritchie Torres says the bill is an effort to get ghost guns off of the street while expanding gun-free school zones. The legislation would also go further than current regulations, ultimately requiring manufacturers of ghost gun kits to be licensed under the Gun Control Act.

<https://brooklyn.news12.com/new-legislation-strives-to-combat-ghost-guns-in-nyc>

New York to propose legislation criminalizing printing ghost guns at home

New York will try to make it a crime to print a gun at home.

Lawmakers are responding to a surge in gun crimes committed with untraceable firearms, known as ghost guns, increasingly being created using a 3D printer.

Under current New York law, someone who possesses or distributes a 3D printed gun can be charged with a misdemeanor. A proposed new law would make it a felony to manufacture a gun using a 3D printer.

<https://abcnews.go.com/US/new-york-propose-legislation-criminalizing-printing-ghost-guns/story?id=99798986>

Bill requiring Health Dept. to promote antigun narratives

New bill introduced to the Health Committee by Councilman Shaun Abreu, INT 1098-2023, Requiring the Department of Health and Mental Hygiene to develop materials on the dangers of keeping a gun in the home.

From the bill text: "... No later than 6 months after the effective date of the local law that added this section, the department, in consultation with the Office for Neighborhood Safety and the Prevention of Gun Violence, shall develop written materials containing information about the dangers of keeping a gun in the home. The department shall update the content of such materials on a yearly basis to reflect any changes in law, public health research, or both. Such materials shall include, but need not be limited to, the following information:

- Legal requirements pertaining to the safe storage of guns, including but not limited to rifles, shotguns, and firearms;
- Best practices for the safe storage of guns, including but not limited to rifles, shotguns, and firearms;
- Details regarding gun buyback programs;
- Health risk factors and exacerbation factors for gun injuries;
- Statistics on fatal and nonfatal shootings in the city;
- How to recognize at-risk persons for suicide and involvement in gun violence; and
- The relationship between intimate partner violence and gun violence.

<http://www.gunpoliticsny.com/?p=27209>

Saratoga Springs council tables vote banning firearm possession when intoxicated (again)

Saratoga Springs city leaders tabled a vote, once again, that would potentially add new punishment for people carrying firearms while under the influence.

The vote was pushed back because the city attorney, Tony Izzo, expressed concerns regarding the proposed ordinance's text, saying he wants to incorporate more New York State terminology into the proposal.

The proposed city law seeks to prohibit people from carrying firearms while under the influence, regardless of whether they have a license to carry.

This is the second time council members tabled the vote after they delayed it last month following concerns Izzo raised over the proposed city law possibly infringing on existing state firearm laws.

<https://cbs6albany.com/news/local/saratoga-springs-council-tables-vote-banning-firearm-possession-when-intoxicated-again>

New York court officials post 'red flag' data online

The number of extreme risk protection orders and temporary orders has steadily increased this year, according to data released Wednesday by New York state court officials.

The state court system has unveiled an online dashboard that will publish data on applications for risk protection orders, how many have been issued, where the orders are being placed and demographic information, such as ages for the people who are subject to the orders.

The data comes a year after state lawmakers and Gov. Kathy Hochul agreed to expand the circumstances in which extreme risk protection orders can be applied for and issued. Known as a red flag law, the provision is meant to keep guns away from people deemed to be a danger to themselves or others.

An application can be submitted by law enforcement, a prosecutor, school official, health care professional or a member of the person's family.

Both applications and orders are on a sharp increase over the last year and a half. Since August of last year, there has been a minimum of 300 applications for risk protection orders each month as well as applications approved. The numbers peaked in March this year with 544 applications and a combined 543 orders approved.

But the increase in applications and orders have also led to State Police investigators calling for additional resources to handle the increased caseload. The State Police Investigators Association worries the paperwork could take law enforcement away from other crimes.

https://nystateofpolitics.com/state-of-politics/new-york/ny-state-of-politics/2023/06/14/new-york-court-officials-post--red-flag--data-online?cid=share_twitter

N.Y. Congressional Dems look to draw contrast with GOP on guns

A group of House Democrats, including Hudson Valley Rep. Pat Ryan, announced plans to attempt an end-run around GOP leadership to force a vote on banning ...semi-automatic guns and enhancing background checks for gun purchases.

House Democrats announced plans to attempt an end-run around GOP leadership to force a vote on gun reforms by using "discharge petitions"

Two New York Republicans in competitive congressional districts told Spectrum News they do not plan to sign the discharge petitions. Others did not respond to a request for comment

On Tuesday, all but one New York Republican in Congress voted in support of a resolution overturning a Biden administration rule tightening federal regulations on stabilizing braces. Rep. Marc Molinaro argued the rule "retroactively" created "felons out of law abiding citizens"

House Democratic Leader Hakeem Jeffries criticized those GOP lawmakers, saying, they "voted to make it easier to kill Americans and unleash carnage on children"

<https://www.ny1.com/nyc/all-boroughs/politics/2023/06/17/n-y--congressional-dems-look-to-draw-contrast-with-gop-on-guns>

Senate rejects House-passed measure overturning Biden rule on pistol braces

The Senate voted largely along party lines Thursday to reject a Republican-sponsored resolution that would have overturned a Biden administration rule effectively banning the use of stabilizing braces on pistols — devices that have been used in several mass shootings.

Sens. Joe Manchin (W.Va.) and Jon Tester (Mont.), two centrist Democrats facing tough reelection races next year in red states, voted against the resolution. They both have a history of supporting gun-owners' rights.

The resolution failed by a vote of 49 to 50.

The resolution, which Republicans moved under the Congressional Review Act, would have nullified the rule finalized in January by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) stating that any stabilizing brace attached to a pistol with a barrel less than 16 inches would be regulated as a "short-barreled rifle" under the 1968 Gun Control Act.

<https://pix11.com/hill-politics/senate-rejects-house-passed-measure-overturning-biden-rule-on-pistol-braces/>

Biden says US needs 'new Congress' if gun laws don't change

While at the Safer Community Summit in Connecticut, the president urged Congress for new restrictions."Prayers are fine. They're important ... but its not going to stop it," President Biden said. "If this Congress refuses to act, we need a new Congress."

https://www.newsontheneck.com/news/national/biden-says-us-needs-new-congress-if-gun-laws-dont-change/video_e203f846-ac8a-5b3f-b0fe-f5eddee9e13d.html

Fact check: Biden makes 5 false claims about guns, plus some about other subjects

President Joe Biden made false claims about a variety of topics, notably including gun policy, during a series of official speeches and campaign remarks over the last two weeks.

He made at least five false claims related to guns, a subject on which he has repeatedly been inaccurate during his presidency.

After mentioning red flag laws, Biden invoked his late son Beau Biden, who served as attorney general of Delaware, and said: “As my son was the first to enforce when he was attorney general.” Biden’s claim is false. Delaware did not have a red flag law when Beau Biden was state attorney general.

Biden’s claims that a stabilizing brace turns a pistol into a gun and increases the caliber of a gun or bullet are false. A pistol is, obviously, already a gun, and a pistol brace does not have any effect on the caliber of ammunition that a gun fires or anything about the basic functioning of the gun itself.

Biden said at a campaign fundraiser in California on Monday: “The only industry in America you can’t sue is the – is the gun manufacturers.” Biden’s claim is false, as CNN and other fact-checkers have previously noted. Gun manufacturers are not entirely exempt from being sued, nor are they the only industry with some liability protections.

At a campaign fundraiser in California on Tuesday, Biden said the National Rifle Association, the prominent gun rights advocacy organization, itself cannot be sued. Biden’s claim is false. While gun manufacturers have [some] liability protections, no law was ever passed to forbid lawsuits against the NRA. The NRA has faced a variety of lawsuits in recent years.

Biden said that he taught the Second Amendment in law school, “And guess what? It doesn’t say that you can own any weapon you want. It says there are certain weapons that you just can’t own.” One example Biden cited was this: “You can’t own a machine gun.” Biden’s claim is false. The Second Amendment does not explicitly say people cannot own certain weapons – and the courts have not interpreted it to forbid machine guns.

Biden’s categorical claim that [those convicted of domestic violence abuse against their girlfriend or boyfriend] now “cannot buy a firearm, period” is an exaggeration, though Biden did sign a law in 2022 that made significant progress in closing the “boyfriend loophole.”

<https://www.weny.com/story/49113246/fact-check-biden-makes-5-false-claims-about-guns-plus-some-about-other-subjects>

Supreme Court rules against a convicted criminal who was given 27 years in prison for having a gun

The Supreme Court ruled Thursday that a man whose conviction on gun charges was called into question by a recent high court decision is out of luck.

The court's conservatives were in the 6-3 majority against the man, Marcus DeAngelo Jones, who was given a 27-year prison sentence for violating a federal law meant to keep guns out of the hands of people with previous criminal convictions.

Jones had argued that he should be allowed another chance to get his conviction thrown out following a 2019 court decision. In that case, the justices ruled prosecutors must prove that people charged with violating federal gun laws knew they were not allowed to have a weapon.

Jones tried to reopen his case following the 2019 decision, but a federal appeals court ruled against him. The issue in the case is technical, though important, and involves when defendants can make their claims in court, not the facts of Jones' case.

Justice Clarence Thomas wrote for the court that people who have used up their appeals don't get another day in court "based solely on a more favorable interpretation of statutory law adopted after his conviction became final."

Only two instances, newly discovered evidence or the court's new interpretation of a constitutional provision, authorize a second bite at the apple under a 1996 federal law meant to limit federal appeals, Thomas wrote.

<https://abcnews.go.com/US/wireStory/supreme-court-rules-man-27-years-prison-gun-100308695>

Armslist Not Liable for Hosting Gun Sale Ads That Led to Purchases by People Who Used the Guns Criminally

Wisconsin statutes regulate the entities that qualify as firearms dealers; other actors are not subject to those statutes and have not been charged with enforcing them. To allow liability on those other actors, such as private sellers—and here a website—would contradict that legislative judgment. The same holds true for the lack of a principled stopping point. If liability is permitted here, there would be no distinction between firearms dealers and exempt entities, a line Wisconsin law has drawn....

<https://reason.com/volokh/2023/06/14/armslist-not-liable-for-hosting-gun-sale-ads-that-led-to-purchases-by-people-who-used-the-guns-criminally/>

Third Circuit Holds That at Least Some Felons Retain Second Amendment Rights

The challenger in this case pleaded guilty in 1995 to making a false statement to obtain food stamps; because this was in theory punishable by up to five years in prison under Pennsylvania law, that made him a felon for federal gun law purposes (even though his actual sentence was just three years' probation plus "\$2,458 in restitution, \$288.29 in costs, and a \$100 fine"). But the logic of the majority opinion suggests that this might apply to many felons, perhaps even including people convicted of violent felonies, at least as I read the court's rationale.

Judge Ambro, joined by Judges Greenaway and Montgomery-Reeves concurred, but would have excluded felons whose crimes suggest that they "would, if armed, pose a threat to the orderly functioning of society," such as "murderers, thieves, sex offenders, domestic abusers, and the like." Judge Greenaway also joined the majority, but the other two did not. (Judge Porter also wrote a separate concurrence focusing on federal power.)

Judges Shwartz, Restrepo, Krause, and Roth dissented, generally arguing that felon disarmament laws are categorically constitutional.

<https://reason.com/volokh/2023/06/06/third-circuit-holds-that-at-least-some-felons-retain-second-amendment-rights/>

Appeals Court Narrows Reach of Ban on Firearms Possession by Criminals, Making Exception for Non-Violent Offenders

A federal appeals court has narrowed the scope of a federal law that disarmed individuals found guilty of an offense punishable by more than one year of imprisonment. The United States Court of Appeals for the Third Circuit, which encompasses Delaware, New Jersey, and Pennsylvania, found the law unconstitutional as applied to individuals convicted of non-violent misdemeanors.

In rejecting the government's argument, the court pondered whether "law-abiding" might "exclude those who have committed summary offenses or petty misdemeanors, which typically result in a ticket and a small fine."

<https://legalinsurrection.com/2023/06/court-narrows-reach-of-ban-on-firearms-possession-by-criminals-making-exception-for-non-violent-offenders/>

Originalism in the Lower Courts: Fifth Circuit Panel Invites Amicus Briefs on Second Amendment

On June 5, a Fifth Circuit panel (Smith, Higginson, and Willett) heard oral argument in *United States v. Daniels*. In this case, the defendant argues that a prohibition on possession of firearms for users of intoxicants and marijuana violates the Second Amendment, as construed by *Bruen*. No amicus briefs were filed in this case. The only

submissions were made by the Federal Public Defender and the Department of Justice. Two days after oral argument, the panel issued a directive: "The court invites briefs from amici curiae who wish to supply relevant information regarding the history and tradition of restrictions on the use and possession of firearms as pertinent to the issues presented in this case. Of particular interest are historical gun regulations applicable to intoxicated or impaired individuals. Such briefs must be filed by July 6, 2023 (regardless of any time limitations set by rule)."

<https://reason.com/volokh/2023/06/13/originalism-in-the-lower-courts-fifth-circuit-panel-invites-amicus-briefs-on-second-amendment/>

Gavin Newsom Wants To 'Permanently Enshrine' Gun Control in the U.S. Constitution

California Gov. Gavin Newsom is proposing a "28th Amendment" that would "permanently enshrine" those policies in the U.S. Constitution. This transparently partisan publicity stunt is wholly impractical and raises more questions than it answers. But Newsom's pitch for it nicely illustrates the dishonesty, emotionalism, divisive rhetoric, illogic, and magical thinking of politicians who promise that their half-baked gun control schemes will rescue America from fear of deadly violence.

Newsom says his amendment "permanently enshrines four additions to the laws of our land." It "raises the minimum age to purchase a firearm from 18 to 21, because if you can't buy a beer, you shouldn't be able to buy a gun"; "mandates universal background checks to prevent truly dangerous people from purchasing a gun that can be used in a crime"; "institutes reasonable waiting periods for all gun purchases"; "bans civilians from buying assault rifles—those weapons of war our founding fathers never foresaw"; and "guarantee[s]...states the ability to enact common-sense gun safety laws while leaving the Second Amendment intact and respecting America's gun-owning tradition."

That's actually five additions, not four, and the last one is especially vague and open-ended. Although Newsom insists that his plan would "leav[e] the Second Amendment intact," limiting the right to arms is the whole point of the proposal, which would authorize restrictions that federal courts otherwise might deem unconstitutional.

<https://reason.com/2023/06/09/gavin-newsom-wants-to-permanently-enshrine-gun-control-in-the-u-s-constitution/>

Connecticut Governor Signs Open Carry Ban, Expands 'Assault Weapon' Ban

Gun owners in the Constitution State will soon be forced to contend with a bevy of constitutionally-questionable new restrictions.

Connecticut Governor Ned Lamont (D.) signed House Bill 6667 into law. The new gun-control bill is wide-ranging. It will ban open carry, expand the list of firearms covered under the state's existing "assault weapon" ban, expand the state's "ghost

gun” ban to include possession, limit the number of handguns that can be purchased per month, and more.

The law also adds at least a dozen new requirements on licensed gun dealers operating in the state, including a provision requiring dealers to annually report their firearm inventories to the state’s Department of Emergency Services and Public Protection (DESPP). The DESPP will be empowered to impose an order barring future sales on any dealer found to be violating the newly created requirements.

<https://thereload.com/connecticut-governor-signs-open-carry-ban-expands-assault-weapon-ban/>

2A supporters sue Connecticut over open carry ban

Democratic Connecticut Gov. Ned Lamont on Tuesday signed into law the state's most wide-ranging gun control bill in the last decade.

The bill includes an open carry ban, which has triggered lawsuits by Second Amendment activists.

"The state constitution guarantees a right to protect oneself. No one sacrifices that right by walking out of their front door," We the Patriots USA lawyer Norm Pattis wrote of the legislation. "In an era of defunding police, permissive bail reform and liberal clemency, folks depend on the right to self-defense more than ever."

<https://www.foxnews.com/politics/2a-supporters-sue-connecticut-open-carry-ban>

Hawaii allows more concealed carry after US Supreme Court ruling, but bans guns in most places

Hawaii Gov. Josh Green on Friday signed legislation that will allow more people to carry concealed firearms but at the same time prohibit people from taking guns to a wide range of places, including beaches, hospitals, stadiums, bars that serve alcohol and movie theaters. Private businesses allowing guns will have to post a sign to that effect.

The legal overhaul comes in response to a U.S. Supreme Court ruling from last year that expanded gun rights by saying Americans have a right to carry firearms in public for self-defense.

New York and New Jersey adopted similar laws last year that quickly met legal challenges which are making their way through federal courts.

<https://abcnews.go.com/US/wireStory/hawaii-allows-concealed-carry-after-supreme-court-ruling-99804217>

Court temporarily allows part of New Jersey's handgun carry law to remain in effect

A federal appeals court has temporarily agreed to keep part of New Jersey's handgun carry law in effect as court proceedings play out.

The Third Circuit Court of Appeals on Tuesday granted the state attorney general's request to keep part of the law that bars people from carrying handguns in "sensitive places" in effect. It also denied Attorney General Matt Platkin's request in part, leaving in place a lower court's order that put an insurance mandate on hold.

The decision means handguns cannot be carried in places such as zoos, public parks, public libraries and museums, bars, and health care facilities. The law bars handguns from being carried in those places as well as schools and child care facilities. The lower court's May injunction did not specify those locations, and the appeals court also didn't remove the prohibition in those places.

The appeals court, though, rebuffed the state's effort to undo the lower court's injunction against an insurance mandate for firearms carriers that was scheduled to take effect in July.

<https://www.nbcnewyork.com/news/local/court-temporarily-allows-part-of-new-jerseys-handgun-carry-law-to-remain-in-effect/4441625/>

Is gun control making Vermont less safe?

Up until 2018, deep blue Vermont was a model for sensible gun laws – meaning they had few and politicians on both sides of the aisle understood the tranquil state didn't need any. Vermont was the original Constitutional Carry state, as the Right-to-Carry without a permit was affirmed in a 1903 state supreme court case. In 2017 Vermont ranked 49th in violent crime – ahead of only Maine.

Then in 2018, Vermont lawmakers rejected the state's independent tradition to become just another New York satrapy. That year politicians enacted a ban on commonly-owned firearm magazines and criminalized the private transfer of firearms (sometimes inaccurately termed "universal" background checks). The legislature also instituted "Red Flag" gun confiscation orders that deprive a person of their Second Amendment rights without due process....

According to CDC fatal injury data, the total number and crude rate of "violence-related firearm deaths" (which includes suicides) increased from 2017 to 2021. Both the total number and crude rate of "violence-related firearm deaths" fell during the same period in neighboring New Hampshire. In Vermont, from 2017 to 2021 "violence-related firearm deaths" among kids ages 0-26 increased 40 percent.

According to FBI data, the violent crime rate increased in Vermont from 2017 to 2020. From 2017 to the first full year of Vermont's 2018 gun control measures

(2019) the violent crime rate rose by nearly 20 percent. Over the same period, New Hampshire's violent crime rate fell by 19 percent.

<https://www.nraila.org/articles/20230612/is-gun-control-making-vermont-less-safe>

Study: Restrictive gun control laws 'unlikely' to solve youth gun violence

A first-of-its-kind study published in late May in the American Medical Association's JAMA Network Open concluded that community-level "social vulnerability" factors like poverty, unemployment, crowded housing, and minority status were much more likely than "permissive" gun control laws to be strongly associated with a high gun-violence death rate among youth....

The study authors concluded that stricter gun laws "did not seem to equalize the consequences on a relative scale" given that social vulnerability-disadvantage was disproportionately associated with assault-related firearm deaths "across the spectrum of state gun laws," and accordingly, "more restrictive firearm laws are unlikely by themselves to reduce the disparities observed in firearm death rates among youths across communities."

In an interview about the results, the lead study author Dr. Deepika Nehra stated that, "[w]hat is clear from our work is that regardless of the strength of the gun laws in an area, the youth gun-related death rate is notably higher in the most socially vulnerable communities. ... In both the permissive and restrictive gun law states, the death rate was 10- to 12-fold higher in the most vulnerable communities compared to the least vulnerable communities."

Additional evidence supports the conclusion that "location, location, location" plays a more decisive role than legislation. A 2023 analysis by John Lott, Jr. of the Crime Prevention Research Council (CPRC) reviewed the distribution of murders across America using 2020 data, and determined that murders tend to be concentrated in a small set of counties. The worst 1% of counties (the worst 31 counties) had 21% of the population but experienced 42% of the murders. An appendix to the study lists the "worst 1% of counties in 2020 in terms of number of murders." At the top of the list are Cook County, IL and Los Angeles County, CA – both in states that are A-rated for their gun control laws by the Giffords Law Center. Numbers four and five on the list are Philadelphia and New York City's five counties, likewise in states that are classed as "restrictive" gun control states (awarded a B and an A rating, respectively, from Giffords).

<https://www.buckeyefirearms.org/study-restrictive-gun-control-laws-unlikely-solve-youth-gun-violence-problem>

Fast Reloading of Guns in the 19th Century

Although the 19th century was, by far, the century of the greatest advances in firearms, many of those advances were not truly new. Rather, the advances were the results of improvements in manufacturing that greatly reduced the price of gun types that previously had been very expensive.

The post covers, in order:

- Spencer lever-action rifles (fast reloads of 7-round tubular magazines);
- Girardoni rifles (20-round tubular speedloaders);
- bolt-action rifles (reloads via detachable box magazines or stripper clips);
- double-barreled shotguns (over 30 shots per minute);
- semiautomatic handguns (detachable box magazines or stripper clips);
- metallic cartridge revolvers (via circular speedloaders);
- cap-and-ball revolvers and pepperboxes (for revolvers, cylinder swaps starting with an 1858 Remington patent);
- finally, and perhaps most surprisingly, the large progress in reloading speed of single-shot muskets and rifles, thanks to the replacement of muzzleloading with breechloading.

During the nineteenth century, firearms that could be reloaded quickly after being emptied became widespread and affordable to a broad market. Many of the developments involved ideas that had been worked out centuries before, but had not become available to average consumers due to the high labor costs of artisanal manufacture before the industrial revolution.

<https://reason.com/volokh/2023/06/05/fast-reloading-of-guns-in-the-19th-century/>